

MINUTES OF THE REGULAR MEETING  
OF THE  
BOARD OF DIRECTORS  
WEST VIRGINIA HOUSING DEVELOPMENT FUND  
August 28, 2024

The regular meeting of the Board of Directors of the West Virginia Housing Development Fund (the "Fund") was held on Wednesday, August 28, 2024 at the Fund's office. The Board of Directors attended via video conferencing, via phone, and in person. The video conferencing information was made available to the public in the Notice of Meeting of the Board of Directors posted on the West Virginia Secretary of State website and the Fund's website. The Chair called the meeting to order at 9:00 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)  
Lynne Gianola, Member (via video)  
Troy Giatras, Member (via video)  
Kara Hughes, Representative for the Honorable Riley Moore, State Treasurer (via phone)  
Patrick Martin, Member (via video)  
Bob Nistendirk, Member (via video)  
Kris Raynes, Member (via phone)  
Allen Retton, Member (in person)  
Steven Travis, Representative for the Honorable Patrick Morrissey, Attorney General (via phone)  
Kellie Wooten-Willis, Member (via video)

Staff present:

Erica Boggess, Executive Director  
Tammy Bonham, Senior Division Manager Loan Servicing  
Antonia Francis, Legal Counsel  
Trisha Hess, Senior Manager – Accounting  
Chrissy Hoover, Loan Processor and Closer  
Whitney Humphrey, Communications Administrator  
Chad Leport, Division Manager – Finance and Federal Compliance  
Martha Lilly, Legal Assistant  
Michael Lindsco, Manager – Asset Management  
Kelley Ridling, Senior Manager – Internal Audit  
Jon Rogers, Senior Division Manager – Single Family Lending  
Lori Ryan, Executive Assistant  
Kristin Shaffer, Deputy Director – Administration and General Counsel  
Scott Smith, Senior Manager – Multifamily Lending  
Claire Spradling, Loan Processor and Closer  
Nathan Testman, Deputy Director – Production  
Dorothy White, Federal Compliance Officer  
Michelle Wilshere, Senior Division Manager – Multifamily – Low Income Housing Tax Credit Program

Others Present:

Samme Gee – Jackson Kelly PLLC

APPROVAL OF THE MINUTES OF THE JULY 31, 2024  
MEETING

Member Troy Giatras moved the approval of the minutes of the July 31, 2024 meeting. His motion was seconded by Representative Kara Hughes, and, upon the affirmative vote of the ten (10) members present, the Chair declared the motion adopted.

FINANCIAL STATEMENTS AND DELINQUENCY REPORT  
FOR THE PERIOD ENDED JUNE 30, 2024

Representative Steven Travis joined the meeting.

Erica Boggess presented the financial statements and delinquency reports for the period ended June 30, 2024. The financial statements and delinquency reports were accepted as presented.

CONSIDERATION OF BOND AUTHORIZING RESOLUTION FOR  
FRANKLIN MANOR

Chad Leport requested the Board's approval of the Bond Authorizing Resolution for the Franklin Manor Apartments Project and explained that the Board approved a Bond Inducement Resolution on behalf of EPD2 FMA, LP at the May 30, 2024 meeting.

Mr. Leport stated that tax exempt bonds are required to qualify the project for 4% tax credits. The Fund will serve as the conduit issuer, which will provide EPD2 FMA, LP, the borrower, with access to the tax-exempt market, and the Fund will issue its West Virginia Housing Development Fund Multifamily Housing Revenue Bonds Series 2024 (Franklin Manor) (the "Bonds") in an amount not to exceed \$5,500,000. The bond proceeds, along with other funds, will provide the borrower with financing for the acquisition and rehabilitation of Franklin Manor Apartments, a 48-unit residential rental housing project located in Martinsburg, WV. The bonds have an expected maturity date of April 1, 2028. The Fund will receive a financing fee of approximately \$17,500.

Mr. Leport stated that staff is asking the Board's approval of the Bond Authorizing Resolution for the project which approved the following: The issuance of the Bonds in an amount not to exceed \$5,500,000; 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 the Trust Indenture, Loan Agreement, and Bond Purchase Agreement; approving a preliminary official statement and its distribution, and authorizing the preparation, deliver, and executive of an official statement; appointing bond counsel, general counsel, underwriter, financial advisor, trustee, registrar, and paying agent; approval of the allocation of Bond Volume Cap to the Bonds; authorizing the execution and delivery of all documents in connection with the issuance of the Bonds to which the Housing Development Fund is a party; and all other actions relating to such financing, in substantially the form presented.

Member Giatras 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 eleven (11) members present, the Chair declared the motion adopted.

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

CONSIDERATION OF MULTIFAMILY LOAN PROGRAM  
PERMANENT LOAN AND ERA2 LOAN FOR FRANKLIN MANOR  
APARTMENTS

Member Retton asked to be recused from participating in this agenda item and then left the room.

Representative Travis left the meeting.

Nathan Testman presented a Multifamily Loan Program permanent loan and an ERA2 loan request from EPD2 FMA, LP to finance, in part, the acquisition, rehabilitation and permanent financing of Franklin Manor Apartments, a 48-unit Low-Income Housing Tax Credit Program ("LIHTCP") project located in Martinsburg, Berkeley County.

Mr. Testman stated that the project consists of 12 one-bedroom units, 28 two-bedroom units, 4 three-bedroom units, and 4 four-bedroom units. Forty (40) units are designated for tenants with income at or below 60% Area Median Income (AMI) and eight (8) units are designated for tenants with income at or below 50% AMI. All forty-eight (48) units are proposed to benefit from Project-Based Rental Assistance ("PBRA"), which covers rent costs that exceed 30% of a tenant's income. Based on the size of the ERA2 loan to this Project, three (3) units will be considered ERA2 units (collectively, the "Project").

Mr. Testman informed the Board that the developer for the Project is Eagle Point Development-Series 2 LLC ("EPD"). "Eagle Point" titled companies have acquired a variety of affordable housing projects that have received national recognition. EPD's current footprint stretches over six (6) states, and it has developed 2,651 units. Frankling Manor is EPD's first development in West Virginia. Given the developer's experience and the PBRA Assistance, Mr. Testman stated that staff has a high level of confidence in the rehabilitation of the Project.

Mr. Testman stated that staff is requesting approval of a Multifamily Loan Program permanent loan in the amount of up to \$4,712,000, with a fixed rate of up to 5.25%, for a term of 40 years. The permanent loan will be secured by a first lien deed of trust on the land and improvements known as Franklin Manor Apartments, operating and replacement reserves associated with the Project, and a USDA 538 Loan Guarantee, which covers 90% of the loan balance. During the construction/rehabilitation phase of the Project, the loan will also contain payment and performance bonds equal to 100% of the construction contract, the personal guarantees of Laura E. Burns and Richard Nelson, Jr., as well as the corporate guarantees of Franklin Manor GP, LLC, Eagle Point Development-Series 2, LLC, and Eagle Point Development, LLC.

Member Giatras moved to approve the request for the Multifamily Loan Program permanent loan for the acquisition and rehabilitation of Frankling Manor Apartments. His motion was seconded by Member Nistendirk, and, upon the affirmative vote of the nine (9) members present, the Chair declared the motion adopted.

Member Pat Martin left the meeting.

Mr. Testman stated that staff is requesting approval of an ERA2 loan in the amount of up to \$1,558,000, with a rate of up to 1.5%, for a term of 40-years. The ERA2 Affordability period will run 20 years from project completion. The ERA2 loan will be secured by a second lien (junior to the Multifamily Loan) deed of trust on the land and improvements known as Franklin Manor Apartments and operating and replacement reserve accounts associated with the Project. During the construction/rehabilitation phase of the Project, the loan will also contain payment and performance bonds equal to 100% of the construction contract, the personal guarantees of Laura E. Burns and Richard Nelson, Jr., as well as the corporate guarantees of Franklin Manor GP, LLC, Eagle Point Development-Series 2, LLC, and Eagle Point Development, LLC.

Member Giatras moved to approve the request for the ERA2 loan in the amount of \$1,558,000 for Franklin Manor Apartments. His motion was seconded by Representative Norm Bailey, and, upon the affirmative vote of the eight (8) members present, the Chair declared the motion adopted.

CONSIDERATION OF MULTIFAMILY LOAN PROGRAM  
CONSTRUCTION LOAN AND ERA2 LOAN FOR TRIADELPHIA  
LANDING

Member Martin rejoined the meeting.

Mr. Testman presented a Multifamily Loan Program construction loan and an ERA2 loan to finance the new construction and permanent financing of Triadelphia Landing, a thirty-two (32) unit LIHTC project located in Mallory, Logan County.

Mr. Testman stated that the project will consist of sixteen (16) one-bedroom units, eight (8) two-bedroom units, and eight (8) three-bedroom units. Twenty-three (23) units are designated for tenants with income at or below 60% Area Median Income (AMI) and nine (9) units are designated for tenants with income at or below 40% AMI and will be considered ERA2 units. Twenty-four (24) of the units are proposed to benefit from PBRA, which covers rent costs that exceed 30% of a tenant's income.

Mr. Testman informed the Board that AU Associates, Inc. is the developer for Triadelphia Landing and explained that the developer has completed over 31 LIHTCP properties representing over 1,200 affordable housing units throughout Kentucky and West Virginia. Given the developer's experience and the presence of PBRA, staff has a high level of confidence in AU Associates, Inc.'s ability to develop the proposed project.

Mr. Testman stated that staff is requesting approval of a Multifamily Loan Program construction loan in the amount of up to \$5,100,000, with a fixed rate of up to 5%, for a term of 24 months to Triadelphia Landing, LLC. The construction loan will be secured by a first lien deed of trust on the land and improvements known as Triadelphia Landing, personal guarantee of Johan Graham, corporate guarantees of GP Triadelphia Landing, LLC and AU Associates, Inc., and payment and performance bonds equal to 100% of the construction contract.

Member Giatras moved to approve the request for the Multifamily Loan Program construction loan for the new construction of Triadelphia Landing, as presented. His motion was seconded by Member Pat Martin, and, upon the affirmative vote of the nine (9) members present, the Chair declared the motion adopted.

Mr. Testman stated that staff is requesting approval of an ERA2 loan in the amount of up to \$2,500,000, with an interest rate of 0%, for a term of 20 years from project completion to Triadelphia Landing, LLC. During construction, the ERA2 loan will be secured by a second lien (junior to the Multifamily construction loan) deed of trust on the land and improvements known as Triadelphia Landing, payment and performance bonds equal to 100% of the construction contract, and the replacement and operating reserve accounts associated with the project. Following construction, the loan will be secured by the first lien deed of trust.

Member Giatras moved to approve the request for the ERA2 loan for the new construction of Triadelphia Lading, as presented. His motion was seconded by Member Martin, and, upon the affirmative vote of the nine (9) members present, the Chair declared the motion adopted.

CONSIDERATION OF MULTIFAMILY LOAN PROGRAM  
CONSTRUCTION LOAN AND MULTIFAMILY LOAN PROGRAM  
PERMANENT LOAN FOR CHILDERS CROSSING

Michelle Wilshere presented a Multifamily Loan Program construction loan and a Multifamily Loan Program permanent loan to finance the new construction and permanent financing of Childers Crossing, a thirty (30) unit Low-Income Housing Tax Credit Program ("LIHTCP") project located in Huntington, Cabell County.

Ms. Wilshere stated that the project will consist of thirty (30) three-bedroom units. Twenty-two (22) units are designated for tenants with income at or below 60% Area Median Income (AMI) and eight (8) units are designated for tenants with income at or below 40% AMI.

Ms. Wilshere informed the Board that Childers Crossing Associates LLC is the developer for Childers Crossing and explained that the principals of the developer have developed 13 LIHTCP projects, creating 514 affordable housing units in West Virginia. Given the developer's experience, staff has a high level of confidence in the developer's ability to develop the proposed project.

Ms. Wilshere stated that staff is requesting approval of a Multifamily Loan Program construction loan in the amount of up to \$6,500,000, with a fixed rate of up to 5%, for a term of 24 months to Childers Crossing LP. The construction loan will be secured by a first lien deed of trust on the land and improvements known as Childers Crossing, personal guarantees of Chris Sadd and Steve Sadd, a limited guarantee of Mark Sadd, and corporate guarantees of Childers Crossing GP LLC and Childers Crossing Associates LLC. Ms. Wilshere also stated that this loan would be secured by either payment and performance bonds equal to 100% of the construction contract or a letter of credit.

Member Giatras moved to approve the request for the Multifamily Loan Program construction loan for the new construction of Childers Crossing, as presented. His motion was seconded by Member Nistendirk, and, upon the affirmative vote of the nine (9) members present, the Chair declared the motion adopted.

Ms. Wilshire stated that staff is requesting approval of a Multifamily Loan Program permanent loan in the amount of up to \$1,024,000, with an interest rate of up to 5.75%, for a term of 40 years to Childers Crossing LP. The loan will be secured by a first lien deed of trust on the land and improvements known as Childers Crossing, operating and replacement reserves associated with the project, and USDA 538 GRRHP Option 1 Permanent Loan Guarantee, which will cover 90% of the permanent loan balance. Limited, non-recourse guarantees for the corporate owners may also be required.

Member Giatras moved to approve the request for the Multifamily Loan Program permanent loan for the new construction of Childers Crossing, as presented. His motion was seconded by Member Nistendirk, and, upon the affirmative vote of the nine (9) members present, the Chair declared the motion adopted.

CONSIDERATION OF MULTIFAMILY LOAN PROGRAM  
CONSTRUCTION LOAN AND HTF PROGRAM LOAN FOR MARLOWE  
GARDENS

Member Retton rejoined the meeting.

Michelle Wilshire presented a Multifamily Loan Program construction loan and an HTF Program loan for the rehabilitation and permanent loan financing of Marlowe Gardens, a thirty-six (36) unit Low-Income Housing Tax Credit Program ("LIHTCP") project located in Falling Waters, Berkeley County.

Ms. Wilshire stated that the project will consist of eight (8) one-bedroom units and twenty-eight (28) two-bedroom units. Twenty-seven (27) units are designated for tenants with income at or below 60% Area Median Income (AMI), five (5) units are designated for tenants with income at or below 40% AMI, and four (4) units are designated for tenants with income at 30% AMI. Thirty (30) units are proposed to benefit from Project-Based Rental Assistance ("PBRA"), which covers rent costs that exceed 30% of a tenant's income. Based on the size of the HTF loan to this Project, four (4) units will be designated as HTF units.

Ms. Wilshire informed the Board that Four S Marlowe Gardens Associates LP, with members Lester Severe, Shelley Severe and Michael Severe. Lester Severe has over 35 years of experience managing and developing multifamily housing. The developer's portfolio includes 230 communities representing 10,000 units. This includes 15 projects in West Virginia. Given the developer's experience, staff has a high level of confidence in the developer's ability to develop the proposed project.

Ms. Wilshire stated that staff is requesting approval of a Multifamily Loan Program construction loan in the amount of up to \$3,000,000, with a fixed rate of up to 5%, for a term of 30 months to Four S Marlowe Gardens LP. The construction loan will be secured by a first lien deed of trust on the land and improvements known as Marlowe Gardens, personal guarantees of Lester Severe, Shelley Severe, and Michael Severe, corporate guarantees of Four S Marlowe Gardens GP LLC and Four S Marlowe Gardens Associates LLC, and payment and performance bonds equal to 100% of the construction contract.

Member Nistendirk moved to approve the request for the Multifamily Loan Program construction loan for the rehabilitation of Marlowe Gardens, as presented. His motion was seconded by Member Giatras, and, upon the affirmative vote of the ten (10) members present, the Chair declared the motion adopted.

Ms. Wilshere stated that staff is requesting approval of an HTF Program loan in the amount of up to \$355,000, with an interest rate of up 0%, for a term of 30 years to Four S Marlowe Gardens LP. The loan will be secured by a second lien deed of trust on the land and improvements known as Marlowe Gardens, which will be shared with the USDA RD-515 mortgage, and operating and replacement reserves associated with the project. During the construction period, the Fund will be secured by Payment and Performance Bonds equal to 100% of the construction contract.

Member Nistendirk moved to approve the request for the HTF Program loan for the rehabilitation of Marlowe Gardens, as presented. His motion was seconded by Member Giatras, and, upon the affirmative vote of the ten (10) members present, the Chair declared the motion adopted.

#### CONSIDERATION OF NOMINATIONS FOR BOARD OFFICERS

Kristin Shaffer stated that, under West Virginia Code §§ 31-18-4 (g) and 31-18-5 (d), the Board must annually elect a Vice-Chair, Secretary and Treasurer from its membership. The Chair of the Board is the Governor or his designee, Vice-Chair is Troy Giatras, Secretary is Bob Nistendirk, and Treasurer is the State Treasurer Riley Moore.

Member Retton moved to nominate and elect Troy Giatras as Vice-Chair, Bob Nistendirk as Secretary, and State Treasurer Riley Moore as Treasurer. His motion was seconded by Representative Bailey, and, upon the affirmative vote of the ten (10) members present, the Chair declared the motion adopted.

Ms. Shaffer noted that, under Article V, Sections 3 and 4 of the Fund's Bylaws, the Board may appoint or designate one or more Assistant Secretaries and Assistant Treasurers.

Ms. Shaffer stated that staff recommends the reappointment of Trisha Hess and Chad Leport as Assistant Treasurers, and the reappointment of Kristin Shaffer and Martha Lilly as Assistant Secretaries.

Member Giatras moved to reappoint Trisha Hess and Chad Leport as Assistant Treasurers, and the reappointment of Kristin Shaffer and Martha Lilly as Assistant Secretaries. His motion was seconded by Member Retton, and, upon the affirmative vote of the ten (10) members present, the Chair declared the motion adopted.

#### INFORMATIONAL ITEMS

##### 2024 AFFORDABLE HOUSING FUND AWARDS

Mr. Testman informed the Board that the Fund conducts annual requests for proposals (RFP) from eligible Affordable Housing Fund (AHF) applicants. The 2024 RFP resulted in the selection of 37 projects to 20 organizations, totaling \$1,463,047.

#### HAF UPDATE

Ms. Boggess updated the Board regarding the Homeowner's Assistance Program (HAF) and explained that the Fund has approximately \$2.1 million left in HAF money to disburse and stated that staff has a goal to close the program by December 31, 2024. Ms. Boggess noted that the Fund ran out of HAF administration money in July and the remaining administrative expenses will be paid from general funds.

#### IRS UPDATE

Ms. Boggess updated the Board on the IRS Audit relating to the 1099s issued in 2021 under the Rental Assistance Program. Staff submitted the requested information to the IRS and is awaiting response from the IRS.

#### ADJOURNMENT

There being no further business, Member Nistendirk moved to adjourn the meeting. His motion was seconded by Representative Bailey. Meeting adjourned at 9:50 a.m.

  
Martha Lilly, Assistant Secretary

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

RESOLUTION AUTHORIZING AND DIRECTING THE ISSUANCE, EXECUTION AND DELIVERY OF NOT TO EXCEED \$5,500,000 AGGREGATE PRINCIPAL AMOUNT OF THE ISSUER'S MULTIFAMILY HOUSING REVENUE BONDS, SERIES 2024 (FRANKLIN MANOR); PROVIDING PARAMETERS FOR ESTABLISHING THE PRINCIPAL AMOUNT, 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 TRUST INDENTURE, A LOAN AGREEMENT AND A BOND PURCHASE AGREEMENT WITH RESPECT TO THE BONDS; APPROVING A PRELIMINARY OFFICIAL STATEMENT AND AUTHORIZING AN OFFICIAL STATEMENT WITH RESPECT TO THE BONDS; APPOINTING BOND COUNSEL, GENERAL COUNSEL, AN UNDERWRITER, A FINANCIAL ADVISOR AND A TRUSTEE, REGISTRAR AND PAYING AGENT FOR THE BONDS; 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, rehabilitation and equipping of residential housing projects;

WHEREAS, EPD2 FMA, LP, a West Virginia limited partnership (the "Borrower"), has requested that the Issuer assist the Borrower in the acquiring, rehabilitating and equipping of privately owned real and personal property known as Franklin Manor Apartments, a 48-unit multifamily housing development to be owned and operated by the Borrower as an affordable multifamily rental housing project located at 700 West Burke Street, Martinsburg, Berkeley County, West Virginia (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 the Borrower in the financing of the Project;

WHEREAS, the Borrower has requested that the Issuer issue not to exceed \$5,500,000 aggregate principal amount of Multifamily Housing Revenue Bonds, Series 2024 (Franklin Manor) (the "Bonds") for the purpose of assisting in the financing of the Project;

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

WHEREAS, the Bonds will be issued by the Issuer and will be secured under and pursuant to a Trust Indenture (the "Indenture") between the Issuer and UMB Bank, N.A., as trustee (the "Trustee");

WHEREAS, the Borrower has requested that the Issuer lend the proceeds of the Bonds to the Borrower pursuant to the terms of a Loan Agreement between the Issuer and the Borrower (the "Loan Agreement"), and the proceeds of the Bonds will be used to finance the Project;

WHEREAS, as security for the Loan Agreement, the Borrower shall execute a Note and such other documents as reasonably requested by the Issuer as security therefor;

WHEREAS, the Bonds will be sold pursuant to a Bond Purchase Agreement (the "Purchase Agreement"), among the Issuer, the Borrower and Stifel, Nicolaus & Company, Incorporated (the "Underwriter"), to be dated as of the date of execution and delivery of the Certificate of Determinations, as hereinafter defined;

WHEREAS, it is anticipated that the Issuer and the Borrower will deliver and the Underwriter will distribute a preliminary official statement (the "Preliminary Official Statement") and an official statement (the "Official Statement") in connection with the marketing and sale of the Bonds;

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 the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, certain actions are required to be taken by the Issuer as a prerequisite to the issuance and sale 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 VIRGINIA 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 2024 is hereby approved.

Section 3. Approval of Bond Documents. Draft forms of the Indenture, the Loan Agreement, the Purchase Agreement and the Preliminary Official Statement (hereinafter collectively referred to as the "Bond Documents") have been prepared and presented to the Issuer. The Bond Documents substantially in the form submitted at this meeting shall be and the same are hereby approved. The Executive Director is authorized to negotiate and approve the final forms and content of the Bond Documents under such terms and conditions as are acceptable to the Executive Director and the Borrower, with such changes, insertions and omissions as may be approved by the Executive Director. The Executive Director, Assistant Secretary and Assistant Treasurer are hereby authorized, empowered and directed to execute (as applicable) and deliver the appropriate Bond Documents prior to or simultaneously with the issuance of the Bonds for and on behalf of the Issuer, in the forms and upon those terms and conditions as approved by the Executive Director, and such approval shall be conclusively evidenced by the execution and/or delivery, as applicable, of the Bond Documents by the Executive Director, Assistant Secretary, Assistant Treasurer or other authorized officer of the Issuer.

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 the principal amount of not to exceed \$5,500,000 is hereby authorized and directed. The Bonds shall be dated their date of issuance, shall mature no later than April 1, 2028, and shall bear interest at an interest rate or rates to be established in accordance with the Indenture, not to exceed 12%, with the final principal amount, dated date, maturity date, interest rate, redemption provisions and other terms of the Bonds to be approved by the Executive Director and set forth in a Certificate of Determinations (the "Certificate of Determinations") to be dated the date of the Purchase Agreement and delivered the date of delivery of the Bonds, such approval to be evidenced by the execution by the Executive Director of the Certificate of Determinations. 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 pursuant to the Indenture, all as provided in the Indenture as finally approved by the Executive Director as described above. The Bonds shall be sold to the Underwriter pursuant to the Purchase Agreement at such price as may be approved by the Executive Director of the Issuer and by the Borrower, such approval to be evidenced by the execution by the Executive Director and by the Borrower of the Purchase Agreement setting forth such price. All of the provisions of the Indenture and the Certificate of Determinations, 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 payments made by the Borrower under the Loan Agreement that are available to the Trustee pursuant to the Indenture, and the funds and accounts pledged under the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture. The Bonds are further secured by an assignment to the Trustee of the right, title and interest of the Issuer in the Loan

Agreement (except for certain reserved rights) and the Note. 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 aforementioned pledge and assignment under the Indenture. 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 the holders thereof have any rightful claim to, any income, revenues, funds or assets of the Issuer other than those pledged under the Indenture as security for the payment of the Bonds. 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 Indenture.

Section 6. Appointments. The Issuer hereby appoints the following:

(a) Stifel, Nicolaus & Company, Incorporated is hereby appointed as the underwriter for the Bonds. The Executive Director is hereby authorized and directed, upon advice of counsel, to enter into the Purchase Agreement with the Underwriter and the Borrower. It is understood by the Issuer that the Underwriter will be compensated only from the proceeds of the Bonds or other funds available to the Borrower.

(b) 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.

(c) 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.

(d) 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.

(e) UMB Bank, N.A., is hereby appointed as trustee, registrar and paying agent for the Bonds under the Indenture.

Section 7. Authentication of Bonds. The Trustee is hereby requested to authenticate and register the Bonds in accordance with the Indenture and to deliver them upon the order of the Executive Director.

Section 8. Investment of Funds. The Trustee shall be, by virtue of this Resolution and without further authorization from the Issuer, authorized, directed and requested to invest and reinvest all moneys available therefor pursuant to the Indenture, which by the terms of the Indenture may be invested, or to deposit and redeposit such moneys in such accounts as may be permitted by the Indenture at the direction of the Borrower, all subject to the terms and limitations contained in the Indenture and the Act.

Section 9. Continuing Disclosure. The Issuer shall have no responsibility to undertake or complete any continuing disclosure related to the Bonds, and such responsibility shall be solely that of the Borrower or its designated agent.

Section 10. Official Statement.

(a) The distribution by the Underwriter of a Preliminary Official Statement in such form as shall be approved and “deemed final” by the Executive Director in accordance with Rule 15c2-12 promulgated by the Securities and Exchange Commission is hereby authorized and approved.

(b) The preparation and distribution of the final Official Statement relating to the Bonds is hereby authorized in such form as may be approved by the Executive Director, such approval to be evidenced by the execution by the Executive Director of such final Official Statement; and the delivery by the Underwriter to prospective purchasers of the Bonds of the final Official Statement is hereby authorized and approved. The Executive Director shall execute and deliver the Official Statement with such changes, insertions and omissions as may be approved by the Executive Director. In executing the Official Statement, the Executive Director shall with respect to all matters, other than that portion of the Official Statement which relates to the Issuer, be entitled to rely upon the certificate of the Borrower with respect to such Official Statement. The execution of the Official Statement by the Executive Director in reliance upon the certificate of the Borrower shall be conclusive evidence of any approval required by this Section.

Section 11. Indemnification. Subject to the provisions of, and as set forth in, the Indenture and the Loan 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 12. 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 13. 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 14. Incidental Actions. The Executive Director, Assistant Secretary, Assistant Treasurer or other authorized officer of the Issuer are hereby authorized and directed to execute and deliver a tax certificate (the “Tax Certificate”), a regulatory agreement by and among the Issuer, the Borrower and the Trustee (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 Bond Documents and the issuance and sale of the Bonds, and for carrying out the transactions contemplated therein, all in accordance with the Act, the Code and this Resolution, including any action necessary with respect to The Depository Trust Company or the blue sky

laws of any state. The execution, delivery and due performance, as applicable, of the Bond Documents, the Official Statement, the Tax Certificate, 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 15. Expenses and Fees. All expenses incurred by the Issuer in connection with the issuance of the Bonds, including 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 16. Governing Law. The laws of the State of West Virginia shall govern the construction of this Resolution and of all Bonds issued under the Indenture.

Section 17. 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 18. 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 28th day of August, 2024.

WEST VIRGINIA HOUSING DEVELOPMENT  
FUND

By: \_\_\_\_\_  
Executive Director

CERTIFICATION

I, \_\_\_\_\_, duly appointed Assistant Secretary of the West Virginia Housing Development Fund, do 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 August 28, 2024.

Dated: \_\_\_\_\_, 2024

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

---

**TRUST INDENTURE**

Dated as of September 1, 2024

between

WEST VIRGINIA HOUSING DEVELOPMENT FUND,  
as Issuer

and

UMB BANK, N.A.,  
as Trustee

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Relating to

\$5,500,000  
West Virginia Housing Development Fund  
Multifamily Housing Revenue Bonds, Series 2024  
(Franklin Manor)

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## INDEX

(This Index is not a part of this Indenture  
but rather is for convenience of reference only)

	Page
Preambles .....	1
Granting Clauses .....	1

## ARTICLE I

### DEFINITIONS

Section 1.01	Definitions.....	4
Section 1.02	Interpretation.....	20
Section 1.03	Captions and Headings .....	21
Section 1.04	Content of Certificates and Opinions.....	21

## ARTICLE II

### AUTHORIZATION AND TERMS OF BONDS

Section 2.01	Authorization and General Terms of Bonds .....	22
Section 2.02	Maturity and Interest.....	22
Section 2.03	Execution and Authentication of Bonds .....	23
Section 2.04	Source of Payment; Limited Obligations.....	23
Section 2.05	Payment and Ownership of Bonds.....	24
Section 2.06	Registration and Transfer of Bonds .....	25
Section 2.07	Mutilated, Lost, Wrongfully Taken or Destroyed Bonds .....	25
Section 2.08	Cancellation of Bonds.....	26
Section 2.09	Special Agreement with Holders .....	26
Section 2.10	Book-Entry Only System.....	27
Section 2.11	Delivery of the Bonds .....	28

## ARTICLE III

### REDEMPTION, MANDATORY TENDER AND REMARKETING OF BONDS

Section 3.01	Redemption of Bonds .....	29
Section 3.02	Partial Redemption.....	30
Section 3.03	Notice of Redemption .....	30
Section 3.04	Payment of Redeemed Bonds .....	32
Section 3.05	Mandatory Tender.....	33
Section 3.06	Mandatory Tender Notice.....	33
Section 3.07	Remarketing of Bonds .....	34
Section 3.08	Cancellation of Bonds.....	37

## ARTICLE IV

### REVENUES AND FUNDS

Section 4.01	Creation of Funds.....	37
Section 4.02	Allocation of Bond Proceeds and Other Deposits .....	38
Section 4.03	Bond Fund.....	38
Section 4.04	Project Fund.....	39
Section 4.05	Costs of Issuance Fund .....	40
Section 4.06	Collateral Fund.....	40
Section 4.07	Completion of the Project .....	41
Section 4.08	Expense Fund.....	41
Section 4.09	Rebate Fund .....	42
Section 4.10	Permanent Loan Fund .....	42
Section 4.11	Investment of Special Funds, Rebate Fund and Permanent Loan Fund .....	43
Section 4.12	Money to be Held in Trust .....	44
Section 4.13	Valuation.....	45
Section 4.14	Nonpresentment of Bonds.....	45
Section 4.15	Repayment to the Borrower from the Bond Fund and the Expense Fund .....	45

## ARTICLE V

### THE TRUSTEE AND REMARKETING AGENT

Section 5.01	Trustee's Acceptance and Responsibilities.....	46
Section 5.02	Certain Rights and Obligations of the Trustee.....	47
Section 5.03	Fees, Charges and Expenses of Trustee .....	52
Section 5.04	Intervention by Trustee .....	52
Section 5.05	Successor Trustee.....	52
Section 5.06	Appointment of Co-Trustee .....	53
Section 5.07	Resignation by the Trustee.....	54
Section 5.08	Removal of the Trustee .....	54
Section 5.09	Appointment of Successor Trustee .....	54
Section 5.10	Adoption of Authentication .....	55
Section 5.11	Dealing in Bonds.....	55
Section 5.12	Representations, Agreements and Covenants of Trustee.....	55
Section 5.13	Right of Trustee to Pay Taxes and Other Charges.....	56
Section 5.14	Interpleader .....	56
Section 5.15	Survival of Certain Provisions .....	56
Section 5.16	Concerning the Remarketing Agent.....	57
Section 5.17	Qualification of Remarketing Agent.....	57
Section 5.18	Additional Duties .....	58
Section 5.19	Notices to Rating Agency and Remarketing Notice Parties .....	58

## ARTICLE VI

### DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND HOLDERS

Section 6.01	Defaults; Events of Default.....	59
Section 6.02	Notice of Default.....	59
Section 6.03	Acceleration .....	60
Section 6.04	Other Remedies; Rights of Holders .....	60
Section 6.05	Right of Holders to Direct Proceedings .....	61
Section 6.06	Application of Money .....	62
Section 6.07	Remedies Vested in Trustee.....	63
Section 6.08	Rights and Remedies of Holders.....	63
Section 6.09	Termination of Proceedings .....	64
Section 6.10	Waivers of Events of Default.....	64

## ARTICLE VII

### SUPPLEMENTAL INDENTURES

Section 7.01	Supplemental Indentures Generally .....	64
Section 7.02	Supplemental Indentures Not Requiring Consent of Holders.....	65
Section 7.03	Supplemental Indentures Requiring Consent of Holders.....	66
Section 7.04	Consent of Borrower.....	67
Section 7.05	Responsibilities of Trustee.....	67
Section 7.06	Authorization to Trustee; Effect of Supplement .....	68
Section 7.07	Opinion of Counsel .....	68
Section 7.08	Modification by Unanimous Consent .....	68

## ARTICLE VIII

### DEFEASANCE

Section 8.01	Release of Indenture .....	69
Section 8.02	Payment and Discharge of Bonds .....	69
Section 8.03	Survival of Certain Provisions .....	70

## ARTICLE IX

### COVENANTS AND AGREEMENTS OF THE ISSUER

Section 9.01	Covenants and Agreements of the Issuer.....	71
Section 9.02	Observance and Performance of Covenants, Agreements, Authority and Actions .....	72
Section 9.03	Enforcement of Issuer's Obligations .....	72

## ARTICLE X

### AMENDMENTS TO LOAN AGREEMENT AND NOTE

Section 10.01	Amendments Not Requiring Consent of Holders .....	72
Section 10.02	Amendments Requiring Consent of Holders .....	73
Section 10.03	Opinion of Bond Counsel .....	73
Section 10.04	Responsibilities of the Trustee.....	73
Section 10.05	Opinion of Counsel .....	73

## ARTICLE XI

### MEETINGS OF HOLDERS

Section 11.01	Purposes of Meetings.....	74
Section 11.02	Call of Meetings.....	74
Section 11.03	Voting .....	74
Section 11.04	Meetings.....	75
Section 11.05	Miscellaneous .....	75

## ARTICLE XII

### MISCELLANEOUS

Section 12.01	Limitation of Rights.....	76
Section 12.02	Severability .....	76
Section 12.03	Notices .....	76
Section 12.04	Suspension of Mail and Courier Service .....	77
Section 12.05	Payments Due on Saturdays, Sundays and Holidays.....	77
Section 12.06	Instruments of Holders.....	77
Section 12.07	Priority of this Indenture.....	78
Section 12.08	No Recourse.....	78
Section 12.09	Binding Effect.....	78
Section 12.10	Counterparts.....	78
Section 12.11	Governing Law .....	78

Exhibit A – Legal Description

Exhibit B – Bond Form

Exhibit C – Form of Requisition (Costs of Issuance)

Exhibit D – Form of Requisition (Permanent Loan Fund)

## TRUST INDENTURE

THIS TRUST INDENTURE dated as of September 1, 2024 (the “**Indenture**”), is made by and between the WEST VIRGINIA HOUSING DEVELOPMENT FUND, a public body corporate and governmental instrumentality of the State of West Virginia (together with its successors and assigns, the “**Issuer**”) and UMB Bank, N.A, with its designated corporate trust office located in Kansas City, Missouri , as Trustee (the “**Trustee**”) under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals and granting clauses being used therein as defined in Article I hereof):

### RECITALS

WHEREAS, the Issuer has been created pursuant to certain Acts of the Legislature of the State of West Virginia, constituting Article 18 of Chapter 31 of the Code of West Virginia, 1931, as amended (the “**Act**”); and

WHEREAS, the Issuer is permitted under the Act to issue bonds to make loans for the construction, rehabilitation, improvement, purchase, or refinancing of residential housing in the State of West Virginia; and

WHEREAS, the Issuer has determined it to be in furtherance of the public purposes of the Act to issue its Multifamily Housing Revenue Bonds, Series 2024 (Franklin Manor) in the aggregate principal amount of \$5,500,000 (the “**Bonds**”) and to use the proceeds of the Bonds to make a loan (the “**Loan**”) to EPD2 FMA, LP a West Virginia limited partnership (the “**Borrower**”) pursuant to a Loan Agreement dated as of September 1, 2024 (the “**Loan Agreement**”), between the Issuer and the Borrower, to finance, refinance or reimburse a portion of the costs of the acquisition, rehabilitation and equipping of a 48-unit multifamily housing development to be owned and operated as an affordable multifamily rental housing project to be known as Franklin Manor Apartments located at 700 West Burke Street, Martinsburg, West Virginia; (the “**Project**”), the development to be occupied by persons of low or moderate income in compliance with Section 142(d) of the Internal Revenue Code of 1986, as amended (the “**Code**”); and

WHEREAS, the Project is to be rehabilitated on the respective parcels of land described in Exhibit A hereto (collectively, the “**Land**”); and

WHEREAS, the obligations of the Borrower to make payments to the Issuer under the Loan Agreement will be evidenced by a Note dated September 1, 2024 (the “**Note**”) in the principal amount of \$5,500,000; and

WHEREAS, contemporaneously with the issuance of the Bonds and the making of the Loan by the Issuer, the Borrower is obtaining a separate mortgage loan with respect to the Project from the Issuer in its capacity as maker of such mortgage loan (the “**WVHDF RD 538 Lender**”) in the principal amount of \$[4,520,000] (the “**WVHDF RD 538 Mortgage Loan**”); and

WHEREAS, the WVHDF RD 538 Mortgage Loan will be guaranteed under the United States Department of Agriculture (“**USDA**”) Rural Development Section 538 program, as amended, and the regulations promulgated thereunder; and

WHEREAS, the obligations of the Borrower to make payments to the WVHDF RD 538 Lender under the WVHDF RD 538 Mortgage Loan will be evidenced by a promissory note effective as of the Closing Date (the “Permanent Loan Note”), which WVHDF RD 538 Note will be secured by a Credit Line Deed of Trust, Security Agreement and Fixture Filing on the Project for the benefit of the WVHDF RD 538 Lender, effective as of the Closing Date (the “WVHDF RD 538 Mortgage”); and

WHEREAS, contemporaneously with the issuance of the Bonds and the making of the Loan by the Issuer, the Borrower is obtaining a separate mortgage loan with respect to the Project from the Issuer in its capacity as maker of such mortgage loan (the “ERA2 Lender”) in the principal amount of \$[1,558,000] (the “ERA2 Loan”); and

WHEREAS, the obligations of the Borrower to make payments to the ERA2 Lender under the ERA2 Loan will be evidenced by a promissory note effective as of the Closing Date (the “ERA2 Note”), which ERA2 Note will be secured by Credit Line Deed of Trust, Security Agreement and Fixture Filing on the Project for the benefit of the ERA2 Lender, effective as of the Closing Date (the “ERA2 Mortgage”); and

WHEREAS, the Bonds will be secured by this Indenture, and the Issuer is authorized to execute and deliver this Indenture and to do or cause to be done all acts provided or required herein to be performed on its part; and

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

WHEREAS, the Trustee has accepted the trusts created by this Indenture, and in evidence thereof has joined in the execution hereof;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that to secure the payment of Bond Service Charges on the Bonds according to their true intent and meaning, to secure the performance and observance of all of the covenants, agreements, obligations and conditions contained therein and herein, and to declare the terms and conditions upon and subject to which the Bonds are and are intended to be issued, held, secured and enforced, and in consideration of the premises and the acceptance by the Trustee of the trusts created herein and of the purchase and acceptance of the Bonds by the Holders, and for other good and valuable consideration, the receipt of which is acknowledged, the Issuer has executed and delivered this Indenture and absolutely assigns hereby to the Trustee (except Reserved Rights) and to its successors in trust, and its assigns, all right, title and interest of the Issuer in and to (i) the Revenues, including, without limitation, all Loan Payments, Eligible Funds and other amounts receivable by or on behalf of the Issuer under the Loan Agreement in respect of repayment of the Loan, (ii) the Special Funds, including all accounts in those Funds and all money deposited therein and the investment earnings on such money, (iii) subject to the provisions of the Bond Resolution, all

right, title and interest of the Issuer in the proceeds derived from the sale of the Bonds, and any securities in which money in the Special Funds are invested, and (except for money required to be rebated to the United States of America under the Code) the proceeds derived therefrom, and any and all other real or personal property of every name and nature from time to time hereafter by delivery or by writing of any kind pledged, assigned or transferred, as and for additional security hereunder by the Issuer or by anyone on its behalf, or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms of this Indenture, (iv) the Note, except for the Reserved Rights and (v) the Loan Agreement, except for the Reserved Rights (the foregoing collectively referred to as the "Trust Estate"); provided, however, the Trust Estate does not include the Permanent Loan Fund, the Rebate Fund, the Expense Fund or the Costs of Issuance Fund (nor, in each case, any money deposited therein nor the investment earnings on such money),

TO HAVE AND TO HOLD unto the Trustee and its successors in that trust and its assigns forever;

BUT IN TRUST, NEVERTHELESS, and subject to the provisions hereof,

(a) except as provided otherwise herein, for the equal and proportionate benefit, security and protection of all present and future Holders of the Bonds issued or to be issued under and secured by this Indenture,

(b) for the enforcement of the payment of the principal of and interest on the Bonds, when payable, according to the true intent and meaning thereof and of this Indenture, and

(c) to secure the performance and observance of and compliance with the covenants, agreements, obligations, terms and conditions of this Indenture,

in each case, without preference, priority or distinction, as to lien or otherwise, of any one Bond over any other by reason of designation, number, date of the Bonds or of authorization, issuance, sale, execution, authentication, delivery or maturity thereof, or otherwise, so that each Bond and all Bonds shall have the same right, lien and privilege under this Indenture and shall be secured equally and ratably hereby, it being intended that the lien and security of this Indenture shall take effect from the date hereof, without regard to the date of the actual issue, sale or disposition of the Bonds, as though upon that date all of the Bonds were actually issued, sold and delivered to purchasers for value; provided, however, that

(i) if the principal of the Bonds and the interest due or to become due thereon shall be well and truly paid, at the times and in the manner to which reference is made in the Bonds, according to the true intent and meaning thereof, or the Outstanding Bonds shall have been paid and discharged in accordance with Article VIII hereof, and

(ii) if all of the covenants, agreements, obligations, terms and conditions of the Issuer under this Indenture shall have been kept, performed and observed and there shall have been paid to the Trustee all sums of money due or to become due to them in accordance with the terms and provisions hereof,

this Indenture and the rights assigned hereby shall cease, terminate and be void, except as provided in Section 8.03 hereof with respect to the survival of certain provisions hereof; otherwise, this Indenture shall be and remain in full force and effect.

It is declared that all Bonds issued hereunder and secured hereby are to be issued, authenticated and delivered, and that all Revenues assigned hereby are to be dealt with and disposed of under, upon and subject to, the terms, conditions, stipulations, covenants, agreements, obligations, trusts, uses and purposes provided in this Indenture. The Issuer has agreed and covenanted, and agrees and covenants with the Trustee and with each and all Holders, as follows:

## **ARTICLE I**

### **DEFINITIONS**

#### **Section 1.01   Definitions.**

In addition to the words and terms defined elsewhere in this Indenture or by reference to the Loan Agreement, unless the context or use clearly indicates another meaning or intent:

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

**“Act of Bankruptcy”** means written notice to the Trustee that the Borrower has become insolvent or has failed to pay its debts generally as such debts become due or has admitted in writing its inability to pay any of its indebtedness or has consented to or has petitioned or applied to any court or other legal authority for the appointment of a receiver, liquidator, trustee or similar official for itself or for all or any substantial part of its properties or assets or that any such trustee, receiver, liquidator or similar official has been appointed or that a petition in bankruptcy, insolvency, reorganization or liquidation proceedings (or similar proceedings) have been instituted by or against the Borrower; provided that, if in the case of an involuntary proceeding, such proceeding is not dismissed within 90 days after commencement thereof.

**“Additional Payments”** means the amounts required to be paid by the Borrower pursuant to the provisions of Section 4.4 of the Loan Agreement.

**“Administrative Expenses”** means the Ordinary Trustee Fees and Expenses, the Dissemination Agent Fee and the Ordinary Issuer Fees.

**“Affiliate”** of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” when used with respect to any specified Person means the power to direct the policies of such Person, directly or indirectly, whether through the power to appoint and remove its directors, the ownership of voting securities, by contract, or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

**“Assistant Secretary”** means each person serving as an Assistant Secretary of the Issuer.

**“Authorized Attesting Officer”** means an Assistant Secretary of the Issuer, or such other officer or director of the Issuer who, in accordance with the laws of the State, the bylaws or other governing documents of the Issuer, or practice or custom, regularly attests or certifies official acts and records of the Issuer, and includes any assistant or deputy officer to the principal officer or officers exercising such responsibilities.

**“Authorized Borrower Representative”** means any person who, at such applicable time, is designated as the Borrower’s authorized representative by written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person and signed on behalf of the Borrower by or on behalf of any authorized general partner of the Borrower if the Borrower is a general or limited partnership, by any authorized managing member of the Borrower if the Borrower is a limited liability company, or by any authorized officer of the Borrower if the Borrower is a corporation, which certificate may designate an alternate or alternates. The Trustee may conclusively presume that a person designated in a written certificate filed with it as an Authorized Borrower Representative is an Authorized Borrower Representative until such time as the Borrower files with it (with a copy to the Issuer) a written certificate revoking such person’s authority to act in such capacity.

**“Authorized Denomination”** means \$5,000, or any integral multiple of \$1,000 in excess thereof.

**“Authorized Officer”** means the Chair, Executive Director and each Deputy Director of the Issuer and any other officer or employee of the Issuer designated by certificate of any of the foregoing as authorized by the Issuer to perform a specified act, sign a specified document or otherwise take action with respect to the Bonds. The Trustee may conclusively presume that a person designated in a written certificate filed with it as an Authorized Officer is an Authorized Officer until such time as such provider files with it a written certificate identifying a different person or persons to act in such capacity.

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

**“Beneficial Owner”** means with respect to the Bonds, the Person owning the Beneficial Ownership Interest therein, as evidenced to the satisfaction of the Trustee.

**“Beneficial Ownership Interest”** means the right to receive payments and notices with respect to the Bonds held in a Book Entry System.

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

**“Bond Fund”** means the Bond Fund created in Section 4.01 hereof.

**“Bond Payment Date”** means each Interest Payment Date and any other date Bond Service Charges on the Bonds are due, whether at maturity, upon redemption, Mandatory Tender or acceleration or otherwise.

**“Bond Purchase Agreement”** means the Bond Purchase Agreement, dated [\_\_\_\_\_], 2024, among the Underwriter, the Issuer and the Borrower.

**“Bond Regulatory Agreement”** means the Regulatory Agreement relating to the Project, dated as of September 1, 2024, among the Issuer, the Trustee and the Borrower, as hereafter amended, modified, supplemented or restated from time to time to the extent permitted herein and which by its terms shall be filed in the official land records of the State on the Closing Date with respect to which the covenants contained therein shall run with the land.

**“Bond Resolution”** means the resolution relating to the issuance and sale of the Bonds, adopted by the Issuer on August 28, 2024.

**“Bond Service Charges”** means, for any period or payable at any time, the principal of and interest on the Bonds for that period or payable at that time whether due at maturity or upon redemption, Mandatory Tender or acceleration.

**“Bond Year”** means the period beginning on the Closing Date and ending on April 1, 2025, and each twelve-month period ending on April 1 of the following years.

**“Bonds”** means the Multifamily Housing Revenue Bonds, Series 2024 (Franklin Manor) of the Issuer authorized in the Bond Resolution and Section 2.01 hereof in the aggregate principal amount of \$5,500,000.

**“Book Entry Form”** or **“Book Entry System”** means, with respect to the Bonds, a form or system, as applicable, under which (a) physical Bond certificates in fully registered form are issued only to a Depository or its nominee, with the physical Bond certificates “immobilized” in the custody of the Depository and (b) the ownership of book entry interests in Bonds and Bond Service Charges thereon may be transferred only through a book entry made by others than the Issuer or the Trustee. The records maintained by others than the Issuer or the Trustee constitute the written record that identifies the owners, and records the transfer, of book entry interests in those Bonds and Bond Service Charges thereon.

**“Borrower”** means EPD2 FMA, LP, a West Virginia limited partnership.

**“Borrower Documents”** means the Financing Documents, the W VHDF RD 538 Mortgage Loan Documents, and the Permanent Loan Documents to which the Borrower is a party.

**“Business Day”** means a day (a) that is not a Saturday or a Sunday or a day on which (i) banking institutions in the City of New York or in the city in which the principal office of the Trustee, Tender Agent or Remarketing Agent is located or authorized or obligated by law or executive order to be closed or (ii) The New York Stock Exchange is closed and (b) on which the United States Government makes payments of principal and interest on its Treasury obligations.

**“Cash Flow Projection”** means a cash flow projection prepared by an independent firm of certified public accountants, a financial advisory firm, a law firm or other independent third party qualified and experienced in the preparation of cash flow projections for structured finance transactions similar to the Bonds, designated by the Borrower and acceptable to the Rating

Agency, establishing, to the satisfaction of the Rating Agency, the sufficiency of (a) the amount on deposit in the Project Fund and the Collateral Fund, (b) projected investment income to accrue on amounts on deposit in the Project Fund and Collateral Fund during the applicable period and (c) any additional Eligible Funds delivered to the Trustee by or on behalf of the Borrower to pay Bond Service Charges and the Administrative Expenses, in each instance, when due and payable, including, but not limited to, any cash flow projection prepared in connection with (i) the initial issuance and delivery of the Bonds, (ii) a proposed remarketing of the Bonds, as provided in Section 3.07, (iii) the purchase, sale or exchange of Eligible Investments as provided in Section 4.11 hereof and (iv) the release of Eligible Funds from the Negative Arbitrage Account of the Bond Fund.

**“Chair”** means the person serving as Chair of the Issuer.

**“Closing Date”** means September \_\_, 2024.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Collateral Fund”** means the Collateral Fund created in Section 4.01 hereof.

**“Completion Certificate”** means the certificate attached as Exhibit C to the Loan Agreement.

**“Confirmation of Rating”** means a written confirmation (or, at the option of the Rating Agency, a new rating with respect to the Bonds), obtained prior to the event or action under scrutiny, from the Rating Agency to the effect that, following the proposed action or event under scrutiny at the time such confirmation is sought, the rating of the Rating Agency with respect to all Bonds then Outstanding and then rated by the Rating Agency will not be downgraded, suspended, qualified or withdrawn as a result of such action or event.

**“Continuing Disclosure Agreement”** means the Continuing Disclosure Agreement dated as of the date hereof between the Borrower and the Dissemination Agent, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

**“Costs of Issuance”** means the “issuance costs” with respect to the Bonds within the meaning of Section 147(g) of the Code.

**“Costs of Issuance Fund”** means the Costs of Issuance Fund created in Section 4.01 hereof.

**“Depository”** means, with respect to the Bonds, DTC, until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter, Depository shall mean the successor Depository. Any Depository shall be a securities depository that is a clearing agency under a federal law operating and maintaining, with its participants or otherwise, a Book Entry System to record ownership of book entry interests in Bonds or Bond Service Charges thereon, and to effect transfers of book entry interests in Bonds.

**“Designated Office”** of the Trustee or the Remarketing Agent means, respectively, the office of the Trustee or the Remarketing Agent at the respective Notice Address set forth in this

Section 1.01 or at such other address as may be specified in writing by the Trustee or the Remarketing Agent, as applicable, as provided in Section 12.03.

**“Determination of Taxability”** means the receipt by the Trustee of (1) a copy of written notice from the Commissioner or any District Director of the Internal Revenue Service or a determination by any court of competent jurisdiction, or (2) an Opinion of Bond Counsel, in either case to the effect that interest on the Bonds is not excludable for regular federal income tax purpose under Section 103(a) of the Code from gross income of any Holders of the Bonds (other than a Holder who is a substantial user of the Project or a related person as defined in the Code).

**“Dissemination Agent”** means UMB Bank, N.A., or any successor, as Dissemination Agent under the Continuing Disclosure Agreement.

**“Dissemination Agent Fee”** means the fee payable to the Dissemination Agent as compensation for its services and expenses in performing its obligations under the Continuing Disclosure Agreement; provided, however, the amount of the Dissemination Agent Fee payable under this Indenture is limited to money withdrawn from the Expense Fund and the Borrower will be responsible to pay the remaining amount of the Dissemination Agent Fee pursuant to Section 4.4 of the Loan Agreement.

**“DTC”** means The Depository Trust Company (a limited purpose trust company), New York, New York, and its successors or assigns.

**“DTC Participant”** means any participant contracting with DTC under its book entry system and includes securities brokers and dealers, banks and trust companies and clearing corporations.

**“Eligible Funds”** means, as of any date of determination, any of:

- (a) the proceeds of the Bonds (including any additional amount paid by the Underwriter to the Trustee as the purchase price of the Bonds);
- (b) moneys drawn on a letter of credit;
- (c) moneys received by the Trustee solely for deposit in the Collateral Fund, which moneys shall become Eligible Funds only upon such deposit, representing Permanent Loan proceeds from the Permanent Loan Fund (for the avoidance of doubt, moneys in the Permanent Loan Fund shall not constitute Eligible Funds while such moneys remain in the Permanent Loan Fund);
- (d) remarketing proceeds of the Bonds (including any additional amount paid by the Remarketing Agent to the Trustee as the remarketing price of the Bonds) received from the Remarketing Agent or any purchaser of Bonds (other than funds provided by the Borrower, the Issuer, or any Affiliate of either the Borrower or the Issuer);
- (e) any other amounts, including the proceeds of refunding bonds, for which, in each case, the Trustee has received an Opinion of Counsel (which opinion may assume that no Holder or Beneficial Owner of Bonds is an “insider” within the meaning of the

Bankruptcy Code) to the effect that (a) the use of such amounts to make payments on the Bonds would not violate Section 362(a) of the Bankruptcy Code or that relief from the automatic stay provisions of such Section 362(a) would be available from the bankruptcy court and (b) payments of such amounts to Holders would not be avoidable as preferential payments under Section 547 or 550 of the Bankruptcy Code should the Issuer or the Borrower become a debtor in proceedings commenced under the Bankruptcy Code;

(f) any payments made by the Borrower and held by the Trustee for a continuous period of 123 days, provided that no Act of Bankruptcy has occurred during such period; and

(g) investment income derived from the investment of the money described in (a) through (f); which all such Eligible Funds are eligible for deposit into the Collateral Fund in accordance with Section 4.06(a) hereof.

**“Eligible Investments”** means, subject to the provisions of Section 4.11 hereof, any of the following obligations which mature (or are redeemable at the option of the Trustee without penalty) at such time or times as to enable timely disbursements to be made from the fund in which such investment is held or allocated in accordance with the applicable terms of this Indenture; *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:

(a) Government Obligations; and

(b) Shares or units in any money market mutual fund rated “Aaa-mf” by Moody’s (or the equivalent Highest Rating Category given by the Rating Agency for that general category of security) including mutual funds of the Trustee or its affiliates or for which the Trustee or an affiliate thereof serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefor registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of direct obligations of the government of the United States of America.

**“ERA2 Lender”** means the Issuer in its capacity as maker of the ERA2 Loan.

**“ERA2 Loan”** means a loan from the ERA2 Lender to the Borrower in the principal amount of \$[1,558,000].

**“ERA2 Loan Documents”** means the ERA2 Mortgage, the ERA2 Note and all other documents required by the ERA2 Lender in connection with the ERA2 Loan.

**“ERA2 Mortgage”** means the Credit Line Deed of Trust, Security Agreement and Fixture Filing made in connection with the ERA2 Loan by the Borrower for the benefit of the ERA2 Lender, effective as of the Closing Date.

**“ERA2 Note”** means the promissory note effective as of the Closing Date made by the Borrower in favor of the ERA2 Lender in connection with the ERA2 Loan.

**“Event of Default”** means any of the events described as an Event of Default in Section 6.01 hereof or Section 7.1 of the Loan Agreement.

**“Executive Director”** means the person serving as Executive Director of the Issuer.

**“Expense Fund”** means the Expense Fund created in Section 4.01 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.

**“Extension Payment”** means the amount due, if any, in connection with the change or extension of the Mandatory Tender Date pursuant to Section 3.07, and (a) which shall be determined by a Cash Flow Projection approved in writing by the Rating Agency and (b) must consist of Eligible Funds.

**“Extraordinary Issuer Fees and Expenses”** means the expenses and disbursements payable to the Issuer under this Indenture or the other Financing Documents for Extraordinary Services and Extraordinary Expenses, including extraordinary fees, costs and expenses incurred by Bond Counsel and counsel to the Issuer which are to be paid by the Borrower pursuant to Section 4.4 of the Loan Agreement.

**“Extraordinary Services”** and **“Extraordinary Expenses”** mean all services rendered and all reasonable expenses properly incurred by the Trustee or the Issuer under this Indenture or the other Financing Documents, other than Ordinary Services and Ordinary Expenses. Extraordinary Services and Extraordinary Expenses shall specifically include but are not limited to services rendered or expenses incurred by the Trustee or the Issuer in connection with, or in contemplation of, an Event of Default. Notwithstanding the foregoing, the Trustee shall be entitled to charge for Extraordinary Services and Extraordinary Expenses only upon the occurrence of an Event of Default under Sections 6.01(a) or 6.01(b) or in the event the Trustee initiates action to cause an event of default under Sections 6.01(c) or 6.01(d).

**“Federal Tax Status”** means, as to the Bonds, the status of the interest on the Bonds as excludible from gross income for federal income tax purposes of the Holders of the Bonds (except on Bonds while held by a substantial user or related person, each as defined in the Code).

**“Financing Documents”** means this Indenture, the Bonds, the Loan Agreement, the Note, the Tax Certificate and Agreement, the Bond Regulatory Agreement, the Extended Use Agreement, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Remarketing Agreement and any other instrument or document executed in connection with the Bonds, together with all modifications, extensions, renewals and replacements thereof, but excluding the Permanent Loan Documents.

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

**“General Partner”** means Eagle Point Development-Series 2, LLC, the managing member of the Borrower.

**“Government”** shall mean the government of the United States of America, the government of any other nation, any political subdivision of the United States of America or any other nation (including, without limitation, any state, territory, federal district, municipality or possession) and any department, agency or instrumentality thereof; and **“Governmental”** shall mean of, by, or pertaining to any Government.

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

**“Highest Rating Category”** means, with respect to an Eligible Investment, that the Eligible Investment is rated by a Rating Agency in the highest rating given by that Rating Agency for that Rating Category provided that such rating shall include but not be below “Aaa” or “Aaa/VMIG-1” if rated by Moody’s or “AA+” or “A-1+” if rated by S&P.

**“Holder”** or **“Holder of a Bond”** means the Person in whose name a Bond is registered on the Register.

**“Indenture”** means this Trust Indenture, dated as of September 1, 2024, between the Issuer and the Trustee, as amended or supplemented from time to time.

**“Independent”** when used with respect to a specified Person means such Person has no specific financial interest direct or indirect in any Borrower or any Affiliate of any Borrower and in the case of an individual is not a director, trustee, officer, partner or employee of any Borrower or any Affiliate of any Borrower and in the case of an entity, does not have a partner, director, trustee, officer, partner or employee who is a director, trustee, officer or employee of any partner of any Borrower or any Affiliate of any Borrower.

**“Initial Interest Rate”** means \_\_%.

**“Initial Mandatory Tender Date”** means October 1, 2026.

**“Initial Remarketing Date”** means the Initial Mandatory Tender Date, but only if the conditions for remarketing the Bonds on such date as provided in Section 3.07 hereof are satisfied.

**“Interest Payment Date”** means (a) April 1 and October 1 of each year beginning April 1, 2025, (b) each Redemption Date, (c) each Mandatory Tender Date, (d) the Maturity Date and (e) the date of acceleration of the Bonds. In the case of payment of defaulted interest, **“Interest Payment Date”** also means the date of such payment established pursuant to Section 2.05.

**“Interest Period”** means, initially, the period from the Closing Date to and including March 31, 2025, and thereafter, the period commencing on each succeeding Interest Payment Date and ending on the last day of the month preceding the next Interest Payment Date.

**“Interest Rate”** means the Initial Interest Rate to but not including the Initial Mandatory Tender Date, and thereafter the applicable Remarketing Rate.

**“Interest Rate for Advances”** means the rate per annum which is two percent plus that interest rate announced by the Trustee in its lending capacity as a bank as its “Prime Rate” or its “Base Rate”.

**“Investor Member”** means Stratford Franklin Manor Investors Limited Partnership, a Massachusetts limited partnership, and its permitted successors and assigns.

**“Issuer”** means the West Virginia Housing Development Fund, a public body corporate and governmental instrumentality of the State, and its successors and assigns.

**“Issuer Documents”** means the Financing Documents to which the Issuer is a party.

**“Issuer Fees and Expenses”** means, collectively, the Ordinary Issuer Fees and the Extraordinary Issuer Fees and Expenses.

**“Land”** means the real property described in Exhibit A attached hereto.

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

**“Loan Agreement”** means the Loan Agreement dated as of even date with this Indenture, between the Issuer and the Borrower and assigned by the Issuer, except for Reserved Rights, to the Trustee, as amended or supplemented from time to time.

**“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 Section 4.1 of the Loan Agreement.

**“Local Time”** means Eastern time (daylight or standard, as applicable).

**“Mandatory Tender”** means a tender of Bonds required by Section 3.05.

**“Mandatory Tender Date”** means the latest of (a) the Initial Mandatory Tender Date and (b) if the Bonds Outstanding on such date or on any subsequent Mandatory Tender Date are remarketed pursuant to Section 3.07 for a Remarketing Period that does not extend to the final maturity of the Bonds, the day after the last day of the Remarketing Period.

**“Maturity Date”** means October 1, 2027.

**“Maximum Interest Rate”** means the interest rate equal to the lesser of: (a) 12% per annum, or (b) the maximum interest rate per annum permitted by applicable State law.

“**Moody’s**” means Moody’s Investors Service, Inc., a Delaware corporation, and its successors and assigns, or if it shall for any reason no longer perform the functions of a securities rating agency, then any other nationally recognized rating agency designated by the Borrower and acceptable to the Remarketing Agent.

“**Negative Arbitrage Account**” means the Negative Arbitrage Account of the Bond Fund created in Section 4.01 hereof.

“**Note**” means the promissory note of the Borrower, dated as of even date with the Bonds initially issued, in the form attached to the Loan Agreement as Exhibit A and in the principal amount of \$5,500,000, evidencing the obligation of the Borrower to make Loan Payments.

“**Notice Address**” means:

To the Issuer:

West Virginia Housing  
Development Fund  
5710 MacCorkle Ave., SE  
Charleston, WV 25304  
Attention: Nathan E. Testman  
Telephone: (304) 391-8737  
Facsimile: (304) 391-8761

With a copy to:

Jackson Kelly PLLC  
500 Lee St. East,  
Suite 1600  
Charleston, WV 25301  
Attention: Gregg Bernaciak  
[Gregg.Bernaciak@jacksonkelly.com](mailto:Gregg.Bernaciak@jacksonkelly.com)

To the Trustee:

UMB Bank, N.A.  
928 Grand Boulevard, 12<sup>th</sup> Floor  
Kansas City, MO 64106  
Attention: Liz Angotti  
[Liz.Angotti@umb.com](mailto:Liz.Angotti@umb.com)  
Telephone: 816-860-3008

To the Borrower:

EPD2 FMA, LP  
125 John Roberts Road, Suite 12  
South Portland, ME 04106  
Attention: Neil Martelle  
Email: [nmartelle@eaglepointco.com](mailto:nmartelle@eaglepointco.com)

With a copy to:

To the Permanent Lender:	West Virginia Housing Development Fund 5710 MacCorkle Ave., SE Charleston, WV 25304 Attention: Nathan E. Testman Telephone: (304) 391-8737 Facsimile: (304) 391-8761
To the Rating Agency:	Moody's Investors Service, Inc. 7 World Trade Center 250 Greenwich Street New York, NY 10007 Attention: Public Finance Group — Housing Team Electronic notices shall be delivered to: Housing@Moody.com
To the Remarketing Agent:	Stifel, Nicolaus & Company, Incorporated 639 Loyala Ave Suite 200 New Orleans, LA 70118 Attention: John Sabatier Telephone: (504) 273-3050 Email: sabatierj@stifel.com
To the Investor Member:	Stratford Franklin Manor Investors Limited Partnership c/o Stratford Capital Group LLC 701 Edgewater Drive, Suite 210 Wakefield, MA 01880 Attn: Asset Management – Franklin Manor

With a copy to:

DLA Piper LLP (US)  
444 West Lake Street, Suite 900  
Chicago, Illinois 60606  
Attn: Gregory R.A. Dahlgren, Esq.

To the Special Limited Partner:

Stratford SLP, Inc.  
c/o Stratford Capital Group LLC  
701 Edgewater Drive, Suite 210  
Wakefield, MA 01880  
Attn: Asset Management – Franklin  
Manor

With a copy to:

DLA Piper LLP (US)  
444 West Lake Street, Suite 900  
Chicago, Illinois 60606  
Attn: Gregory R.A. Dahlgren, Esq.

or such additional or different address, notice of which is given under Section 12.03 hereof.

**“Opinion of Bond Counsel”** means an opinion of Bond Counsel.

**“Opinion of Counsel”** means an opinion from an attorney or firm of attorneys, acceptable to the Trustee and the Issuer, with experience in the matters to be covered in the opinion.

**“Ordinary Issuer Fees”** means the origination fee of the Issuer in the amount equal to \$\_\_\_\_\_ payable on the Closing Date by the Borrower to the Issuer from the Costs of Issuance Fund, if funded, or from equity funds of the Borrower, but not from the Project Fund or the Bond Fund; provided, however, that such fee does not include amounts due, if any, for Extraordinary Issuer Fees and Expenses; and provided further, however, the amount of Ordinary Issuer Fees payable under this Indenture is limited to money withdrawn from the Expense Fund and the Borrower will be responsible to pay the remaining amount of the Ordinary Issuer Fees pursuant to Section 4.4 of the Loan Agreement.

**“Ordinary Services”** and **“Ordinary Expenses”** mean those services normally rendered, and those expenses normally incurred, by a trustee under instruments similar to this Indenture.

**“Ordinary Trustee Fees and Expenses”** means amounts due to the Trustee for the Ordinary Services and the Ordinary Expenses of the Trustee incurred in connection with its duties under this Indenture, payable annually in advance at closing and on each \_\_\_\_\_ 1 thereafter, commencing \_\_\_\_\_ 1, 2024 in an amount equal to \$3,500 per year; a Remarketing Fee of \$1,500 per remarketing; a Dissemination Agent Fee of \$1,000 per year; and a one-time Acceptance and Set-Up Fee of \$5,000; provided, however, the amount of Ordinary Trustee Fees and Expenses payable under this Indenture is limited to money withdrawn from the

Expense Fund and the Borrower will be responsible to pay the remaining amount of the Ordinary Trustee Fees and Expenses pursuant to Section 4.4 of the Loan Agreement. In addition, all amounts due to the Trustee for Extraordinary Services and all Extraordinary Expenses of the Trustee will be paid as provided in Section 6.06 of this Indenture or directly by the Borrower pursuant to Section 4.4 of the Loan Agreement.

**“Organizational Documents”** means the Amended and Restated Limited Partnership Agreement, as the same may be amended from time to time.

**“Outstanding Bonds,” “Bonds outstanding” or “Outstanding”** as applied to Bonds mean, as of the applicable date, all Bonds which have been authenticated and delivered, or which are being delivered by the Trustee under this Indenture, except:

(a) Bonds cancelled upon surrender, exchange or transfer, or cancelled because of payment on or prior to that date;

(b) Bonds, or the portion thereof, for the payment or purchase for cancellation of which sufficient money has been deposited and credited with the Trustee on or prior to that date for that purpose (whether upon or prior to the maturity of those Bonds);

(c) Bonds, or the portion thereof, which are deemed to have been paid and discharged or caused to have been paid and discharged pursuant to the provisions of this Indenture; and

(d) Bonds in lieu of which others have been authenticated under Section 2.07 of this Indenture.

**“Permanent Lender”** means the Issuer, in its capacity as the WVHDF 538 RD Lender and/or the ERA2 Lender, as applicable.

**“Permanent Loan”** means, as applicable, the WVHDF 538 RD Loan and/or the ERA2 Loan.

**“Permanent Loan Documents”** means, as applicable, the WVHDF 538 RD Loan Documents and/or the ERA2 Loan Documents.

**“Permanent Loan Fund”** means the Permanent Loan Fund created in Section 4.01 hereof.

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

**“Plans and Specifications”** means the plans and specifications describing the Project as now prepared and as they may be changed as provided in the Loan Agreement.

**“Predecessor Bond”** of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by the particular Bond. For the purposes of this definition, any Bond authenticated and delivered under Section 2.07 of this Indenture in lieu of a lost, stolen or destroyed Bond shall, except as otherwise provided in Section 2.07, be deemed to evidence the same debt as the lost, stolen or destroyed Bond.

**“Project”** means, collectively, the acquisition, rehabilitation and equipping of (i) a multifamily residential rental housing development to be known as Franklin Manor Apartments, consisting of approximately 48 units located at 700 West Burke Street, Martinsburg, West Virginia; the development will be occupied by persons of low or moderate income in compliance with Section 142(d) of the Code.

**“Project Costs”** means the costs of the Project specified in Section 3.6 of the Loan Agreement.

**“Project Fund”** means the Project Fund created in Section 4.01 hereof.

**“Project Purposes”** means the making of the Loan to finance the Project.

**“Rating Agency”** means Moody’s, S&P or any other nationally recognized securities rating agency rating the Bonds, or such rating agency’s successors or assigns, and initially means Moody’s so long as Moody’s is rating the Bonds.

**“Rating Category”** means one of the rating categories of the Rating Agency for the specific type and duration of the applicable Eligible Investment.

**“RD 538 Commitment”** means the Commitment for Guarantee, dated \_\_\_\_\_, 2024, issued by USDA with respect to the RD 538 Guarantee of the WVHDF RD 538 Mortgage Loan, as the same may be amended.

**“RD 538 Guarantee”** means the guarantee of the WVHDF RD 538 Mortgage Loan by the USDA Rural Development 538 program, as amended, and the regulations promulgated thereunder.

**“Rebate Amount”** means the amount required to be rebated to the United States pursuant to Section 148 of the Code.

**“Rebate Analyst”** means Hawkins Delafield & Wood LLP.

**“Rebate Analyst Fee”** means a fee paid or payable to the Rebate Analyst for each rebate calculation pursuant to the Tax Certificate and Agreement.

**“Rebate Fund”** means the Rebate Fund created in Section 4.01 hereof.

**“Redemption Date”** means any date upon which Bonds are to be redeemed, including (a) the Maturity Date, (b) the date of acceleration of the Bonds, and (c) pursuant to Sections 3.01 and 3.05 hereof.

**“Register”** means the books kept and maintained by the Trustee for registration and transfer of Bonds pursuant to Section 2.06 hereof.

**“Regular Record Date”** means, with respect to any Bond, the fifth Business Day preceding each Interest Payment Date.

**“Remarketing Agent”** means Stifel, Nicolaus & Company, Incorporated or any successor as Remarketing Agent designated in accordance with Section 5.17.

**“Remarketing Agent Fee”** means the fee of the Remarketing Agent for its remarketing services.

**“Remarketing Agreement”** means the Remarketing Agreement, dated as of September 1, 2024 by and between the Borrower and the Remarketing Agent, as amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

**“Remarketing Date”** means the Initial Remarketing Date and, if the Bonds Outstanding on such date or on any subsequent Remarketing Date are remarketed pursuant to Section 3.07 for a Remarketing Period that does not extend to the final maturity of the Bonds, the day after the last day of the Remarketing Period.

**“Remarketing Expenses”** means the costs and expenses incurred by the Trustee and its counsel, the Remarketing Agent and its counsel, the Issuer and its counsel, and Bond Counsel in connection with the remarketing of the Bonds, including bond printing and registration costs, costs of funds advanced by the Remarketing Agent, registration and filing fees, rating agency fees and other costs and expenses incurred in connection with or properly attributable to the remarketing of Bonds as certified to the Trustee by the Remarketing Agent in writing.

**“Remarketing Notice Parties”** means the Borrower, the Issuer, the Trustee, the Remarketing Agent, the Investor Member and the Permanent Lender.

**“Remarketing Period”** means the period beginning on a Remarketing Date and ending on the last day of the term for which Bonds are remarketed pursuant to Section 3.07 or the final Maturity Date of the Bonds, as applicable.

**“Remarketing Proceeds Account”** means the Remarketing Proceeds Account of the Bond Fund created in Section 4.01 hereof.

**“Remarketing Rate”** means the interest rate or rates established pursuant to Section 2.02(c) and borne by the Bonds then Outstanding from and including each Remarketing Date to, but not including, the next succeeding Remarketing Date or the final Maturity Date of the Bonds, as applicable.

**“Reserved Rights”** of the Issuer means (a) the right of the Issuer to amounts payable to it pursuant to this Indenture and Section 4.4 of the Loan Agreement, (b) all rights that the Issuer or its officers, directors, agents or employees may have under this Indenture and the Financing Documents to indemnification by the Borrower and by any other persons and to payments for expenses incurred by the Issuer itself, or its officers, directors, agents or employees; (c) the right

of the Issuer to receive notices, reports or other information, make determinations and grant approvals hereunder and under the other Financing Documents; (d) all rights of the Issuer to enforce the representations, warranties, covenants and agreements of the Borrower pertaining in any manner or way, directly or indirectly, to the requirements of the Act or of the Issuer, and set forth in any of the Financing Documents or in any other certificate or agreement executed by the Borrower; (e) all rights of the Issuer to give or withhold consent to amendments, changes, modifications and alterations to this Indenture, the other Financing Documents and such other matters where, hereunder or under any Financing Document, the Issuer's consent or approval is required; and (f) all enforcement remedies with respect to the foregoing. The foregoing rights are retained by the Issuer and are not assigned to the Trustee pursuant to this Indenture.

**“Revenues”** means (a) the Loan Payments, (b) Eligible Funds received by the Trustee, (c) all other money received or to be received by the Trustee in respect of repayment of the Loan, including without limitation, all money and investments in the Bond Fund, (d) any money and investments in the Project Fund and the Collateral Fund, and (e) all income and profit from the investment of the foregoing money. The term “Revenues” does not include any money or investments in the Rebate Fund, the Permanent Loan Fund, the Expense Fund or the Costs of Issuance Fund.

**“S&P”** means S&P Global Ratings, and its successors and assigns, or if it shall for any reason no longer perform the functions of a securities rating agency, then any other nationally recognized rating agency designated by the Borrower and acceptable to the Issuer and the Remarketing Agent.

**“Special Funds”** means, collectively, the Bond Fund, the Project Fund and the Collateral Fund, and any accounts therein, all as created in this Indenture.

**“Special Limited Partner”** means Stratford SLP, Inc., and its successors and assigns.

**“Special Record Date”** means, with respect to any Bond, the date established by the Trustee in connection with the payment of overdue interest or principal on that Bond.

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

**“Subordinate Lender”** means\_\_\_\_\_, and its successors and assigns.

**“Supplemental Indenture”** means any indenture supplemental to this Indenture entered into between the Issuer and the Trustee in accordance with Article VII hereof.

**“Tax Certificate and Agreement”** means the Tax Certificate and Agreement, made and executed by the Issuer and the Borrower in connection with the Bonds dated as of the Closing Date, including IRS Form 8038, an Issue Price Certificate of the Underwriter and other exhibits and attachments.

**“Tendered Bond”** means any Bond which has been tendered for purchase pursuant to a Mandatory Tender.

**“Title Policy”** means that certain loan policy of title insurance insuring the WVHDF RD 538 Mortgage and the ERA2 Mortgage issued by Advantage Title Group Agency, LLC on behalf of [\_\_\_\_\_].

**“Trust Estate”** means the property rights, money, securities and other amounts pledged and assigned to the Trustee hereunder pursuant to the Granting Clauses hereof.

**“Trustee”** means UMB Bank, N.A., until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter, “Trustee” shall mean the successor Trustee.

**“Undelivered Bond”** means any Bond that is required under this Indenture to be delivered to the Remarketing Agent or the Trustee for purchase on a Mandatory Tender Date but that has not been received on the date such Bond is required to be so delivered.

**“Underwriter”** means Stifel, Nicolaus & Company, Incorporated.

**“USDA”** means the United States Department of Agriculture.

**“WVHDF”** means the Issuer.

**“WVHDF RD 538 Lender”** means the Issuer, in its capacity as maker of the WVHDF RD 538 Mortgage Loan.

**“WVHDF RD 538 Mortgage”** means the Credit Line Deed of Trust, Security Agreement and Fixture Filing made in connection with the WVHDF RD 538 Mortgage Loan by the Borrower for the benefit of the WVHDF RD 538 Lender, effective as of the Closing Date.

**“WVHDF RD 538 Mortgage Loan”** means the mortgage loan to be made from the WVHDF RD 538 Lender to the Borrower in the principal amount of \$[4,520,000] as described and provided for in the RD 538 Commitment.

**“WVHDF RD 538 Mortgage Loan Documents”** means the WVHDF RD 538 Mortgage, the WVHDF RD 538 Note, and all other documents required by the WVHDF RD 538 Lender in connection with the WVHDF RD 538 Mortgage Loan.

**“WVHDF RD 538 Note”** means the promissory note effective as of the Closing Date made by the Borrower in favor of the WVHDF RD 538 Lender in connection with the WVHDF RD 538 Mortgage Loan.

#### Section 1.02 Interpretation.

Any reference herein to the Issuer or to any director or officer thereof 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 paragraph, if it constitutes in any way an impairment of the rights or obligations of the Issuer, the Holders, the Trustee or the Borrower under the Bond Resolution, the Bonds, the Financing Documents or any other instrument or document entered into in connection with any of the foregoing, including without limitation, any alteration of the obligation to pay Bond Service Charges in the amount and manner, at the times, and from the sources provided in the Bond Resolution and this Indenture, except as permitted herein.

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

#### Section 1.03 Captions and Headings.

The captions and headings in this Indenture 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.

#### Section 1.04 Content of Certificates and Opinions.

Every certificate or opinion provided for in this Indenture with respect to compliance with any provision hereof made or given by an Authorized Officer of the Issuer or Authorized Borrower Representative may be based, insofar as it relates to legal or accounting matters, upon a certificate or opinion or representation given by counsel or an accountant, unless such Authorized Representative knows, or in the exercise of reasonable care should have known, that the certificate, opinion or representation with respect to the matters upon which such certificate or statement is based is erroneous. Any such certificate or opinion made or given by counsel or an accountant may be based, insofar as it relates to factual matters with respect to which information is in the possession of the Issuer or the Borrower, as applicable, upon a certificate or opinion of or representation by an Authorized Officer of the Issuer or Authorized Borrower Representative, unless such counsel or accountant knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representation with respect to the matters upon which such certificate, opinion or representation is based is erroneous. The same Authorized Officer of the Issuer or Authorized Borrower Representative, or the same counsel or accountant, as the case may be, need not certify to all of the matters required to be certified under any provision of this Indenture, but different officers, counsel or accountants may certify to different matters.

## ARTICLE II

### AUTHORIZATION AND TERMS OF BONDS

#### Section 2.01 Authorization and General Terms of Bonds.

(a) Issuance of Bonds. It is determined to be necessary to, and the Issuer shall, issue, sell and deliver \$5,500,000 principal amount of Bonds for the Project Purposes. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total authorized principal amount of Bonds which may be issued under the provisions of this Indenture is \$5,500,000.

(b) General Terms. The Bonds shall be designated “**Multifamily Housing Revenue Bonds, Series 2024 (Franklin Manor)**”; shall be in substantially the form as set forth in Exhibit B to this Indenture; shall be numbered in such manner as determined by the Trustee in order to distinguish each Bond from any other Bond; shall be in Authorized Denominations; and shall be dated the Closing Date.

(c) Registered Form. All Bonds, unless a Supplemental Indenture shall have been executed and delivered pursuant to Section 7.02 hereof, shall be in fully-registered form, without coupons, and the Holder of a Bond shall be regarded as the absolute owner thereof for all purposes of this Indenture.

(d) Further Details. The Bonds shall be negotiable instruments in accordance with the Act and shall express the purpose for which they are issued and any other statements or legends which may be required by law. Each Bond shall be of a single maturity, unless the Trustee shall approve the authentication and delivery of a Bond of more than one maturity.

#### Section 2.02 Maturity and Interest.

(a) General. The Bonds shall bear interest on the principal amount Outstanding from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or provided for, from their date of initial delivery, payable on each Interest Payment Date. The Bonds shall bear interest for each Interest Period at the Interest Rate all as more specifically set forth hereinafter. Interest on the Bonds shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. The Bonds shall mature on the Maturity Date, subject to prior redemption as set forth in Section 3.01 hereof and subject to Mandatory Tender for purchase as set forth in Section 3.05 hereof.

(b) Initial Interest Rate. From the date of their initial delivery to but not including the Initial Mandatory Tender Date, the interest rate on the Bonds shall be the Initial Interest Rate. On the Initial Mandatory Tender Date, the Bonds shall be subject to Mandatory Tender pursuant to Section 3.05 hereof.

(c) Establishment of Remarketing Rate. The Remarketing Agent shall establish the interest rate on the Bonds Outstanding for each Remarketing Period at the Remarketing Rate in accordance with this Section 2.02. Not less than ten (10) Business Days preceding each Remarketing Date, the Remarketing Agent, taking into consideration prevailing market

conditions, shall, using its best professional judgment, determine the minimum rate(s) of interest which, if borne by the Bonds then Outstanding for the Remarketing Period specified by the Remarketing Agent at the direction of the Borrower as provided in Section 3.07 hereof, would permit the Bonds to be remarketed at par. The rate of interest determined in accordance with the previous sentence shall be the Remarketing Rate for the specified Remarketing Period; provided that if the rate of interest so determined for such period would exceed the maximum interest rate per annum permitted by applicable State law, the Bonds Outstanding shall be remarketed for the longest Remarketing Period for which the minimum rate of interest that would enable such Bonds to be remarketed at a price equal to 100% of the principal amount of such Bonds that would not exceed the maximum interest rate permitted by applicable State law. Notwithstanding the foregoing, if the rate of interest so determined for any Remarketing Period would exceed the maximum interest rate permitted by applicable State law, the Bonds Outstanding shall not be remarketed.

(d) Notice of Remarketing Rate. The Remarketing Agent shall, upon determination of the Remarketing Rate and Remarketing Period, immediately (and in no event later than the Business Day following the day on which the Remarketing Agent makes its determination of the Remarketing Rate and the Remarketing Period) give notice of its determination by telephone or telecopy, promptly confirmed in writing, to the Trustee, the Issuer, the Investor Member and the Borrower. The Remarketing Rate and the Remarketing Period shall be conclusive and binding upon the Trustee, the Issuer, the Borrower and the Holders for the purposes of this Indenture.

#### Section 2.03 Execution and Authentication of Bonds.

Unless otherwise provided in the applicable Bond Resolution or Supplemental Indenture, each Bond shall be signed by the Chair or Executive Director and attested by an Assistant Secretary of the Issuer in their official capacities (provided that any or all of those signatures may be facsimiles). In case any officer whose signature or a facsimile of whose signature shall appear on any Bond shall cease to be that officer before the issuance of the Bond, such 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.

No Bond shall be valid or become obligatory for any purpose or shall be entitled to any security or benefit under this Indenture unless and until a certificate of authentication, substantially in the form set forth in Exhibit B to this Indenture, has been signed by the Trustee. The authentication by the Trustee upon any Bond shall be conclusive evidence that the Bond so authenticated has been duly authenticated and delivered hereunder and is entitled to the security and benefit of this Indenture. The certificate of the Trustee may be executed by any person authorized by the Trustee, but it shall not be necessary that the same authorized person sign the certificates of authentication on all of the Bonds.

#### Section 2.04 Source of Payment; Limited Obligations.

The Bonds, and the premium, if any, and interest thereon, are limited obligations of the Issuer, the principal of, premium, if any, and interest on which are payable solely from the Trust

Estate. NEITHER THE DIRECTORS OR OFFICERS OF THE ISSUER NOR ANY PERSON EXECUTING THE BONDS SHALL BE LIABLE PERSONALLY ON THE BONDS BY REASON OF THE ISSUANCE THEREOF. THE BONDS AND THE INTEREST THEREON SHALL NOT BE A DEBT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE ISSUER) AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE ISSUER) SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL SUCH BONDS BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE ISSUER PLEDGED THEREFOR PURSUANT TO THIS INDENTURE. THE BONDS SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. THE ISSUER HAS NO TAXING POWER.

#### Section 2.05 Payment and Ownership of Bonds.

Bond Service Charges shall be payable in lawful money of the United States of America without deduction for the services of the Trustee. Subject to the provisions of Sections 2.09 and 2.10 of this Indenture, (a) the principal of any Bond shall be payable when due to a Holder upon presentation and surrender of such Bond at the Designated Office of the Trustee or at the office designated by the Trustee of any paying agent, and (b) interest on any Bond shall be paid on each Interest Payment Date by check or draft which the Trustee shall cause to be mailed on that date to the Person in whose name the Bond (or one or more Predecessor Bonds) is registered at the close of business on the Regular Record Date applicable to that Interest Payment Date on the Register at the address appearing therein.

If and to the extent, however, that the Issuer shall fail to make payment or provision for payment of interest on any Bond on any Interest Payment Date, that interest shall cease to be payable to the Person who was the Holder of that Bond (or of one or more Predecessor Bonds) as of the applicable Regular Record Date. In that event, except as provided below in this Section, when money becomes available for payment of the interest, (a) the Trustee shall, pursuant to Section 6.06(d) hereof, establish a Special Record Date for the payment of that interest which shall be not more than fifteen (15) nor fewer than ten (10) days prior to the date of the proposed payment, and (b) the Trustee shall cause notice of the proposed payment and of the Special Record Date to be mailed by first-class mail, postage prepaid, to each Holder at its address as it appears on the Register not fewer than 10 days prior to the Special Record Date and, thereafter, the interest shall be payable to the Persons who are the Holders of the Bonds (or their respective Predecessor Bonds) at the close of business on the Special Record Date.

Subject to the foregoing, each Bond delivered under this Indenture upon transfer thereof, or in exchange for or in replacement of any other Bond, shall carry the rights to interest accrued and unpaid, and to accrue on that Bond, or which were carried by that Bond.

Except as provided in this Section and the first paragraph of Section 2.07 hereof, (a) the Holder of any Bond shall be deemed and regarded as the absolute owner thereof for all purposes of this Indenture, (b) payment of or on account of the Bond Service Charges on any Bond shall be made only to or upon the order of that Holder or its duly authorized attorney in the manner permitted by this Indenture, and (c) neither the Issuer nor the Trustee shall, to the extent

permitted by law, be affected by notice to the contrary. All of those payments shall be valid and effective to satisfy and discharge the liability upon that Bond, including without limitation, the interest thereon, to the extent of the amount or amounts so paid.

#### Section 2.06 Registration and Transfer of Bonds.

So long as any of the Bonds remain Outstanding, the registration and transfer of Bonds, as provided in this Indenture, will be maintained and kept at the Designated Office of the Trustee.

Subject to the provisions set forth above and in Section 2.10 hereof, any Bond may be transferred upon the Register, upon presentation and surrender thereof at the Designated Office of the Trustee, together with an assignment duly executed by the Holder or its duly authorized attorney in any form which shall be satisfactory to the Trustee. Upon transfer of any Bond and on request of the Trustee, the Issuer shall execute in the name of the transferee, and the Trustee shall authenticate and deliver, a new Bond or Bonds, of any Authorized Denomination or Denominations in an aggregate principal amount equal to the unmatured and unredeemed principal amount of, and bearing interest at the same rate and maturing on the same date or dates as, the Bonds presented and surrendered for transfer.

In all cases in which Bonds shall be transferred hereunder, the Issuer shall execute, and the Trustee shall authenticate and deliver, Bonds in accordance with the provisions of this Indenture. The transfer shall be made without charge; provided, that the Issuer and the Trustee may make a charge for every exchange or transfer of Bonds sufficient to reimburse them for any tax or excise required to be paid with respect to the transfer. The charge shall be paid before a new Bond is delivered.

All Bonds issued upon any transfer of Bonds shall be the valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Bonds surrendered upon transfer.

#### Section 2.07 Mutilated, Lost, Wrongfully Taken or Destroyed Bonds.

If any Bond is mutilated, lost, wrongfully taken or destroyed, in the absence of written notice to the Issuer or the Trustee that a lost, wrongfully taken or destroyed Bond has been acquired by a bona fide purchaser, the Issuer shall execute, and the Trustee shall authenticate and deliver, a new Bond of like date, maturity and denomination as the Bond mutilated, lost, wrongfully taken or destroyed; provided, that (a) in the case of any mutilated Bond, the mutilated Bond first shall be surrendered to the Trustee, and (b) in the case of any lost, wrongfully taken or destroyed Bond, there first shall be furnished to the Trustee evidence of the loss, wrongful taking or destruction satisfactory to the Trustee, together with indemnity satisfactory to the Authorized Borrower Representative, the Trustee and the Authorized Officer.

If any lost, wrongfully taken or destroyed Bond shall have matured, instead of issuing a new Bond, the Issuer may direct the Trustee to pay that Bond without surrender thereof upon the furnishing of satisfactory evidence and indemnity as in the case of issuance of a new Bond. The Issuer and the Trustee may charge the Holder of a mutilated, lost, wrongfully taken or destroyed Bond their reasonable fees and expenses in connection with their actions pursuant to this Section.

Every new Bond issued pursuant to this Section by reason of any Bond being mutilated, lost, wrongfully taken or destroyed (a) shall constitute, to the extent of the Outstanding principal amount of the Bond lost, mutilated, taken or destroyed, an additional contractual obligation of the Issuer, regardless of whether the mutilated, lost, wrongfully taken or destroyed Bond shall be enforceable at any time by anyone and (b) shall be entitled to all of the benefits of this Indenture equally and proportionately with any and all other Bonds issued and Outstanding 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 destroyed Bonds and, to the extent permitted by law, shall preclude any and all other rights and remedies with respect to the replacement or payment of negotiable instruments or other investment securities without their surrender, notwithstanding any law or statute to the contrary now existing or enacted hereafter.

#### Section 2.08 Cancellation of Bonds.

Any Bond surrendered pursuant to this Article for the purpose of payment or retirement or for exchange, replacement or transfer shall be cancelled upon presentation and surrender thereof to the Trustee.

Notwithstanding any provision of this Indenture to the contrary, the Issuer, or the Borrower on behalf of the Issuer, may deliver at any time to the Trustee for cancellation any Bonds previously authenticated and delivered hereunder, which the Issuer or the Borrower may have acquired in any manner whatsoever. All Bonds so delivered shall be cancelled promptly by the Trustee. Certification of the surrender and cancellation shall be made to the Issuer by the Trustee upon the request of the Issuer. Unless otherwise directed by the Issuer, cancelled Bonds shall be retained and stored by the Trustee for a period of six months after their cancellation. Those cancelled Bonds shall be destroyed by the Trustee by shredding or incineration at that time or at any earlier time directed by the Issuer. The Trustee shall provide certificates describing the destruction of cancelled Bonds to the Issuer.

#### Section 2.09 Special Agreement with Holders.

Notwithstanding any provision of this Indenture or of any Bond to the contrary, with the approval of the Borrower, the Trustee may enter into an agreement with any Holder providing for making all payments to that Holder of principal of and interest on that Bond or any part thereof (other than any payment of the entire unpaid principal amount thereof) at a place and in a manner other than as provided in this Indenture and in the Bond, without presentation or surrender of the Bond, upon any conditions which shall be satisfactory to the Trustee and the Borrower; provided, that payment in any event shall be made to the Person in whose name a Bond shall be registered on the Register, with respect to payment of principal, on the date such principal is due, and, with respect to the payment of interest, as of the applicable Regular Record Date or Special Record Date, as the case may be.

The Trustee will furnish a copy of each of those agreements, certified to be correct by an officer of the Trustee, to the Issuer and the Borrower. Any payment of principal or interest

pursuant to such an agreement shall constitute payment thereof pursuant to, and for all purposes of, this Indenture.

#### Section 2.10 Book-Entry Only System.

Notwithstanding any provision of this Indenture to the contrary, the Issuer may direct that all Bonds issued hereunder shall be initially issued in a Book Entry System, registered in the name of a Depository or its nominee as registered owner of the Bonds, and held in the custody of that Depository. Unless otherwise requested by a Depository, a single certificate will be issued and delivered to the Depository for each maturity of Bonds. Beneficial Owners of Bonds in a Book Entry System will not receive physical delivery of Bond certificates except as provided hereinafter. For so long as a Depository shall continue to serve as securities depository for the Bonds as provided herein, all transfers of Beneficial Ownership Interests will be made by book-entry only, and no investor or other party purchasing, selling or otherwise transferring Beneficial Ownership Interests of Bonds is to receive, hold or deliver any Bond certificate; provided; that, if a Depository fails or refuses to act as securities depository for the Bonds, the Issuer shall take the actions necessary to provide for the issuance of Bond certificates to the Holders of such Bonds.

With respect to Bonds registered in the name of a Depository, the Issuer, the Borrower and the Trustee shall have no responsibility or obligation to any participant therein or to any Person on whose behalf any participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, none of the Issuer, the Borrower or the Trustee shall have any responsibility or obligation with respect to (a) the accuracy of the records of the Depository or any participant therein or any other Person, other than a registered owner of the Bonds, as shown on the Register, or any notice with respect to the Bonds or (b) the payment to any participant in the Depository or any other Person, other than a registered owner of the Bonds, as shown in the Register, of any amount with respect to principal of or interest on or purchase price of the Bonds.

Replacement Bonds may be issued directly to Beneficial Owners of Bonds other than a Depository, or its nominee, but only in the event that (a) the Depository determines not to continue to act as securities depository for the Bonds (which determination shall become effective no less than 90 days after written notice to such effect to the Issuer and the Trustee); or (b) the Issuer has advised a Depository of its determination (which determination is conclusive as to the Depository and Beneficial Owners of the Bonds) that the Depository is incapable of discharging its duties as securities depository for the Bonds; or (c) the Issuer has determined (which determination is conclusive as to the Depository and the Beneficial Owners of the Bonds) that the interests of the beneficial owners of the Bonds might be adversely affected if such book-entry only system of transfer is continued. Upon occurrence of any of the foregoing events, the Issuer and the Borrower shall use commercially reasonable efforts to attempt to locate another qualified securities depository. If the Issuer and the Borrower fail to locate another qualified securities depository to replace the Depository, the Issuer and the Borrower, at the Borrower's expense, shall cause to be authenticated and delivered replacement Bonds, in certificate form, to the Beneficial Owners of the Bonds. In the event that the Issuer makes the determination noted in (b) or (c) above (provided that the Issuer undertakes no obligation to make any investigation to determine the occurrence of any events that would permit the Issuer to make any such determination), and has made provisions to notify the Beneficial Owners of Bonds of such determination by mailing an appropriate notice to the Depository, the Issuer and the Borrower

shall cause to be issued replacement Bonds in certificate form to Beneficial Owners of the Bonds as shown on the records of the Depository provided to the Issuer.

Upon the written consent of 100% of the Beneficial Owners of the Bonds, the Trustee shall withdraw the Bonds from any Depository and authenticate and deliver Bonds as fully-registered bonds, without coupons, to the assignees of that Depository or its nominee. If the request for such withdrawal is not the result of any Issuer action or inaction, such withdrawal, authentication and delivery shall be at the cost and expense (including costs of printing, preparing and delivering such Bonds) of the persons requesting such withdrawal, authentication and delivery; otherwise such withdrawal, authentication and delivery shall be at the cost and expense of the Borrower.

Whenever, during the term of the Bonds, the beneficial ownership thereof is determined by a book entry at a Depository, (a) the requirements in this Indenture of holding, delivering or transferring Bonds shall be deemed modified to require the appropriate Person or entity to meet the requirements of the Depository as to registering or transferring the book entry to produce the same effect and (b) delivery of the Bonds will be in accordance with arrangements among the Issuer, the Trustee and the Depository notwithstanding any provision of this Indenture to the contrary.

The Trustee and the Issuer shall enter into any letter of representation with a Depository to implement the Book Entry System of Bond registration described above.

#### Section 2.11 Delivery of the Bonds.

Upon the execution and delivery of this Indenture, and satisfaction of the conditions established by the Issuer in the Bond Resolution and in the Bond Purchase Agreement for delivery of the Bonds, the Issuer shall execute the Bonds and deliver them to the Trustee. Thereupon, the Trustee shall authenticate the Bonds and deliver them to the Depository, as further directed by the Underwriter.

Prior to the delivery of any Bonds against payment therefor, the Trustee shall have received the following:

- (a) executed counterparts of this Indenture and the other Financing Documents specifically set forth in the definition of Financing Documents, those of which to be recorded to be in a form acceptable for recordation in the land records of the State;
- (b) a written order of the Issuer directing the Trustee to authenticate and deliver the Bonds;
- (c) sale proceeds of the Bonds, required to be received by the Trustee for deposit pursuant to Section 4.02 hereof, together with accrued interest thereon, if any;
- (d) a UCC-1 financing statement for recordation with respect to the Trust Estate;
- (e) a copy of the Issuer's certified Bond Resolution;

- (f) an approving opinion of Bond Counsel;
- (g) an opinion of counsel to the Issuer to the effect that the Issuer Documents have been duly authorized, executed and delivered by the Issuer and are legal, valid and binding agreements of the Issuer, enforceable against the Issuer in accordance with their respective terms, subject to customary qualifications and exceptions relating to, among other things, bankruptcy, insolvency, creditors' rights generally and principles of equity;
- (h) an Opinion of Counsel for the Borrower to the effect that the Borrower Documents have been duly authorized, executed and delivered by the Borrower and are legal, valid and binding agreements of the Borrower, enforceable against the Borrower in accordance with their respective terms, subject to customary qualifications and exceptions relating to, among other things, bankruptcy, insolvency, creditors' rights generally and principles of equity;
- (i) a copy of the rating letter from the Rating Agency evidencing a rating on the Bonds of "Aaa/VMIG-1"; and
- (j) any other documents or opinions which the Trustee, the Issuer or Bond Counsel may reasonably require.

### **ARTICLE III**

#### **REDEMPTION, MANDATORY TENDER AND REMARKETING OF BONDS**

##### **Section 3.01 Redemption of Bonds.**

(a) Optional Redemption of Bonds. The Bonds are subject to optional redemption in whole or in part by the Issuer at the written direction of the Borrower on the Initial Remarketing Date at a redemption price of 100% of the principal amount of such Bonds to be redeemed plus accrued interest thereto. If the Bonds are not redeemed in whole on the Initial Remarketing Date, the Borrower, in consultation with the Remarketing Agent, may establish an optional redemption date with respect to any subsequent Remarketing Period and, thereafter, the Bonds are subject to optional redemption in whole or in part by the Issuer at the written direction of the Borrower on or after the applicable redemption date at a redemption price of 100% of the principal amount of such Bonds to be redeemed plus accrued interest to the applicable redemption date. Notwithstanding the forgoing, the Bonds shall not be so subject to redemption until the Trustee receives a certificate from the Borrower stating that (i) the last building in the Project has been placed in service for purposes of Section 42 of the Code and (ii) at least 50% of the aggregate basis in the land and buildings of the Project have been financed or will be financed with the proceeds of the Bonds.

(b) Mandatory Redemption of Bonds. The Bonds shall be redeemed in whole at a redemption price of 100% of the principal amount of such Bonds, plus accrued interest to the redemption date, if any, on any Mandatory Tender Date upon the occurrence of any of the following events: (i) the Borrower has not elected to request the remarketing of the Bonds, (ii) the conditions to remarketing set forth in Section 3.07(b) or Section 3.07(d) have not been met by the dates and times set forth therein, or (iii) the proceeds of a remarketing on deposit in the Bond Fund at 11:00 a.m. Eastern time on the Mandatory Tender Date are insufficient to pay

the purchase price of the Outstanding Bonds on such Mandatory Tender Date. Bonds subject to redemption in accordance with this paragraph shall be redeemed from (i) amounts on deposit in the Collateral Fund, (ii) amounts on deposit in the Negative Arbitrage Account of the Bond Fund, (iii) amounts on deposit in the Project Fund, and (iv) any other Eligible Funds available or made available for such purpose at the direction of the Borrower.

(c) Purchase in Lieu of Redemption. At the election of the Borrower upon a redemption in whole of the Bonds, by written notice to the Trustee, the Issuer and the Remarketing Agent given not less than five (5) Business Days in advance of such redemption date, the Bonds will be deemed tendered for purchase in lieu of the redemption on such date and the call for redemption shall be cancelled. The purchase price of Bonds so purchased in lieu of redemption shall be the principal amount thereof together with all accrued and unpaid interest to the date of redemption and any prepayment fee, if due, and shall be payable on the date of redemption thereof. Bonds so purchased in lieu of redemption shall remain Outstanding and shall be registered upon the direction of the Borrower; *provided*, however, that notwithstanding anything herein or elsewhere to the contrary, neither the Borrower nor a Related Party (as defined in Treasury Regulation Section 1.150-1(b)) shall be permitted to purchase the Bonds, which are being issued as Program Investments (as defined in Treasury Regulation Section 1.148-1(b)).

#### Section 3.02 Partial Redemption.

In the case of a partial redemption of Bonds when Bonds of denominations greater than \$5,000 are then Outstanding, each \$5,000 unit of face value of principal thereof shall be treated as though it were a separate Bond of the denomination of \$5,000. If it is determined that one or more, but not all of the \$5,000 units of face value represented by a Bond are to be called for redemption, then upon notice of redemption of a \$5,000 unit or units, the Holder of that Bond shall surrender the Bond to the Trustee (a) for payment of the redemption price of the \$5,000 unit or units of face value called for redemption (including without limitation, the interest accrued to the date fixed for redemption and any premium), and (b) for issuance, without charge to the Holder thereof, of a new Bond or Bonds of the same series, of any Authorized Denomination or Denominations in an aggregate principal amount equal to the unmatured and unredeemed portion of, and bearing interest at the same rate and maturing on the same date as, the Bond surrendered.

If less than all of an Outstanding Bond of one maturity in a Book Entry System is to be called for redemption, the Trustee shall give notice to the Depository or the nominee of the Depository that is the Holder of such Bond, and the selection of the Beneficial Ownership Interests in that Bond to be redeemed shall be at the sole discretion of the Depository and its participants.

#### Section 3.03 Notice of Redemption.

Unless waived by any Holder of Bonds to be redeemed, official notice of redemption shall be given by the Trustee on behalf of the Issuer by mailing a copy of an official redemption notice by first class mail, postage prepaid, to the Holder of each Bond to be redeemed, at the address of such Holder shown on the Register at the opening of business on the fifth day prior to such mailing, not less than thirty (30) days nor more than sixty (60) days prior to the date fixed

for redemption (with a copy to the Investor Member and the Subordinate Lender). A second notice of redemption shall be given, as soon as practicable, by first class mail to the Holder of each Bond which has been so called for redemption (in whole or in part) but has not been presented and surrendered to the Trustee within sixty (60) days following the date fixed for redemption of that Bond.

All official notices of redemption shall be dated and shall state:

- (a) the redemption date,
- (b) the redemption price,
- (c) if less than all Outstanding Bonds are to be redeemed, the identification by designation, letters, numbers or other distinguishing marks (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed,
- (d) that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date,
- (e) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the Designated Office of the Trustee, and
- (f) that the notice of redemption is conditioned upon there being deposited with the Trustee on or prior to the date of redemption money sufficient to pay the redemption price of the Bonds to be redeemed and, in the case of any redemption premium on Bonds, that there be on deposit Eligible Funds sufficient to pay such redemption premium.

Notices of redemption shall be revocable in the event that there is not on deposit with the Trustee prior to the date of redemption money sufficient to pay the redemption price of the Bonds to be redeemed or, in the case of any redemption premium on Bonds, there is not on deposit Eligible Funds sufficient to pay such redemption premium.

If the Bonds are not then held in a Book Entry System, in addition to the foregoing notice, further notice shall be given by the Trustee as set out below, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as above prescribed.

- (a) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (i) the CUSIP numbers of all Bonds being redeemed; (ii) the date of issue of the Bonds as originally issued; (iii) the rate of interest borne by each Bond being redeemed; (iv) the maturity date of each Bond being redeemed; and (v) any other descriptive information deemed necessary in the sole discretion of the Trustee to identify accurately the Bonds being redeemed.

(b) Each further notice of redemption shall be sent at least fifteen (15) days before the redemption date by telecopy, registered or certified mail or overnight delivery service to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Bonds and to one or more national information services that disseminate notices of redemption of obligations such as the Bonds.

(c) Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number (if any) identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

Failure to receive notice by mailing or any defect in that notice regarding any Bond, however, shall not affect the validity of the proceedings for the redemption of any other Bond.

Notice of any redemption hereunder with respect to Bonds held under a Book Entry System shall be given by the Trustee only to the Depository, or its nominee, as the Holder of such Bonds. Selection of Beneficial Ownership Interests in the Bonds called for redemption is the responsibility of the Depository and any failure of such Depository to notify the Beneficial Owners of any such notice and its contents or effect will not affect the validity of such notice of any proceedings for the redemption of such Bonds.

#### Section 3.04 Payment of Redeemed Bonds.

Notice having been mailed in the manner provided in Section 3.03 hereof, the Bonds and portions thereof called for redemption shall become due and payable on the redemption date, and upon presentation and surrender thereof at the place or places specified in that notice, shall be paid at the redemption price, including interest accrued to the redemption date.

Upon the payment of the price of Bonds being redeemed or prepaid, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed or prepaid with the proceeds of such check or other transfer.

If money for the redemption of all of the Bonds and portions thereof to be redeemed, together with interest accrued thereon to the redemption date, is held by the Trustee on the redemption date, so as to be available therefor on that date and if notice of redemption has been deposited in the mail as aforesaid, then from and after the redemption date those Bonds and portions thereof called for redemption shall cease to bear interest and no longer shall be considered to be Outstanding hereunder. If such money shall not be so available on the redemption date, or that notice shall not have been deposited in the mail as aforesaid, those Bonds and portions thereof shall continue to bear interest, until they are paid, at the same rate as they would have borne had they not been called for redemption.

All money deposited in the Bond Fund and held by the Trustee for the redemption, purchase or prepayment of particular Bonds shall be held in trust for the account of the Holders thereof and shall be paid to them, respectively, upon presentation and surrender of those Bonds.

### Section 3.05 Mandatory Tender.

(a) Mandatory Tender for Purchase. All Outstanding Bonds shall be subject to mandatory tender by the Holders for purchase in whole and not in part on each Mandatory Tender Date. The purchase price for each such Bond shall be payable in lawful money of the United States of America by check or draft, shall equal 100% of the principal amount to be purchased and accrued interest, if any, to the Mandatory Tender Date, and shall be paid in full on the applicable Mandatory Tender Date.

(b) Mandatory Tender Dates. The Mandatory Tender Dates shall consist of (i) the Initial Mandatory Tender Date and (ii) any subsequent dates for mandatory tender of the Bonds established by the Borrower with the consent of the Remarketing Agent in connection with a remarketing of the Bonds pursuant to Section 3.07 hereof.

(c) Holding of Tendered Bonds. While tendered Bonds are in the custody of the Trustee pending purchase pursuant hereto, the tendering Holders thereof shall be deemed the owners thereof for all purposes, and interest accruing on tendered Bonds through the day preceding the applicable Mandatory Tender Date is to be paid as if such Bonds had not been tendered for purchase.

(d) Effect of Prior Redemption. Notwithstanding anything herein to the contrary, any Bond tendered under this Section 3.05 will not be purchased if such Bond matures or is redeemed on or prior to the applicable Mandatory Tender Date.

(e) Purchase of Tendered Bonds. The Trustee shall utilize the following sources of payments to pay the tender price of the Bonds not later than 2:30 p.m. Local Time on the Mandatory Tender Date in the following priority: (i) amounts representing proceeds of remarketed Bonds deposited in the Remarketing Proceeds Account, to pay the principal amount, plus accrued interest, of Bonds tendered for purchase, (ii) amounts on deposit in the Collateral Fund, to pay the principal amount of Bonds tendered for purchase, (iii) amounts on deposit in the Negative Arbitrage Account of the Bond Fund to pay the accrued interest, if any, on Bonds tendered for purchase, (iv) amounts on deposit in the Project Fund to pay the accrued interest, if any, on the Bonds tendered for purchase and (v) any other Eligible Funds available or made available for such purpose at the direction of the Borrower.

(f) Undelivered Bonds. Bonds shall be deemed to have been tendered for purposes of this Section 3.05 whether or not the Holders shall have delivered such Undelivered Bonds to the Trustee, and subject to the right of the Holders of such Undelivered Bonds to receive the purchase price of such Bonds and interest accrued thereon to the Mandatory Tender Date, such Undelivered Bonds shall be null and void. If such Undelivered Bonds are to be remarketed, the Trustee shall authenticate and deliver new Bonds in replacement thereof pursuant to the remarketing of such Undelivered Bonds.

### Section 3.06 Mandatory Tender Notice.

(a) Notice to Holders. Not less than thirty (30) days preceding a Mandatory Tender Date, the Trustee shall give written notice of mandatory tender to the Holders of the Bonds then

Outstanding (with a copy to the Borrower, the Investor Member, and the Remarketing Agent) by first class mail, postage prepaid, at their respective addresses appearing on the Register stating:

(i) the Mandatory Tender Date and that (a) all Outstanding Bonds are subject to mandatory tender for purchase on the Mandatory Tender Date, (b) all Outstanding Bonds must be tendered for purchase no later than 12:00 Noon Local Time on the Mandatory Tender Date and (c) Holders will not have the right to elect to retain their Bonds;

(ii) the address of the Designated Office of the Trustee at which Holders should deliver their Bonds for purchase and the date of the required delivery;

(iii) that all Outstanding Bonds will be purchased on the Mandatory Tender Date at a price equal to the principal amount of the Outstanding Bonds plus interest accrued to the Mandatory Tender Date; and

(iv) any Bonds not tendered will nevertheless be deemed to have been tendered and will cease to bear interest from and after the Mandatory Tender Date.

(b) Second Notice. In the event that any Bond required to be delivered to the Trustee for payment of the purchase price of such Bond shall not have been delivered to the Trustee on or before the 30th day following a Mandatory Tender Date, the Trustee shall mail a second notice to the Holder of the Bond at its address as shown on the Register setting forth the requirements set forth in this Indenture for delivery of the Bond to the Trustee and stating that delivery of the Bond to the Trustee (or compliance with the provisions of this Indenture concerning payment of lost, stolen or destroyed Bonds) must be accomplished as a condition to payment of the purchase price or redemption price applicable to the Bond.

(c) Failure to Give Notice. Neither failure to give or receive any notice described in this Section 3.06, nor the lack of timeliness of such notice or any defect in any notice (or in its content) shall affect the validity or sufficiency of any action required or provided for in this Section 3.06.

#### Section 3.07 Remarketing of Bonds.

(a) Notice of Mandatory Tender. No later than 11:00 a.m. Local Time on the 35th day prior to each Mandatory Tender Date, the Trustee shall give notice to the Issuer, the Borrower, the Investor Member and the Remarketing Agent by email, telephone or telecopy, confirmed on the same day in writing, which states the aggregate principal amount of Bonds Outstanding, all of which are to be tendered or deemed to be tendered pursuant to Section 3.05 hereof.

(b) Preliminary Conditions to Remarketing. No later than 11:00 a.m. Local Time on the 15th day prior to the Mandatory Tender Date then in effect, the Borrower may give notice to the Remarketing Notice Parties by telephone or telecopy, confirmed on the same day in writing, that it elects to cause the Bonds to be remarketed. A remarketing of the Bonds shall be permitted only if the following conditions are satisfied no later than the time the foregoing election notice is given:

(i) Notice by the Borrower to the Remarketing Agent of the Remarketing Period pursuant to Section 3.10 of the Loan Agreement;

(ii) Delivery to the Issuer, the Trustee and the Remarketing Agent of a preliminary Cash Flow Projection with respect to the proposed Remarketing Period; and

(iii) The Issuer and the Borrower shall each have notified the Trustee in writing that it has approved as to form and substance any disclosure document or offering materials which, in the Opinion of Counsel to the Remarketing Agent, is necessary to be used in connection with the remarketing of the Outstanding Bonds.

(c) Remarketing. Not less than ten (10) days before each Remarketing Date, the Remarketing Agent shall offer for sale and use its best efforts to sell the Bonds Outstanding on the Remarketing Date at a price equal to 100% of the principal amount of such Bonds plus, if such Remarketing Date is a date other than an Interest Payment Date, accrued interest on such Bonds from the preceding Interest Payment Date to which interest has been paid. Not less than four (4) Business Days before each Remarketing Date, the Remarketing Agent shall give notice, by telephone or telecopy, promptly confirmed in writing, to the Remarketing Notice Parties specifying the principal amount of Bonds, if any, it has remarketed (including Bonds to be purchased by the Remarketing Agent on the Remarketing Date for its own account), the Remarketing Rate(s) and the Remarketing Period applicable to the Bonds.

The Remarketing Agent shall have the right to remarket any Bond tendered pursuant to Section 3.05 hereof; provided, however, that no such Bond shall be remarketed at a price less than 100% of the principal amount thereof plus accrued interest (if any) without the prior written consent of the Borrower; and provided, further, that the purchase price of any Bond paid to the tendering Holder allocable to such discount shall be paid with Eligible Funds made available by the Borrower therefor and on deposit with the Trustee prior to the remarketing of such Bonds. The Remarketing Agent shall have the right to purchase any Bond tendered or deemed tendered pursuant to Section 3.05 hereof at 100% of the principal amount thereof, and to thereafter sell such Bond. Any such purchase shall constitute a remarketing hereunder.

The Remarketing Agent shall not remarket any Bond to the Issuer, the Borrower, any guarantor of the Bonds or any person which is an “insider” of the Issuer, Borrower, or any such guarantor within the meaning of the Bankruptcy Code.

(d) Final Conditions to Remarketing.

(i) If, not less than four (4) Business Days preceding the Remarketing Date:

(A) the Remarketing Agent shall have notified the Trustee in writing of the remarketing of the Outstanding Bonds and that the proceeds from the remarketing (including proceeds of remarketing of Outstanding Bonds to be purchased by the Remarketing Agent on the Remarketing Date for its own account) or other funds equal to the amount needed to purchase the remarketed Bonds on the Remarketing Date are expected to be available to the Trustee on the Remarketing Date for deposit into the Remarketing Proceeds Account;

(B) the Trustee shall have received written confirmation that the Rating Agency shall have received and approved a Cash Flow Projection based on the interest rate(s) to be in effect with respect to the Outstanding Bonds on and after the Remarketing Date;

(ii) If, not less than two (2) Business Days preceding the Remarketing Date:

(A) there shall be on deposit with the Trustee, from Eligible Funds provided by the Borrower an amount sufficient to pay the Extension Payment set forth in the Cash Flow Projection for deposit (a) to the Negative Arbitrage Account of the Bond Fund with respect to the payment of Bond Service Charges during the new Remarketing Period and (b) to the Expense Fund with respect to the payment of Administrative Expenses during the new Remarketing Period;

(B) there shall either (a) be on deposit with the Trustee, from funds provided by the Borrower an amount sufficient to pay the estimated Remarketing Expenses as certified in writing to the Trustee by the Borrower for deposit in the Expense Fund, or (ii) the Remarketing Agent shall have certified in writing to the Trustee that provision for the payment of the estimated Remarketing Expenses shall have been made to the satisfaction of the Remarketing Agent; and

(C) the Trustee shall have received written notice from the Remarketing Agent that the Remarketing Agent has received a Confirmation of Rating from the Rating Agency;

then the Trustee shall immediately give notice, by email, telephone or telecopy, which notice shall be promptly confirmed in writing, to the Remarketing Agent, the Issuer, the Borrower and the Investor Member that (a) all conditions precedent to the remarketing of the Outstanding Bonds have been satisfied and (b) the sale and settlement of the Outstanding Bonds is expected to occur on the Remarketing Date. Following the Trustee's notice, the Outstanding Bonds shall be sold to the purchasers identified by the Remarketing Agent for delivery and settlement on the Remarketing Date, and the Trustee shall apply the funds in the Remarketing Proceeds Account of the Bond Fund on the Remarketing Date to payment of the purchase price of the Outstanding Bonds.

(e) Failure to Satisfy Final Conditions. If, not less than two (2) or four (4) Business Days, as applicable, preceding a Remarketing Date, any condition set forth in paragraph (d) of this Section 3.07 has not been satisfied, then, unless the Outstanding Bonds are otherwise purchased on the Remarketing Date the Remarketing Agent shall not sell any of the Outstanding Bonds on the Remarketing Date.

(f) Remarketing Proceeds. No later than 11:00 a.m. Local Time on each Remarketing Date, the Remarketing Agent shall pay to the Trustee, in immediately available funds, the proceeds theretofore received by the Remarketing Agent from the remarketing of Bonds tendered for purchase on such Remarketing Date; provided, that the Remarketing Agent may use its best efforts to cause the purchasers of the remarketed Bonds to pay the purchase price plus accrued interest (if any) to the Trustee in immediately available funds. The proceeds

from the remarketing of the Bonds shall be segregated from any funds of the Borrower and the Issuer and shall in no case be considered to be or be assets of the Borrower or the Issuer. Funds representing remarketing proceeds received by the Remarketing Agent after 11:00 a.m. Local Time on each Remarketing Date shall be paid to the Trustee as soon as practicable upon such receipt.

(g) Delivery of Purchased Bonds. On or before the Business Day next preceding each Remarketing Date, the Remarketing Agent, by telephonic advice, shall notify the Trustee of (i) the principal amount of Bonds to be sold by the Remarketing Agent pursuant to Section 3.07 hereof and the purchase price, and, unless the Bonds are then in the Book Entry System, the names, addresses and social security numbers or other tax identification numbers of the proposed purchasers thereof and (ii) the principal amount of Bonds tendered for purchase on such Remarketing Date which will not be sold by the Remarketing Agent pursuant to Section 3.07 hereof. Such telephonic advice shall be confirmed by written notice delivered or electronically communicated at the same time as the telephonic advice.

Bonds purchased by the Trustee on a Mandatory Tender Date that have been remarketed shall be delivered to the purchasers thereof as directed by the Remarketing Agent. Bonds delivered as provided in this Section shall be registered in the manner directed by the recipient thereof.

#### Section 3.08 Cancellation of Bonds.

The Trustee shall immediately cancel Bonds if the tender price of the Bonds is paid from amounts other than proceeds derived from the remarketing of the Bonds.

### **ARTICLE IV**

#### **REVENUES AND FUNDS**

##### Section 4.01 Creation of Funds.

There are hereby established with the Trustee the following funds and accounts to be held in trust and maintained by the Trustee under this Indenture:

- (a) the Bond Fund, and therein the Negative Arbitrage Account and the Remarketing Proceeds Account (but only at such times as money is to be deposited or held in such Accounts as provided in this Indenture);
- (b) the Project Fund;
- (c) the Costs of Issuance Fund;
- (d) the Collateral Fund;
- (e) the Rebate Fund;
- (f) the Expense Fund; and

- (g) the Permanent Loan Fund.

Each fund and account therein shall be maintained by the Trustee as a separate and distinct trust fund or account to be held, managed, invested, disbursed and administered as provided in this Indenture; provided, the Rebate Fund, the Expense Fund, the Permanent Loan Fund and the Costs of Issuance Fund shall not be part of the Trust Estate and shall not be subject to the lien and pledge of this Indenture. All money deposited in the funds and accounts created hereunder shall be used solely for the purposes set forth in this Indenture. The Trustee shall keep and maintain adequate records pertaining to each fund and account, and all disbursements therefrom, in accordance with its general practices and procedures in effect from time to time. The Trustee may also terminate funds and accounts that are no longer needed; provided, the Trustee shall not terminate the Permanent Loan Fund without the express written direction from the Permanent Lender.

The Trustee shall, at the written direction of an Authorized Borrower Representative, and may, in its discretion, establish such additional accounts within any fund, and subaccounts within any of the accounts, as the Issuer or the Trustee may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that fund and its accounts, or for the purpose of complying with the requirements of the Code, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Indenture with respect to a deposit or use of money in the Special Funds, the Permanent Loan Fund or the Rebate Fund, or result in commingling of funds not permitted hereunder.

#### Section 4.02 Allocation of Bond Proceeds and Other Deposits.

(a) Allocation of Bond Proceeds. On the Closing Date, all of the proceeds of the Bonds in the amount of \$5,500,000 shall be delivered to the Trustee and deposited to the Project Fund.

(b) Allocation of Borrower Funds. On the Closing Date, the Trustee shall receive Eligible Funds, which the Trustee shall deposit as follows:

(i) to the Negative Arbitrage Account of the Bond Fund, the Initial Borrower Deposit in the amount of \$\_\_\_\_\_; and

(ii) to the Costs of Issuance Fund, \$0.

#### Section 4.03 Bond Fund.

On the Closing Date, there shall be deposited in the Negative Arbitrage Account of the Bond Fund the amount set forth in Section 4.02(b) hereof. Any Extension Payment received by the Trustee in connection with an extension of the Mandatory Tender Date pursuant to Section 3.07 hereof shall also be deposited in the Negative Arbitrage Account.

So long as there are any Outstanding Bonds, to the extent the Borrower has not received a credit against Loan Payments, all Loan Payments under the Loan Agreement shall be paid on or before each Interest Payment Date directly to the Trustee, and deposited in the Bond Fund, in at

least the amount necessary to pay the interest and the principal due on the Bonds on such Bond Payment Date.

The Bond Fund (and accounts therein for which provision is made in this Indenture) and the money therein shall be used solely and exclusively for the payment of Bond Service Charges as they become due.

Bond Service Charges shall be payable, as they become due, (a) in the first instance from the money on deposit in the Bond Fund (other than the Negative Arbitrage Account within the Bond Fund), (b) next from money on deposit in the Negative Arbitrage Account within the Bond Fund, (c) next from money on deposit in the Collateral Fund and transferred as necessary to the Bond Fund and (d) thereafter, from money on deposit in the Project Fund and transferred as necessary to the Bond Fund.

Upon receipt by the Trustee of a Cash Flow Projection provided on behalf of the Borrower with a copy to the Issuer, the Trustee is hereby authorized to release from the Negative Arbitrage Account the amount set forth in the Cash Flow Projection to and/or at the written direction of the Borrower.

#### Section 4.04 Project Fund.

Upon the deposit of Eligible Funds in the Collateral Fund as provided in Section 4.06 hereof, the Trustee shall unconditionally and immediately upon receipt of the Eligible Funds disburse the Bond proceeds on deposit in the Project Fund with the prior written approval of the Permanent Lender for use by the Borrower to pay Project Costs in accordance with Section 3.6 of the Loan Agreement and upon satisfaction of the conditions specified therein. The Trustee shall disburse funds from the Project Fund in accordance with Section 3.6 of the Loan Agreement on the same Business Day that it receives the Eligible Funds in the event (i) the Trustee receives the fully-signed and completed disbursement request prior to such Business Day and (ii) the Trustee receives the Eligible Funds with respect to such disbursement request prior to 2:30 PM Local Time on such Business Day. If the Trustee receives the Eligible Funds after 2:30 PM Local Time, the disbursement shall be made on the next succeeding Business Day. Notwithstanding any provisions to the contrary, upon satisfaction of the conditions set forth in Section 3.6 of the Loan Agreement, the Trustee shall be unconditionally and irrevocably obligated to disburse funds from the Project Fund with the prior written approval of the Permanent Lender. The Trustee shall not disburse money from the Project Fund, other than to pay Bond Service Charges on the Bonds, unless and until Eligible Funds in an amount equal to or greater than the requested disbursement amount have been deposited in the Collateral Fund and all of the conditions set forth in Section 3.6 of the Loan Agreement are met. In accordance with Section 3.6 of the Loan Agreement, and prior to making any disbursement, the Trustee shall determine that the aggregate account balance in (a) the Collateral Fund and (b) the Project Fund (less the requested disbursement amount) is at least equal to the then-Outstanding principal amount of the Bonds; provided, however, to the extent money on deposit in the Project Fund is invested in Eligible Investments, the Trustee is hereby authorized to make the following allocations and exchanges, which allocations and exchanges shall occur prior to the disbursement of amounts on deposit in the Project Fund to pay Project Costs: (i) allocate all or a portion of the Eligible Investments in the Project Fund, in the amount specified in the request for disbursement,

to the Collateral Fund and (ii) transfer a like amount of Eligible Funds on deposit in the Collateral Fund to the Project Fund, in exchange for an allocation of a like amount of Eligible Investments held therein.

Money in the Project Fund shall be disbursed in accordance with the provisions of Section 3.6 of the Loan Agreement and this Section 4.04. To the extent money is not otherwise available to the Trustee, including money on deposit in the Bond Fund and the Collateral Fund, the Trustee shall transfer from the Project Fund to the Bond Fund sufficient money to make the necessary interest and principal payments, if any, on each Interest Payment Date without further written direction.

On any Redemption Date, the Trustee will transfer any amounts then on deposit in the Project Fund into the Bond Fund to pay Bond Service Charges on the Bonds.

Upon the occurrence and continuance of an Event of Default hereunder as a result of which the principal amount of the Bonds has been declared to be due and immediately payable pursuant to Section 6.03 hereof, any money remaining in the Project Fund shall be promptly transferred by the Trustee to the Bond Fund.

#### Section 4.05 Costs of Issuance Fund.

Amounts on deposit in the Costs of Issuance Fund, if any, shall be used by the Trustee to pay costs of issuance upon receipt of a written order in the form attached hereto as Exhibit C, signed by the Borrower and approved by the Investor Member. Any amounts remaining on deposit in the Costs of Issuance Fund thirty (30) days after the Closing Date shall be returned to and/or at the written direction of the Borrower. Notwithstanding anything to the contrary stated herein, the Costs of Issuance Fund and the moneys deposited therein shall not be part of the Trust Estate and shall not be subject to the lien and pledge of this Indenture.

#### Section 4.06 Collateral Fund.

(a) The Trustee shall deposit in the Collateral Fund all Eligible Funds received pursuant to Section 4.2 of the Loan Agreement and any other Eligible Funds received by the Trustee, at the written direction of the Borrower. Pursuant to Section 4.10 hereof and Section 4.2 of the Loan Agreement, the Borrower shall cause the Permanent Lender to deliver a requisition to the Trustee to transfer certain Permanent Loan proceeds from the Permanent Loan Fund to the Collateral Fund in a principal amount equal to, and as a prerequisite to the disbursement of, the amount of Bond proceeds on deposit in the Project Fund to be disbursed by the Trustee to pay Project Costs.

(b) Each deposit into the Collateral Fund shall constitute an irrevocable deposit solely for the benefit of the Holders, subject to the provisions hereof; provided, however, if for any reason the Trustee is not able to disburse a corresponding amount of Bond proceeds from the Project Fund immediately following receipt of Permanent Loan proceeds from the Permanent Loan Fund for deposit into the Collateral Fund, the Trustee shall promptly transfer such Permanent Loan proceeds back to the Permanent Loan Fund and not deposit the same into the Collateral Fund, and shall notify the Borrower and the Permanent Lender.

(c) The Trustee shall transfer money in the Collateral Fund as follows: (i) on the Mandatory Tender Date, to the Bond Fund, the amount necessary to pay the purchase price of the Bonds, to the extent amounts on deposit in the Remarketing Proceeds Account and the Negative Arbitrage Account of the Bond Fund are insufficient therefor; and (ii) on any Redemption Date or the Maturity Date of the Bonds, to the Bond Fund the amount, together with amounts on deposit in the Bond Fund, necessary to pay the principal and interest due on the Bonds on such date.

(d) On any Redemption Date, the Trustee will transfer funds held in the Collateral Fund into the Bond Fund to pay Bond Service Charges on the Bonds.

(e) Amounts, if any, on deposit in the Collateral Fund in excess of the amount required to pay Bond Service Charges after payment in full of the Bonds may be transferred to the Project Fund and used to pay Project Costs as provided in Section 3.6 of the Loan Agreement.

(f) The Bonds shall not be, and shall not be deemed to be, paid or prepaid by reason of any deposit into the Collateral Fund unless and until the amount on deposit in the Collateral Fund is transferred to the Bond Fund and applied to the payment of the principal of any of the Bonds, the principal component of the redemption price of any of the Bonds or the principal component of the tender price of any of the Bonds, all as provided in this Indenture.

#### Section 4.07 Completion of the Project.

The completion of the Project and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the Completion Certificate required by Section 3.9 of the Loan Agreement. As soon as practicable after the filing with the Trustee of the Completion Certificate, any balance remaining in the Project Fund (other than the amounts retained by the Trustee as described in the Completion Certificate) shall be deposited or applied in accordance with the written direction of the Authorized Borrower Representative pursuant to Section 3.6 of the Loan Agreement; provided, however, that (i) if the WVHDF RD 538 Mortgage Loan is in default and has been assigned to USDA in connection with a mortgage insurance claim, such amount shall be remitted to the WVHDF RD 538 Lender to repay the WVHDF RD 538 Mortgage Loan together with any other costs owed to USDA and/or the WVHDF RD 538 Lender and (ii) if the ERA2 Loan is in default, such amount shall be remitted to the ERA2 Lender to repay the ERA2 Loan, together with any other costs owed to the ERA2 Lender.

#### Section 4.08 Expense Fund.

The Trustee shall apply money on deposit in the Expense Fund solely for the following purposes, upon receipt of written instructions from the Borrower, in the following order of priority:

(a) to transfer money to the Rebate Fund to the extent necessary to pay the Rebate Amount (if any) when due pursuant to Section 4.09 hereof;

(b) to pay the Ordinary Trustee Fees and Expenses when due;

- (c) to pay the Dissemination Agent Fee when due;
- (d) to pay the Ordinary Issuer Fees when due;
- (e) to pay the Issuer Fees and Expenses not previously paid; and
- (f) to pay the Remarketing Expenses when due.

To the extent moneys in the Expense Fund are not sufficient to pay the foregoing fees and expenses, such deficiency shall be paid by the Borrower pursuant to Section 4.4 of the Loan Agreement promptly upon written demand. Notwithstanding anything to the contrary stated herein, the Expense Fund and the moneys deposited therein shall not be part of the Trust Estate and shall not be subject to the lien and pledge of this Indenture.

#### Section 4.09 Rebate Fund.

Any provision hereof to the contrary notwithstanding, amounts credited to the Rebate Fund shall not be part of the Trust Estate and shall not be subject to the lien and pledge of this Indenture.

Without limiting the generality of the foregoing, the Trustee shall furnish to the Borrower and the Investor Member all information reasonably requested by the Borrower or the Investor Member with respect to the Bonds and investments of the Funds and accounts maintained by the Trustee hereunder. The Trustee shall make deposits to and disbursements from the Rebate Fund (including rebate payments to the United States required to be made by the Tax Certificate and Agreement), as well as investments of the amounts therein, in accordance with the written directions received from the Borrower pursuant to the Tax Certificate and Agreement.

#### Section 4.10 Permanent Loan Fund.

From time to time on or after the Closing Date, Permanent Loan proceeds shall be deposited in the Permanent Loan Fund by or on behalf of the Permanent Lender and such amounts shall be held, transferred or transmitted per the written instructions of the Permanent Lender utilizing the requisition form attached hereto as Exhibit D. To the extent set forth in such requisition form, funds on deposit in the Permanent Loan Fund may be transferred to the Collateral Fund in the amounts and at such times as may be necessary to allow the Trustee to disburse funds from the Project Fund upon the Trustee's receipt of a request for disbursement from the Borrower. To the extent set forth in such requisition form, funds on deposit in the Permanent Loan Fund representing Permanent Loan proceeds in excess of the amount of Bond proceeds deposited into the Project Fund on the Closing Date may be disbursed to the Borrower for the payment of Project Costs not payable from proceeds of the Bonds. To the extent set forth in such requisition form, the Trustee shall wire to the Permanent Lender any amounts in the Permanent Loan Fund requested by the Permanent Lender. The Trustee shall, at the written direction of the Permanent Lender, establish within the Permanent Loan Fund a WVHDF 538 Loan Account and an ERA2 Loan Account; should such Accounts be so established, payments into and disbursements from the Permanent Loan Fund shall specify the Account into which such payment will be made, or from which such disbursement will be made, as applicable. Notwithstanding anything to the contrary stated herein, the Permanent Loan Fund and the

moneys deposited therein shall not be a part of the Trust Estate and shall not be subject to the lien and pledge of this Indenture.

Section 4.11 Investment of Special Funds, Rebate Fund and Permanent Loan Fund.

Except as otherwise set forth in this Section, moneys in the Special Funds and the Rebate Fund shall be invested and reinvested by the Trustee in Eligible Investments at the written direction of the Authorized Borrower Representative.

In the absence of instructions from the Authorized Borrower Representative regarding investment of moneys in the Special Funds and the Rebate Fund, the Trustee shall invest solely in Eligible Investments.

Moneys in the Permanent Loan Fund shall be invested and reinvested by the Trustee in Eligible Investments at the written direction of the Permanent Lender. In the absence of instructions from the Permanent Lender regarding investments of moneys in the Permanent Loan Fund, the Trustee shall invest solely in Eligible Investments.

Except as provided in the following paragraph, investments of money in the Special Funds shall be invested and reinvested (i) at the written direction of the Authorized Borrower Representative in Government Obligations that mature or are redeemable at the option of the Trustee at par no later than 30 days from the date of investment or (ii) in the absence of instructions from the Authorized Borrower Representative, the Trustee shall invest solely in Eligible Investments.

At no time shall the Authorized Borrower Representative direct that any funds constituting gross proceeds of the Bonds be used in any manner as would constitute failure of compliance with Section 148 of the Code. Investments of moneys in the Bond Fund shall mature or be redeemable at the times and in the amounts necessary to provide moneys to pay Bond Service Charges on the Bonds. Each investment of moneys in a Project Fund shall mature or be redeemable without penalty at such time as may be necessary to make payments from the Project Fund, including on each Interest Payment Date. Any of those investments may be purchased from or sold to the Trustee, the Registrar, an authenticating agent or a paying agent, or any bank, trust company or savings and loan association affiliated with any of the foregoing. The Trustee shall sell or redeem investments credited to the Special Funds to produce sufficient moneys applicable hereunder to and at the times required for the purposes of paying Bond Service Charges when due as aforesaid, and shall do so without necessity for any order on behalf of the Issuer and without restriction by reason of any order. If the Trustee is required to sell or otherwise dispose of any Eligible Investments prior to maturity, the Borrower shall, at the Borrower's expense, deliver to the Trustee (i) a Cash Flow Projection and (ii) Eligible Funds in the amount set forth in such Cash Flow Projection, if any. An investment made from moneys credited to the Special Funds shall constitute part of that respective Fund. All investment earnings from amounts on deposit in the Project Fund shall be credited to the Negative Arbitrage Account of the Bond Fund. All investment earnings from amounts on deposit in the Collateral Fund shall be credited to the Negative Arbitrage Account of the Bond Fund. All gains resulting from the sale of, or income from, any investment made from moneys credited to the Special Funds shall be credited to and become part of the Bond Fund. Except as may be otherwise

expressly provided hereunder, with respect to any investment made from moneys credited to any fund or account hereunder (i) all gains or losses resulting from the sale thereof shall be credited to or charged against such fund or account and (ii) any income or earnings thereon shall be retained in and constitute part of such fund or account.

The Trustee shall not be liable for losses on investments made in compliance with the provisions of this Indenture.

Ratings of Eligible Investments shall be determined at the time of purchase of such Eligible Investments and without regard to ratings subcategories. The Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including cash sweep account fees. Although each of the Issuer and the Borrower recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, each of the Issuer and the Borrower hereby agrees that confirmations of Eligible Investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month. The Trustee may conclusively rely upon the Authorized Borrower Representative's written instructions as to both the suitability and legality of the directed investments. Following the Closing Date, at the written direction of the Borrower with written notice from the Borrower to the Issuer, the Trustee is permitted to purchase, sell or exchange Eligible Investments with a Cash Flow Projection delivered to the Trustee and the Issuer.

Notwithstanding the foregoing, except as set forth above with respect to the Permanent Loan Fund, any moneys held under this Indenture without the written direction of the Authorized Borrower Representative shall be invested in Eligible Investments; provided, however, that (i) earnings received by the Trustee with respect to Eligible Investments purchased for the purpose of paying Bond Service Charges shall be held uninvested and (ii) Bond proceeds and the Initial Borrower Deposit shall be held uninvested until the Trustee has purchased, sold or exchanged Eligible Investments.

#### Section 4.12 Money to be Held in Trust.

Except where money has been deposited with or paid to the Trustee pursuant to an instrument restricting their application to particular Bonds, all money required or permitted to be deposited with or paid to the Trustee under any provision of this Indenture or the Note, and any investments thereof, shall be held by the Trustee in trust (for the avoidance of doubt, money in the Permanent Loan Fund shall be held in trust for the Permanent Lender as long as such money remains in the Permanent Loan Fund). Except for money held by the Trustee pursuant to Sections 4.05, 4.08, 4.09 and 4.10 hereof, all money described in the preceding sentence held by the Trustee shall be subject to the lien and pledge of this Indenture while so held.

The money in any fund or account established under this Indenture shall be subject to the unclaimed property laws of the State.

The Trustee shall cause to be kept and maintained adequate records pertaining to the Special Funds and all deposits and disbursements therefrom. The Trustee shall satisfy this obligation by providing monthly statements for all periods in which there are funds in the Special Funds to the Borrower and the Investor Member.

Section 4.13 Valuation.

For the purpose of determining the amount on deposit to the credit of any Special Fund or Account, the value of obligations in which money in such Fund or Account shall have been invested shall be computed (i) in the case of Government Obligations held in the Special Funds, at the maturity or redemption value (as applicable) as of the maturity or next redemption date and (ii) in the case of all other Eligible Investments, at the then market value thereof.

The Eligible Investments shall be valued by the Trustee at any time requested by the Authorized Borrower Representative on reasonable notice to the Trustee (which period of notice may be waived or reduced by the Trustee); provided, however, that the Trustee shall not be required to value the Eligible Investments more than once in any calendar month.

Section 4.14 Nonpresentment of Bonds.

In the event that any Bond shall not be presented for payment when the principal thereof becomes due, or a check or draft for interest is uncashed, if money sufficient to pay the principal then due of that Bond or of such check or draft shall have been made available to the Trustee for the benefit of its Holder, all liability of the Issuer to that Holder for such payment of the principal then due of the Bond or of such check or draft thereupon shall cease and be discharged completely. Thereupon, it shall be the duty of the Trustee to hold such money, without liability for interest thereon, in a separate account in the Bond Fund for the exclusive benefit of the Holder, who shall be restricted thereafter exclusively to such money for any claim of whatever nature on its part under this Indenture or on, or with respect to, the principal then due of that Bond or of such check or draft.

Any of such money which shall be so held by the Trustee, and which remain unclaimed by the Holder of a Bond not presented for payment or check or draft not cashed for a period of four years after the due date thereof, shall, subject to any applicable escheat laws, be paid to the Borrower free of any trust or lien. Thereafter, the Holder of that Bond shall look only to the Borrower for payment and then only to the amounts so received by the Borrower without any interest thereon, and the Trustee shall not have any responsibility with respect to such money.

Section 4.15 Repayment to the Borrower from the Bond Fund and the Expense Fund.

On any Mandatory Tender Date, any amounts in the Bond Fund in excess of the amount necessary to cover any negative arbitrage from such Mandatory Tender Date through the last day of the new Remarketing Period established pursuant to Section 3.07 hereof, or if no such Remarketing Period has been established, the Maturity Date (assuming 0.00% interest earnings on all deposits) shall be paid to and/or at the direction of the Borrower.

Except as provided in Section 4.09, Section 4.10 and Section 4.14 hereof, any amounts remaining in the Bond Fund and the Expense Fund (a) after all of the Outstanding Bonds shall be

deemed paid and discharged under the provisions of this Indenture, and (b) after payment of all fees, charges and expenses of the Issuer and the Trustee and of all other amounts required to be paid under this Indenture, the Loan Agreement, the Tax Certificate and Agreement, the Bond Regulatory Agreement and the Note, shall be paid to the Borrower to the extent that those amounts are in excess of those necessary to effect the payment and discharge of the Outstanding Bonds; provided however, that if the Trustee has received written notice that the W VHDF RD 538 Mortgage Loan has been assigned to USDA in connection with a mortgage insurance claim, such funds shall not be remitted to the Borrower, but shall be remitted to the Permanent Lender to repay the W VHDF RD 538 Mortgage Loan together with any other costs owed to USDA and/or the Permanent Lender.

## **ARTICLE V**

### **THE TRUSTEE AND REMARKETING AGENT**

#### **Section 5.01 Trustee's Acceptance and Responsibilities.**

The Trustee accepts the trusts imposed upon it by this Indenture, and agrees to observe and perform those trusts, but only upon and subject to the terms and conditions set forth in this Article, to all of which the parties hereto and the Holders agree.

(a) Prior to the occurrence of a default or an Event of Default (as defined in Section 6.01 hereof) of which the Trustee has been notified, as provided in paragraph (f) of Section 5.02 hereof, or of which by that paragraph the Trustee is deemed to have notice, and after the cure or waiver of all defaults or Events of Default which may have occurred,

(i) the Trustee undertakes to perform only those duties and obligations which are set forth specifically in this Indenture, and no duties or obligations shall be implied to the Trustee;

(ii) in the absence of bad faith on its part, the Trustee may rely conclusively, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are required specifically to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(b) In case a default or an Event of Default has occurred and is continuing hereunder (of which the Trustee has been notified, or is deemed to have notice), the Trustee shall exercise those rights and powers vested in it by this Indenture and shall use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(i) this Subsection shall not be construed to affect the limitation of the Trustee's duties and obligations provided in subparagraph (a)(i) of this Section or the Trustee's right to rely on the truth of statements and the correctness of opinions as provided in subparagraph (a)(ii) of this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by any one of its officers, unless it shall be established that the Trustee was grossly negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority in principal amount of the Bonds then Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture or any other Financing Documents relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Article V.

#### Section 5.02 Certain Rights and Obligations of the Trustee.

Except as otherwise provided in Section 5.01 hereof:

(a) The Trustee (i) may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees (but shall be answerable therefor only in accordance with the standard specified above), (ii) shall be entitled to the advice of counsel concerning all matters of trusts hereof and duties hereunder, and (iii) may pay reasonable compensation in all cases to all of those attorneys, agents, receivers and employees reasonably employed by it in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Issuer or the Borrower) approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action taken or omitted to be taken in good faith in reliance upon that opinion or advice.

(b) Except for its certificate of authentication on the Bonds, the Trustee shall not be responsible for:

- (i) any recital in this Indenture, in the Bonds, or in any other Financing Documents,
- (ii) the validity, priority, recording, re-recording, filing or re-filing of this Indenture, any Supplemental Indenture, the Bond Regulatory Agreement, or any of the other Financing Documents,
- (iii) any instrument or document of further assurance or collateral assignment,
- (iv) the filing of any financing statements, amendments thereto or continuation statements,
- (v) insurance of the Project or collection of insurance moneys,
- (vi) the validity of the execution by the Issuer of this Indenture, any Supplemental Indenture or instruments or documents of further assurance,
- (vii) the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby,
- (viii) the value of or title to the Project, or
- (ix) the maintenance of the security hereof.

The Trustee shall not be bound to ascertain or inquire as to the observance or performance of any covenants, agreements or obligations on the part of the Issuer or the Borrower under the Loan Agreement except as set forth hereinafter; but the Trustee may, upon written request, require of the Issuer or the Borrower full information and advice as to the observance or performance of those covenants, agreements and obligations. Except as otherwise provided in Section 6.04 hereof, the Trustee shall have no obligation to observe or perform any of the duties of the Issuer under the Loan Agreement.

(c) The Trustee shall not be accountable for the application by the Borrower or any other Person of the proceeds of any Bonds authenticated or delivered hereunder.

(d) The Trustee shall be protected, in the absence of bad faith on its part, in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to this Indenture upon the request, authority or consent of any Person who is the Holder of any Bonds at the time of making the request or giving the authority or consent, shall be conclusive and binding upon all future Holders of the same Bond and of Bonds issued in exchange therefor or in place thereof.

(e) As to the existence or nonexistence of any fact for which the Issuer or the Borrower may be responsible or as to the sufficiency or validity of any instrument, document, report, paper or proceeding, the Trustee, in the absence of bad faith on its part, shall be entitled to rely upon a certificate signed by an Authorized Borrower Representative or Authorized Officer as sufficient evidence of the facts recited therein. Prior to the occurrence of a default or Event of

Default hereunder of which the Trustee has been notified, as provided in paragraph (f) of this Section, or of which by that paragraph the Trustee is deemed to have notice, the Trustee may accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient; provided, that the Trustee in its discretion may require and obtain any further evidence which it deems to be necessary or advisable; and, provided further, that the Trustee shall not be bound to secure any further evidence. The Trustee may accept a certificate of the officer, or an assistant thereto, having charge of the appropriate records, to the effect that legislation has been enacted by the State in the form recited in that certificate, as conclusive evidence that the legislation has been duly enacted and is in full force and effect.

(f) The Trustee shall not be required to take notice, and shall not be deemed to have notice, of any default or Event of Default hereunder, except Events of Default described in paragraphs (a) or (b) of Section 6.01 hereof, unless the Trustee shall be notified specifically of the default or Event of Default in a written instrument or document delivered to it by the Issuer or by the Holders of at least 10% of the aggregate principal amount of Bonds then Outstanding. In the absence of delivery of a notice satisfying those requirements, the Trustee may assume conclusively that there is no default or Event of Default, except as noted above.

(g) At any reasonable time upon reasonable prior written notice to the Borrower, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives (i) may inspect and copy fully all books, papers and records of the Borrower pertaining to the Project and the Bonds, and (ii) may make any memoranda from and in regard thereto as the Trustee may desire.

(h) The Trustee shall not be required to give any bond or surety with respect to the execution of these trusts and powers or otherwise in respect of the premises.

(i) Notwithstanding anything contained elsewhere in this Indenture, the Trustee may demand any showings, certificates, reports, opinions, appraisals and other information, and any corporate action and evidence thereof, in addition to that required by the terms hereof, as a condition to the authentication of any Bonds or the taking of any action whatsoever within the purview of this Indenture, if the Trustee deems it to be desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds or the right of any Person to the taking of any other action by the Trustee; provided, that the Trustee shall not be required to make that demand.

(j) Before taking action hereunder pursuant to Section 5.04 or Article VI hereof (with the exception of any action required to be taken under Section 6.02 hereof or the acceleration of the Bonds under Section 6.03 hereof), the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all reasonable expenses, including attorneys' fees and expenses, which it may incur and to protect it against all liability by reason of any action so taken, except liability which is adjudicated to have resulted from its negligence or willful misconduct. The Trustee may take action without that indemnity, and in that case, the Borrower shall reimburse the Trustee for all of the Trustee's reasonable expenses pursuant to Section 5.03 hereof.

(k) Unless otherwise provided herein, all moneys received by the Trustee under this Indenture shall be held in trust for the purposes for which those moneys were received, until those moneys are used, applied or invested as provided herein; provided, that those moneys need not be segregated from other moneys, except to the extent required by this Indenture or by law. The Trustee shall not have any liability for interest on any moneys received hereunder, except to the extent expressly provided herein.

(l) Any opinions, certificates and other instruments and documents for which provision is made in this Indenture, may be accepted by the Trustee, in the absence of bad faith on its part, as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for its actions taken hereunder.

(m) The Trustee shall be entitled to file proofs of claim in bankruptcy. Trustee fees and expenses, including Trustee's attorneys; fees and expenses, are intended to constitute administrative expenses in bankruptcy.

(n) The Trustee shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Indenture and the other Financing Documents and delivered using Electronic Means; provided, however, that the Issuer and the Borrower or other Person (i.e., Permanent Lender, Remarketing Agent or Investor Member), as the case may be, (collectively, the "Directing Party", and individually, a "Directing Party") shall provide to the Trustee an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officials") and containing specimen signatures of such Authorized Officials, which incumbency certificate shall be amended by a Directing Party whenever a person is to be added or deleted from the listing. If a Directing Party elects to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee's understanding of such Instructions shall be deemed controlling. Each Directing Party understands and agrees that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Official listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Official. Each Directing Party shall be responsible for ensuring that only Authorized Officials transmit such Instructions to the Trustee and that each Directing Party and all respective Authorized Officials are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the relevant Directing Party. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction, provided that Trustee shall alert such Directing Party(ies) in the case it receives inconsistent written instructions. Each Directing Party agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by a Directing Party; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances;

and (iv) to notify the Trustee promptly upon learning of any compromise or unauthorized use of the security procedures.

“Electronic Means” shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder.

(o) The permissive right of the Trustee to do things enumerated in this Indenture and the other Financing Documents shall not be construed as a duty and the Trustee shall not be answerable in connection with the performance of its duties hereunder and under the Financing Documents for other than its negligence or willful misconduct. The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds, and shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds. The Trustee shall have no duty to review or analyze any financial statements or other financial information delivered to the Trustee under this Indenture and the other Financing Documents and shall hold such financial statements and other financial information solely as a repository for the benefit of the Holder; the Trustee shall not be deemed to have notice of any information contained therein or event of default which may be disclosed therein in any manner. The Trustee shall not be responsible or liable for the environmental condition or any contamination of any property which secures the Bonds or for any diminution in value of any such property as a result of any contamination of the property by any hazardous substance, hazardous material, pollutant or contaminant. The Trustee shall not be liable for any claims by or on behalf of the Holders or any other person or entity arising from contamination of the property by any hazardous substance, hazardous material, pollutant or contaminant, and shall have no duty or obligation to assess the environmental condition of any such property or with respect to compliance of any such property under state or federal laws pertaining to the transport, storage, treatment or disposal of, hazardous substances, hazardous materials, pollutants, or contaminants or regulations, permits or licenses issued under such laws. The Trustee in performing its duties and exercising its rights under any of the other Financing Documents shall be entitled to all rights, protections and limitations of liability set forth in this Indenture, and the provisions of this Indenture relating to the rights, protections and limitations of liability of the Trustee shall be deemed to be set forth and included in the Financing Documents, *mutatis mutandis*, as if references to “hereof”, “herein”, “this Indenture” and the like set forth in this Indenture referred to the applicable Financing Document.

(p) The Trustee shall not be accountable for the use or application by the Borrower of any of the Bonds or the proceeds thereof or for the use or application of any money paid over by the Trustee in accordance with the provisions of this Indenture or any other Financing Documents or for the use and application of money received by any paying agent.

(q) Under no circumstances does the Trustee assume any responsibility or liability for the issuance of the Bonds as obligations the interest on which is excludable from gross income for purposes of Federal income taxation or for the maintenance of such tax-exempt status subsequent to the date of issuance of the Bonds.

### Section 5.03 Fees, Charges and Expenses of Trustee.

The Trustee shall be entitled to payment or reimbursement by the Borrower, as provided herein and in the Loan Agreement, for customary fees for Ordinary Services rendered hereunder and for all advances, reasonable counsel fees and expenses, and other Ordinary Expenses reasonably and necessarily paid or incurred by it in connection with the provision of Ordinary Services. For purposes hereof, fees for Ordinary Services provided for by its standard fee schedule shall be considered customary. In the event that it should become necessary for the Trustee to perform Extraordinary Services, it shall be entitled to customary extra compensation therefor and to reimbursement for reasonable and necessary Extraordinary Expenses incurred in connection therewith. Unless and until such time as the Trustee resigns or is replaced, and a successor Trustee is appointed pursuant to Section 5.09 hereunder, the Trustee shall continue to perform its duties hereunder notwithstanding the Borrower's failure to timely pay such fees.

Without creating a default or an Event of Default hereunder, however, the Borrower may contest in good faith the necessity for any Extraordinary Service and Extraordinary Expense and the amount of any fee, charge or expense.

The Trustee shall not be entitled to compensation or reimbursement for Extraordinary Services or Extraordinary Expenses occasioned by its negligence or willful misconduct. The customary fees for its Ordinary Services and charges of the foregoing shall be entitled to payment and reimbursement only from (i) the Additional Payments made by the Borrower pursuant to the Loan Agreement, or (ii) moneys available therefor in the Expense Fund or Section 6.06 hereof. Any amounts payable to the Trustee pursuant to this Section 5.03 shall be payable upon demand and shall bear interest from the date of demand therefor at the Interest Rate for Advances.

### Section 5.04 Intervention by Trustee.

The Trustee may intervene on behalf of the Holders, and shall intervene if requested to do so in writing by the Holders of at least 25% of the aggregate principal amount of Bonds then Outstanding, in any judicial proceeding to which the Issuer or the Borrower is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of Holders of the Bonds. The rights and obligations of the Trustee under this Section are subject to the approval of that intervention by a court of competent jurisdiction. The Trustee may require that satisfactory indemnity be provided to it in accordance with Sections 5.01 and 5.02 hereof before it takes action hereunder.

### Section 5.05 Successor Trustee.

Anything herein to the contrary notwithstanding,

(a) any corporation or association (i) into which the Trustee may be converted or merged, (ii) with which the Trustee or any successor to it may be consolidated, or (iii) to which it may sell or transfer its corporate trust assets and corporate trust business as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, merger, consolidation, sale or transfer, ipso facto, shall be and become successor Trustee

hereunder and shall be vested with all of the title to the whole property or Trust Estate hereunder; and

(b) that corporation or association shall be vested further, as was its predecessor, with each and every trust, property, remedy, power, right, duty, obligation, discretion, privilege, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by, vested in or conveyed to the Trustee, without the execution or filing of any instrument or document or any further act on the part of any of the parties hereto.

Any successor Trustee, however, (i) shall be a trust company, a bank or a national association having the powers of a trust company, (ii) shall be in good standing within the State, (iii) shall be duly authorized to exercise trust powers within the State, and (iv) shall have a reported capital, surplus and retained earnings of not less than \$100,000,000.

#### Section 5.06 Appointment of Co-Trustee.

It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including without limitation, the laws of the State) denying or restricting the right of banks or trust companies to transact business as trustees in that jurisdiction. It is recognized that, (a) if there is litigation under this Indenture or other instruments or documents relating to the Bonds and the Project, and in particular, in case of the enforcement hereof or thereof upon a default or an Event of Default, or (b) if the Trustee should deem that, by reason of any present or future law of any jurisdiction, it may not (i) exercise any of the powers, rights or remedies granted herein to the Trustee, (ii) hold title to the properties, in trust, as granted herein, or (iii) take any action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an individual or additional institution as a co-Trustee, such appointment to be made subject to the approval of the Issuer.

In the event that the Trustee appoints an individual or additional institution as a co-Trustee, each and every trust, property, remedy, power, right, duty, obligation, discretion, privilege, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by, vested in or conveyed to the Trustee shall be exercisable by, vest in and be conveyed to that co-Trustee, but only to the extent necessary for it to be so vested and conveyed and to enable that co-Trustee to exercise it. Every covenant, agreement and obligation necessary to the exercise thereof by that co-Trustee shall run to and be enforceable by it.

Should any instrument or document in writing from the Issuer reasonably be required by the co-Trustee so appointed by the Trustee for vesting and conveying more fully and certainly in and to that co-Trustee those trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens, that instrument or document shall be executed, acknowledged and delivered, but not prepared, by the Issuer. In case any co-Trustee or a successor to it shall die, become incapable of acting, resign or be removed, all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of the co-Trustee shall be exercised by, vest in and be conveyed to the Trustee, to the extent permitted by law, until the appointment of a successor to the co-Trustee.

Section 5.07 Resignation by the Trustee.

The Trustee may resign at any time from the trusts created hereby by giving written notice of the resignation to the Issuer, the Borrower and the Remarketing Agent, and by mailing written notice of the resignation to the Holders as their names and addresses appear on the Register at the close of business fifteen days prior to the mailing. The resignation shall take effect upon the appointment of a successor Trustee as provided for in Section 5.09 of this Indenture or an order of a court of competent jurisdiction allowing the Trustee to resign.

Section 5.08 Removal of the Trustee.

The Trustee may be removed at any time (i) by the Issuer or (ii) upon and during the continuance of an Event of Default, by an instrument or document or concurrent instruments or documents in writing delivered to the Trustee and the Issuer, with copies thereof mailed to the Remarketing Agent, and signed by the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding.

The Trustee also may be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provision of this Indenture with respect to the duties and obligations of the Trustee by any court of competent jurisdiction upon the application of the Issuer or the Holders of not less than 25% in aggregate principal amount of the Bonds then Outstanding under this Indenture.

The removal of the Trustee under this Section 5.08 shall take effect upon the appointment of a successor Trustee as provided for in Section 5.09 of this Indenture.

Section 5.09 Appointment of Successor Trustee.

If (a) the Trustee shall resign, shall be removed, shall be dissolved, or shall become otherwise incapable of acting hereunder, (b) the Trustee shall be taken under the control of any public officer or officers, or (c) a receiver shall be appointed for the Trustee by a court, then a successor Trustee shall be appointed (i) by the Issuer, at Borrower's expense or (ii) by the Holders of a majority in aggregate principal amount of Bonds then Outstanding by an instrument or document or concurrent instruments or documents in writing signed by or on behalf of those Holders. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section within sixty (60) days after the occurrence of the events described in clause (a), (b) or (c) above, the Holder of any Bond Outstanding hereunder or any retiring Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee, at Borrower's expense. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

Every successor Trustee appointed pursuant to this Section (a) shall be a trust company, a bank or a national association having the powers of a trust company (b) shall be in good standing within the State, (c) shall be duly authorized to exercise trust powers within the State, (d) shall have a reported capital, surplus and retained earnings of not less than \$100,000,000, and (e) shall be willing to accept the trusteeship under the terms and conditions of this Indenture.

Every successor Trustee appointed hereunder shall execute and acknowledge, and shall deliver to its predecessor, the Issuer and the Borrower an instrument or document in writing accepting the appointment. Thereupon, without any further act, the successor shall become vested with all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of its predecessor. Upon the written request of its successor, the Issuer or the Borrower, and payment of all fees and expenses owed to it, the predecessor Trustee (a) shall execute and deliver an instrument or document transferring to its successor all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of the predecessor Trustee hereunder, and (b) shall take any other action necessary to duly assign, transfer and deliver to its successor all property (including without limitation, all securities and moneys) held by it as Trustee. Should any instrument or document in writing from the Issuer be requested by any successor Trustee for vesting and conveying more fully and certainly in and to that successor the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens vested or conveyed or intended to be vested or conveyed hereby in or to the predecessor Trustee, the Issuer shall execute, acknowledge and deliver that instrument or document.

In the event of a change in the Trustee, the predecessor Trustee shall cease to be custodian of any moneys which it may hold pursuant to this Indenture and shall cease to be registrar, authenticating agent and paying agent for any of the Bonds, to the extent it served in any of those capacities.

#### Section 5.10 Adoption of Authentication.

In case any of the Bonds shall have been authenticated, but shall not have been delivered, any successor Trustee may adopt the certificate of authentication of any predecessor Trustee and may deliver those Bonds so authenticated as provided herein. In case any Bonds shall not have been authenticated, any successor Trustee may authenticate those Bonds either in the name of any predecessor or in its own name. In all cases, the certificate of authentication shall have the same force and effect as provided in the Bonds or in this Indenture with respect to the certificate of authentication of the predecessor Trustee.

#### Section 5.11 Dealing in Bonds.

The Trustee, its Affiliates, and any directors, officers, employees or agents thereof, in good faith, may become the owners of Bonds secured hereby with the same rights which it or they would have hereunder if the Trustee did not serve in that capacity.

#### Section 5.12 Representations, Agreements and Covenants of Trustee.

The Trustee hereby represents that it is a national banking association duly organized and validly existing under the laws of the United States of America, in good standing and duly authorized to exercise corporate trust powers in the State, and that it has an unimpaired reported capital, surplus and retained earnings of not less than \$100,000,000. The Trustee covenants that it will take such action, if any, as is necessary to remain in good standing and duly authorized to

exercise corporate trust powers in the State, and that it will maintain an unimpaired reported capital, surplus and retained earnings of not less than \$100,000,000. The Trustee accepts and agrees to observe and perform the duties and obligations of the Trustee to which reference is made in any other instrument or document providing security for any of the Bonds expressly subject to this Indenture, including this Article V.

Section 5.13 Right of Trustee to Pay Taxes and Other Charges.

The Trustee is hereby authorized (but not obligated) to advance funds (a) to pay taxes, assessments and other governmental charges with respect to the Project, (b) for the discharge of mechanics' and other liens relating to the Project, (c) to obtain and maintain insurance for the Project and pay premiums therefor, and (d) generally, to make payments and incur expenses in the event that the Borrower fails to do so as required by the Loan Agreement. The Trustee may make those advances, but without prejudice to any rights of the Trustee or the Holders against the Borrower for failure of the Borrower to do so.

Any amount so paid at any time, with interest thereon at the Interest Rate for Advances from the date of payment, (a) shall be an additional obligation secured by this Indenture, (b) shall be given a preference in payment over any Bond Service Charges, and (c) shall be paid out of the Revenues, if not caused otherwise to be paid. The Trustee shall make the advance, if it shall have been requested to do so by the Holders of at least 25% of the aggregate principal amount of Bonds then Outstanding and shall have been provided with adequate funds for the purpose of making the advance.

Section 5.14 Interpleader.

In the event of a dispute between any of the parties hereto with respect to the disposition of any funds held by the Trustee hereunder, or the Trustee receives conflicting demands made upon the Trustee with respect to the Trustee's duties hereunder or any other document related to the Bonds, the Trustee shall, at the expense of the Borrower, be entitled to file a suit in interpleader in a court of competent jurisdiction seeking to require the parties to interplead and litigate in such court their several claims and rights among themselves. Upon the filing of such a suit and the deposit of the applicable funds to such court, the Trustee will *ipso facto* be fully released and discharged from all obligations to further perform any and all duties imposed hereunder or any other document related to the Bonds regarding such matter and/or such funds that are the subject of such interpleader suit. In the event that the Trustee remains as Trustee under this Indenture and receives a court order, directive or other request regarding the interpleader suit, the Trustee shall be entitled to rely upon such instruction without incurring any obligation or liability and the parties hereto release, hold harmless and indemnify the Trustee for any obligation or liability for so relying on such court instruction.

Section 5.15 Survival of Certain Provisions.

The provisions of Sections 5.01 through 5.14 of this Indenture shall survive the release, discharge and satisfaction of this Indenture.

#### Section 5.16 Concerning the Remarketing Agent.

The Remarketing Agent identified in Section 1.01 hereof shall serve as the Remarketing Agent for the Bonds. The Remarketing Agent shall designate to the Trustee its Designated Office and signify its acceptance of the duties and obligations imposed upon it hereunder and for the compensation provided to it therefor in a written agreement between the Borrower and the Trustee, under which the Remarketing Agent will agree particularly to:

- (a) keep such records relating to its computations of interest rates for the Bonds as shall be consistent with prudent industry practice and to make such records available for inspection by the Issuer, the Trustee and the Borrower at all reasonable times; and
- (b) perform all of its functions and duties under this Indenture.

The Remarketing Agent shall be entitled to advice of legal counsel on any matter relating to the Remarketing Agent's obligations hereunder and shall be entitled to act upon the opinion of such counsel in the exercise of reasonable care in fulfilling such obligations.

The Remarketing Agent shall be entitled to appoint additional co-Remarketing Agents to assist in the performance of the Remarketing Agent's obligations under this Indenture, and any such appointment shall be effective without any action by the Issuer or the Borrower being necessary; provided that any such co-Remarketing Agent, shall have a capitalization of at least \$5,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$5,000,000, shall be in conformity with all standards and requirements of the Municipal Securities Rulemaking Board and the Securities and Exchange Commission, and shall be authorized by law to perform all the duties imposed upon it by this Indenture. The Remarketing Agent shall take responsibility for any co-Remarketing Agent it appoints.

#### Section 5.17 Qualification of Remarketing Agent.

The Remarketing Agent shall be a member in good standing of the Financial Industry Regulatory Authority having a capitalization of at least \$5,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$5,000,000, and shall be authorized by law to perform all the duties imposed upon it by this Indenture.

Subject to the terms of the Remarketing Agreement, the Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least sixty (60) days' written notice to the Issuer, the Trustee, the Borrower and the Investor Member. The Remarketing Agent may be removed by the Issuer without cause upon at least sixty (60) days' written notice and for cause at any time at the written direction or with the consent (which consent shall not be unreasonably withheld) of the Borrower by an instrument, signed by an Authorized Representative and filed with the Remarketing Agent, the Trustee, the Borrower and the Investor Member. The Issuer shall appoint a successor Remarketing Agent, with the written consent (which consent shall not be unreasonably withheld) of the Borrower. Notwithstanding the foregoing, the Remarketing Agent shall not resign or be removed during the sixty-day period preceding any Purchase Date; excepting only at the written direction of the Borrower for cause.

Upon any resignation or removal of the Remarketing Agent, the departing Remarketing Agent shall pay over, assign and deliver any money and Bonds held by it in such capacity to its successor or, if there be no successor, to the Trustee to be held in a separate account to be established for such purpose hereunder.

In the event that the Remarketing Agent shall resign or be removed, or be dissolved, or if the property or affairs of the Remarketing Agent shall be taken under the control of any state or federal court or administrative body because of a bankruptcy or insolvency, or for any other reason, the Issuer shall appoint a successor Remarketing Agent, with the written consent (which consent shall not be unreasonably withheld) of the Borrower.

The Trustee, within thirty (30) days of the resignation or removal of the Remarketing Agent or the appointment of a successor Remarketing Agent, shall give notice thereof by registered or certified mail to the Rating Agency (if the Bonds are then rated) and to the Holders of the Bonds.

#### Section 5.18 Additional Duties.

Notwithstanding any provisions hereof to the contrary, the Trustee shall have the following additional duties:

(a) The Trustee shall provide the Rating Agency such information within its possession as the Rating Agency shall reasonably require from time to time in order to maintain the rating on the Bonds;

(b) Subject to Section 5.02(j) hereof, the Trustee shall continue to perform its function hereunder without regard to the insufficiency of payment of its fees, provided that nothing herein shall negate the Trustee's right to compensation and indemnification hereunder and as provided in the Loan Agreement; and

(c) The Trustee shall provide to the Underwriter upon its written request a list of the names and addresses of the registered Holders of all Bonds then Outstanding at the sole cost and expense of the Underwriter or, if the Bonds are held in Book Entry Form, the special position report (or similar list of Beneficial Owners) from the Depository.

#### Section 5.19 Notices to Rating Agency and Remarketing Notice Parties.

The Trustee shall notify in writing the Rating Agency and the Remarketing Notice Parties of (a) the occurrence of an Event of Default of which the Trustee has actual notice, (b) the occurrence of any monetary or other material default under the Loan of which the Trustee has actual notice, (c) any change in the identity of the Trustee, (d) any amendments, modifications, supplements or changes to this Indenture, the Loan Agreement, the Note or the Bonds, including any extension of principal or modification of interest or redemption premium due on any of the Bonds, in each case only in the event the Trustee has actual notice, (e) any change or proposed change in the structure or identity of the Borrower of which the Trustee has actual knowledge, (f) any change or notification of proposed change of the Mandatory Tender Date or Remarketing Date, (g) any partial prepayment of the Loan or the giving of notice of the call for redemption of any Bonds, (h) any change in the investment of funds subject to the lien of this Indenture, (i) any

defeasance or acceleration of the Bonds hereunder, (j) any change in the Remarketing Agent of which its Trustee has actual knowledge, or (k) any sale of Eligible Investments below par, as shown in a Cash Flow Projection delivered to the Rating Agency prior to the sale date.

## **ARTICLE VI**

### **DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND HOLDERS**

#### **Section 6.01 Defaults; Events of Default.**

The occurrence of any of the following events is defined as and declared to be and to constitute an Event of Default hereunder:

(a) Payment of any interest on any Bond shall not be made when and as that interest shall become due and payable;

(b) Payment of the principal of any Bond shall not be made when and as that principal shall become due and payable, whether at stated maturity, upon acceleration or otherwise;

(c) Failure by the Issuer to observe or perform any other covenant, agreement or obligation on its part to be observed or performed contained in this Indenture or in the Bonds, which failure shall have continued for a period of 30 days after written notice, by registered or certified mail, to the Issuer, the Borrower and the Investor Member specifying the failure and requiring that it be remedied, which notice may be given by the Trustee in its discretion and shall be given by the Trustee at the written request of the Holders of not less than 25% in aggregate principal amount of Bonds then Outstanding; and

(d) The occurrence and continuance of an Event of Default as defined in Section 7.1 of the Loan Agreement.

The term “default” or “failure” as used in this Article means (i) a default or failure by the Issuer in the observance or performance of any of the covenants, agreements or obligations on its part to be observed or performed contained in this Indenture or in the Bonds, or (ii) a default or failure by the Borrower under the Loan Agreement, exclusive of any period of grace or notice required to constitute a default or failure an Event of Default, as provided above or in the Loan Agreement.

#### **Section 6.02 Notice of Default.**

If an Event of Default shall occur, the Trustee shall give written notice of the Event of Default, by registered or certified mail, to the Issuer, the Borrower, the Investor Member, the Special Limited Partner, the Subordinate Lender, the Rating Agency and the Remarketing Agent, within five (5) days after the Trustee has notice of the Event of Default pursuant to Section 5.02(f) of this Indenture. If an Event of Default occurs of which the Trustee has notice pursuant to this Indenture, the Trustee shall give written notice thereof, within thirty (30) days after the Trustee’s receipt of notice of its occurrence, to the Holders of all Bonds then

Outstanding as shown by the Register at the close of business fifteen (15) days prior to the mailing of that notice; provided, that except in the case of a default in the payment of the principal of or interest on any Bond, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors or responsible officers of the Trustee in good faith determine that the withholding of notice to the Holders is in the interests of the Holders.

#### Section 6.03 Acceleration.

Upon the occurrence of an Event of Default described in Section 6.01(a) and (b), the Trustee may declare, and upon the written request of the Holders of not less than a majority in aggregate principal amount of Bonds then Outstanding the Trustee shall declare, by a notice in writing delivered to the Borrower and the Investor Member, the principal of all Bonds then Outstanding (if not then due and payable), and the interest accrued thereon, to be due and payable immediately. Upon the occurrence of any Event of Default other than those described in Section 6.01(a) and (b), the Trustee shall, with the written consent of all Holders of Bonds then Outstanding, declare by a notice in writing delivered to the Borrower and the Investor Member, the principal of all Bonds then Outstanding (if not then due and payable), and the interest thereon, to be due and payable immediately. Following such declaration, interest on any unpaid principal of Bonds Outstanding shall continue to accrue from such date through but not including the tender of payment to the Holders of those Bonds.

The provisions of the preceding paragraph are subject, however, to the condition that if, at any time after declaration of acceleration and prior to the entry of a judgment in a court for enforcement hereunder (after an opportunity for hearing by the Issuer and the Borrower),

(a) all sums payable hereunder (except the principal of and interest on Bonds which have not reached their stated maturity dates but which are due and payable solely by reason of that declaration of acceleration), plus interest to the extent permitted by law on any overdue installments of interest at the rate borne by the Bonds in respect of which the default shall have occurred, shall have been duly paid or provision shall have been duly made therefor by deposit with the Trustee, and

(b) all existing Events of Default shall have been cured, then and in every case, the Trustee shall waive the Event of Default and its consequences and shall rescind and annul that declaration. No waiver or rescission and annulment shall extend to or affect any subsequent Event of Default or shall impair any rights consequent thereon.

The Investor Member and/or the Subordinate Lender shall be entitled to cure any Event of Default hereunder within the timeframe provided to the Borrower hereunder. The Issuer and the Trustee agree that cure of any default or Event of Default made or tendered by the Investor Member and/or the Subordinate Lender shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

#### Section 6.04 Other Remedies; Rights of Holders.

(a) With or without taking action under Section 6.03 hereof, upon the occurrence and continuance of an Event of Default, the Trustee may pursue any available remedy, including

without limitation actions at law or equity to enforce the payment of Bond Service Charges or the observance and performance of any other covenant, agreement or obligation under this Indenture, the Loan Agreement, the Bond Regulatory Agreement or the Note or any other instrument providing security, directly or indirectly, for the Bonds;

(b) If, upon the occurrence and continuance of an Event of Default, the Trustee is requested so to do by the Holders of at least 25% in aggregate principal amount of Bonds Outstanding, the Trustee (subject to the provisions of Sections 5.01 and 5.02 and particularly subparagraph 5.01(c)(iv) and Subsection 5.02(j) of those Sections), shall exercise any rights and powers conferred by this Section and by Section 6.03 hereof.

(c) No remedy conferred upon or reserved to the Trustee (or to the Holders) by this Indenture is intended to be exclusive of any other remedy. Subject to the provisions of Section 6.04(a) hereof, each remedy shall be cumulative and shall be in addition to every other remedy given hereunder or otherwise to the Trustee or to the Holders now or hereafter existing.

(d) No delay in exercising or omission to exercise any remedy, right or power accruing upon any default or Event of Default shall impair that remedy, right or power or shall be construed to be a waiver of any default or Event of Default or acquiescence therein. Every remedy, right and power may be exercised from time to time and as often as may be deemed to be expedient.

(e) No waiver of any default or Event of Default hereunder, whether by the Trustee or by the Holders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any remedy, right or power consequent thereon.

(f) As the assignee of all right, title and interest of the Issuer in and to the Loan Agreement (except for the Reserved Rights), the Trustee is empowered to enforce each remedy, right and power granted to the Issuer under the Loan Agreement. In exercising any remedy, right or power thereunder or hereunder, the Trustee shall take any action which would best serve the interests of the Holders in the judgment of the Trustee, applying the standards described in Sections 5.01 and 5.02 hereof, subject to the provisions of Section 6.04(a) hereof.

#### Section 6.05 Right of Holders to Direct Proceedings.

Anything to the contrary in this Indenture notwithstanding, the Holders of a majority in aggregate principal amount of Bonds then Outstanding shall have the right at any time to direct, by an instrument or document in writing executed and delivered to the Trustee, the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture or any other proceedings hereunder; provided, that (a) any direction shall not be other than in accordance with the provisions of law and of this Indenture, (b) the Trustee shall be indemnified as provided in Sections 5.01 and 5.02, and (c) the Trustee may take any other action which it deems to be proper and which is not inconsistent with the direction.

Section 6.06 Application of Money.

After payment of any costs, expenses, liabilities and advances paid, incurred or made by the Trustee in the collection of money and to all Ordinary Trustee Fees and Expenses and fees of the Trustee for Extraordinary Services and Extraordinary Expenses (including without limitation, reasonable attorneys' fees and expenses, except as limited by law or judicial order or decision entered in any action taken under this Article VI), all money received by the Trustee (except for such moneys then on deposit in the Permanent Loan Fund, which are not part of the Trust Estate and which are free and clear of any lien hereunder), shall be applied as follows, subject to Section 2.05 hereof and any provision made pursuant to Section 4.10 or 4.11 hereof:

(a) Unless the principal of all of the Bonds shall have become, or shall have been declared to be, due and payable, all of such money shall be deposited in the Bond Fund and shall be applied:

First – To the payment to the Holders entitled thereto of all installments of interest then due on the Bonds, in the order of the dates of maturity of the installments of that interest, beginning with the earliest date of maturity and, if the amount available is not sufficient to pay in full any particular installment, then to the payment thereof ratably, according to the amounts due on that installment, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds; and

Second – To the payment to the Holders entitled thereto of the unpaid principal of any of the Bonds which shall have become due, in the order of their due dates, beginning with the earliest due date, with interest on those Bonds from the respective dates upon which they became due at the rates specified in those Bonds, and if the amount available is not sufficient to pay in full all Bonds due on any particular date, together with that interest, then to the payment thereof ratably, according to the amounts of principal due on that date, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds.

(b) If the principal of all of the Bonds shall have become due or shall have been declared to be due and payable pursuant to this Article, all of such money shall be deposited into the Bond Fund and shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest, of interest over principal, of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds.

(c) If the principal of all of the Bonds shall have been declared to be due and payable pursuant to this Article, and if that declaration thereafter shall have been rescinded and annulled under the provisions of Section 6.03 or 6.10 hereof, subject to the provisions of paragraph (b) of this Section in the event that the principal of all of the Bonds shall become due and payable later, the money shall be deposited in the Bond Fund and shall be applied in accordance with the provisions of Article II.

(d) Whenever money is to be applied pursuant to the provisions of this Section, such money shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of money available for application and the likelihood of additional money becoming available for application in the future. Whenever the Trustee shall direct the application of such money, it shall fix the date upon which the application is to be made, and upon that date, interest shall cease to accrue on the amounts of principal, if any, to be paid on that date, provided the money is available therefor. The Trustee shall give notice of the deposit with it of any money and of the fixing of that date, all consistent with the requirements of Section 2.05 hereof for the establishment of, and for giving notice with respect to, a Special Record Date for the payment of overdue interest. The Trustee shall not be required to make payment of principal of a Bond to the Holder thereof, until the Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if it is paid fully.

#### Section 6.07 Remedies Vested in Trustee.

All rights of action (including without limitation, the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto. Any suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining any Holders as plaintiffs or defendants. Any recovery of judgment shall be for the benefit of the Holders of the Outstanding Bonds, subject to the provisions of this Indenture.

#### Section 6.08 Rights and Remedies of Holders.

A Holder shall not have any right to institute any suit, action or proceeding for the enforcement of this Indenture, for the execution of any trust hereof, or for the exercise of any other remedy hereunder, unless:

(a) there has occurred and is continuing an Event of Default of which the Trustee has been notified, as provided in paragraph (f) of Section 5.02 hereof, or of which it is deemed to have notice under that paragraph,

(b) the Holders of at least 25% in aggregate principal amount of Bonds then Outstanding shall have made written request to the Trustee and shall have afforded the Trustee reasonable opportunity to proceed to exercise the remedies, rights and powers granted herein or to institute the suit, action or proceeding in its own name, and shall have offered indemnity to the Trustee as provided in Sections 5.01 and 5.02 hereof, and

(c) the Trustee thereafter shall have failed or refused to exercise the remedies, rights and powers granted herein or to institute the suit, action or proceeding in its own name.

At the option of the Trustee, that notification (or notice), request, opportunity and offer of indemnity are conditions precedent in every case, to the institution of any suit, action or proceeding described above.

No one or more Holders of the Bonds shall have any right to affect, disturb or prejudice in any manner whatsoever the security or benefit of this Indenture by its or their action, or to

enforce, except in the manner provided herein, any remedy, right or power hereunder. Any suit, action or proceedings shall be instituted, had and maintained in the manner provided herein for the benefit of the Holders of all Bonds then Outstanding. Nothing in this Indenture shall affect or impair, however, the right of any Holder to enforce the payment of the Bond Service Charges on any Bond owned by that Holder at and after the maturity thereof, at the place, from the sources and in the manner expressed in that Bond.

#### Section 6.09 Termination of Proceedings.

In case the Trustee shall have proceeded to enforce any remedy, right or power under this Indenture in any suit, action or proceedings, and the suit, action or proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, the Issuer, the Trustee and the Holders shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as if no suit, action or proceedings had been taken.

#### Section 6.10 Waivers of Events of Default.

Except as hereinafter provided, at any time, in its discretion, the Trustee may waive any Event of Default hereunder and its consequences and may rescind and annul any declaration of maturity of principal of or interest on, the Bonds. The Trustee shall do so upon the written request of the Holders of:

- (a) at least a majority in aggregate principal amount of all Bonds then Outstanding in respect of which an Event of Default in the payment of Bond Service Charges exists, or
- (b) at least 25% in aggregate principal amount of all Bonds then Outstanding, in the case of any other Event of Default.

There shall not be so waived, however, any Event of Default described in paragraph (a) or (b) of Section 6.01 hereof or any declaration of acceleration in connection therewith rescinded or annulled, unless at the time of that waiver or rescission and annulment payments of the amounts provided in Section 6.03 hereof for waiver and rescission and annulment in connection with acceleration of maturity have been made or provision has been made therefor. In the case of the waiver or rescission and annulment, or in case any suit, action or proceedings taken by the Trustee on account of any Event of Default shall have been discontinued, abandoned or determined adversely to it, the Issuer, the Trustee and the Holders shall be restored to their former positions and rights hereunder, respectively. No waiver or rescission shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

## **ARTICLE VII**

### **SUPPLEMENTAL INDENTURES**

#### Section 7.01 Supplemental Indentures Generally.

The Issuer and the Trustee may enter into indentures supplemental to this Indenture, as provided in this Article and pursuant to the other provisions therefor in this Indenture.

## Section 7.02 Supplemental Indentures Not Requiring Consent of Holders.

Without the consent of, or notice to, any of the Holders, the Issuer and the Trustee may enter into indentures supplemental to this Indenture which shall not, in the opinion of the Issuer and the Trustee, be inconsistent with the terms and provisions hereof for any one or more of the following purposes:

(a) To cure any ambiguity, inconsistency or formal defect or omission in this Indenture;

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

(c) To assign additional revenues under this Indenture;

(d) To accept additional security and instruments and documents of further assurance with respect to the Project;

(e) To add to the covenants, agreements and obligations of the Issuer under this Indenture, other covenants, agreements and obligations to be observed for the protection of the Holders, or to surrender or limit any right, power or authority reserved to or conferred upon the Issuer in this Indenture;

(f) To evidence any succession to the Issuer and the assumption by its successor of the covenants, agreements and obligations of the Issuer under this Indenture, the Loan Agreement and the Bonds;

(g) To facilitate (i) the transfer of Bonds issued by the Issuer under this Indenture and held in Book Entry Form from one Depository to another and the succession of Depositories, or (ii) the withdrawal of Bonds issued by the Issuer under this Indenture and delivered to a Depository for use in a Book Entry System and the issuance of replacement Bonds in fully registered form and in the form of physical certificates to others than a Depository;

(h) To permit the Trustee to comply with any obligations imposed upon it by law;

(i) To specify further the duties and responsibilities of the Trustee;

(j) To achieve compliance of this Indenture with any applicable federal securities or tax law;

(k) To make amendments to the provisions hereof relating to arbitrage matters under Section 148 of the Code, if, in the Opinion of Bond Counsel, those amendments would not adversely affect the Federal Tax Status of the Bonds which amendments may, among other things, change the responsibility for making the relevant calculations, provided that in no event shall such amendment delegate to the Trustee, without its consent, in its sole discretion the obligation to make or perform the calculations required under Section 148 of the Code; and

(l) To permit any other amendment that, in the judgment of the Trustee, is not to the prejudice of the Issuer, the Trustee or the Holders.

The provisions of Subsections 7.02(h) and (j) shall not be deemed to constitute a waiver by the Trustee, the Issuer or any Holder of any right which it may have in the absence of those provisions to contest the application of any change in law to this Indenture or the Bonds.

#### Section 7.03 Supplemental Indentures Requiring Consent of Holders.

Exclusive of Supplemental Indentures to which reference is made in Section 7.02 hereof and subject to the terms, provisions and limitations contained in this Section, and not otherwise, with the consent of the Holders of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding, evidenced as provided in this Indenture, and with the consent of the Borrower if required by Section 7.04 hereof, the Issuer and the Trustee may execute and deliver Supplemental Indentures adding any provisions to, changing in any manner or eliminating any of the provisions of this Indenture or any Supplemental Indenture or restricting in any manner the rights of the Holders. Nothing in this Section or Section 7.02 hereof shall permit, however, or be construed as permitting:

(a) without the consent of the Holder of each Bond so affected, (i) an extension of the maturity of the principal of or the interest on any Bond or (ii) a reduction in the principal amount of any Bond or the rate of interest thereon, or

(b) without the consent of the Holders of all Bonds then Outstanding, (i) the creation of a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (ii) a reduction in the aggregate principal amount of the Bonds required for consent to a Supplemental Indenture.

If the Issuer shall request that the Trustee execute and deliver any Supplemental Indenture for any of the purposes of this Section, upon (i) being satisfactorily indemnified with respect to its expenses in connection therewith, and (ii) if required by Section 7.04 hereof, receipt of the Borrower's consent to the proposed execution and delivery of the Supplemental Indenture, the Trustee shall cause notice of the proposed execution and delivery of the Supplemental Indenture to be mailed by first-class mail, postage prepaid, to all Holders of Bonds then Outstanding at their addresses as they appear on the Register at the close of business on the fifteenth day preceding that mailing.

The Trustee shall not be subject to any liability to any Holder by reason of the Trustee's failure to mail, or the failure of any Holder to receive, the notice required by this Section. Any failure of that nature shall not affect the validity of the Supplemental Indenture when there has been consent thereto as provided in this Section. The notice shall set forth briefly the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the Designated Office of the Trustee for inspection by all Holders.

If the Trustee shall receive, within a period prescribed by the Borrower, of not less than 60 days, but not exceeding one year, following the mailing of the notice, an instrument or document or instruments or documents, in form to which the Trustee does not reasonably object, purporting to be executed by the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding (which instrument or document or instruments or

documents shall refer to the proposed Supplemental Indenture in the form described in the notice and specifically shall consent to the Supplemental Indenture in substantially that form), the Trustee shall, but shall not otherwise, execute and deliver the Supplemental Indenture in substantially the form to which reference is made in the notice as being on file with the Trustee, without liability or responsibility to any Holder, regardless of whether that Holder shall have consented thereto.

Any consent shall be binding upon the Holder of the Bond giving the consent and, anything herein to the contrary notwithstanding, upon any subsequent Holder of that Bond and of any Bond issued in exchange therefor (regardless of whether the subsequent Holder has notice of the consent to the Supplemental Indenture). A consent may be revoked in writing, however, by the Holder who gave the consent or by a subsequent Holder of the Bond by a revocation of such consent received by the Trustee prior to the execution and delivery by the Trustee of the Supplemental Indenture. At any time after the Holders of the required percentage of Bonds shall have filed their consents to the Supplemental Indenture, the Trustee shall make and file with the Issuer a written statement that the Holders of the required percentage of Bonds have filed those consents. That written statement shall be conclusive evidence that the consents have been so filed.

If the Holders of the required percentage in aggregate principal amount of Bonds Outstanding shall have consented to the Supplemental Indenture, as provided in this Section, no Holder shall have any right (a) to object to (i) the execution or delivery of the Supplemental Indenture, (ii) any of the terms and provisions contained therein, or (iii) the operation thereof, (b) to question the propriety of the execution and delivery thereof, or (c) to enjoin or restrain the Trustee or the Issuer from that execution or delivery or from taking any action pursuant to the provisions thereof.

#### Section 7.04 Consent of Borrower.

Anything contained herein to the contrary notwithstanding, a Supplemental Indenture executed and delivered in accordance with this Article VII which affects in any material respect any rights or obligations of the Borrower shall not become effective unless and until the Borrower and the Investor Member shall have consented in writing to the execution and delivery of that Supplemental Indenture. The Trustee shall cause notice of the proposed execution and delivery of any Supplemental Indenture and a copy of the proposed Supplemental Indenture to be mailed to the Borrower and the Investor Member, as provided in Section 12.03 hereof, (a) at least 30 days (unless waived by the Borrower and the Investor Member) before the date of the proposed execution and delivery in the case of a Supplemental Indenture to which reference is made in Section 7.02 hereof, and (b) at least 30 days (unless waived by the Borrower and the Investor Member) before the giving of the notice of the proposed execution and delivery in the case of a Supplemental Indenture for which provision is made in Section 7.03 hereof.

#### Section 7.05 Responsibilities of Trustee.

Notwithstanding anything else contained herein, the Trustee shall not be required to enter into any Supplemental Indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 7.06 Authorization to Trustee; Effect of Supplement.

The Trustee is authorized to join with the Issuer in the execution and delivery of any Supplemental Indenture in accordance with this Article and to make the further agreements and stipulations which may be contained therein. Thereafter,

- (a) That Supplemental Indenture shall form a part of this Indenture;
- (b) All terms and conditions contained in that Supplemental Indenture as to any provision authorized to be contained therein shall be deemed to be a part of the terms and conditions of this Indenture for any and all purposes;
- (c) This Indenture shall be deemed to be modified and amended in accordance with the Supplemental Indenture; and
- (d) The respective rights, duties and obligations under this Indenture of the Issuer, the Borrower, the Trustee, the Remarketing Agent and all Holders of Bonds then Outstanding shall be determined, exercised and enforced hereunder in a manner which is subject in all respects to those modifications and amendments made by the Supplemental Indenture.

Express reference to any executed and delivered Supplemental Indenture may be made in the text of any Bonds issued thereafter, if that reference is deemed necessary or desirable by the Trustee or the Issuer. A copy of any Supplemental Indenture for which provision is made in this Article, except a Supplemental Indenture described in clause (g) of Section 7.02 hereof, shall be mailed to the Trustee. The Trustee shall not be required to execute any supplemental indenture containing provisions adverse to the Trustee.

Section 7.07 Opinion of Counsel.

Before the Trustee shall enter into any Supplemental Indenture, there shall have been delivered to the Trustee and the Issuer an Opinion of Counsel to the effect that (a) any proposed Supplemental Indenture is authorized or permitted by the provisions of this Indenture and is not inconsistent herewith, and (b) it is proper for the Trustee to join in the execution of that Supplemental Indenture under the provisions of this Article.

Before the Issuer and the Trustee shall enter into any Supplemental Indenture, there shall have been delivered to the Trustee and the Issuer an Opinion of Bond Counsel to the effect that such Supplemental Indenture will not, in and of itself, adversely affect the Federal Tax Status of the Bonds.

The Trustee may conclusively rely upon an Opinion of Counsel that an amendment to this Indenture effected pursuant to Section 7.02(1) of the Indenture is not to the prejudice of the Trustee or the Holders.

Section 7.08 Modification by Unanimous Consent.

Notwithstanding anything contained elsewhere in this Indenture, the rights and obligations of the Issuer and of the Holders, and the terms and provisions of the Bonds and this

Indenture or any Supplemental Indenture, may be modified or altered in any respect with the consent of (a) the Issuer, (b) the Holders of all of the Bonds then Outstanding, (c) the Borrower and the Investor Member and (d) if such modification or alteration contains provisions adverse to the Trustee, the Trustee.

## **ARTICLE VIII**

### **DEFEASANCE**

#### **Section 8.01 Release of Indenture.**

If (a) the Issuer shall pay all of the Outstanding Bonds, or shall cause them to be paid and discharged, or if there otherwise shall be paid to the Holders of the Outstanding Bonds, all Bond Service Charges due or to become due thereon, and (b) provision also shall be made for the payment of all other sums payable hereunder or under the Loan Agreement, the Bond Regulatory Agreement and the Note, then this Indenture shall cease, terminate and become null and void (except for those provisions surviving by reason of Section 8.03 hereof in the event the Bonds are deemed paid and discharged pursuant to Section 8.02 hereof), and the covenants, agreements and obligations of the Issuer hereunder shall be released, discharged and satisfied.

Thereupon, and subject to the provisions of Section 8.03 hereof if applicable,

(a) the Trustee shall release this Indenture (except for those provisions surviving by reason of Section 8.03 hereof in the event the Bonds are deemed paid and discharged pursuant to Section 8.02 hereof), and shall execute and deliver to the Issuer any instruments or documents in writing as shall be requisite to evidence that release and discharge or as reasonably may be requested by the Issuer;

(b) the Trustee shall release and satisfy the Note and deliver such release and satisfaction to the Borrower; and

(c) the Trustee shall assign and deliver to the Issuer any property subject at the time to the lien of this Indenture which then may be in its possession, except amounts in the Bond Fund required (i) to be paid to the Borrower under Section 4.15 hereof, or (ii) to be held by the Trustee under Section 4.14 hereof or otherwise for the payment of Bond Service Charges.

#### **Section 8.02 Payment and Discharge of Bonds.**

All or any part of the Bonds shall be deemed to have been paid and discharged within the meaning of this Indenture, including without limitation, Section 8.01 hereof, if:

(a) the Trustee as paying agent shall have received, in trust for and irrevocably committed thereto, sufficient money, or

(b) the Trustee shall have received in trust for and irrevocably committed thereto, noncallable Government Obligations; and the Trustee and the Issuer shall have received (i) certification by an Independent public accounting firm of national reputation to the effect that the Government Obligations have such maturities or redemption dates and interest payment

dates, and bear such interest, as will be sufficient together with any money to which reference is made in subparagraph (a) above, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom (which earnings are to be held likewise in trust and so committed, except as provided herein), for the payment of all Bond Service Charges on those Bonds at their maturity; and (ii) an Opinion of Bond Counsel to the effect that the conditions of this Section 8.02 have been satisfied.

Any money held by the Trustee in accordance with the provisions of this Section may be invested by the Trustee only in noncallable Government Obligations having maturity dates, or having redemption dates which, at the option of the Holder of those obligations, shall be not later than the date or dates at which money will be required for the purposes described above. To the extent that any income or interest earned by, or increment to, the investments held under this Section is determined from time to time by the Trustee to be in excess of the amount required to be held by the Trustee for the purposes of this Section, that income, interest or increment shall be transferred at the time of that determination in the manner provided in Section 4.15 hereof for transfers of amounts remaining in the Bond Fund.

If any Bonds shall be deemed paid and discharged pursuant to this Section 8.02, then within fifteen (15) days after such Bonds are so deemed paid and discharged the Trustee shall cause a written notice to be given to each Holder as shown on the Register on the date on which such Bonds are deemed paid and discharged. Such notice shall state the numbers of the Bonds deemed paid and discharged or state that all Bonds are deemed paid and discharged, set forth a description of the obligations held pursuant to subparagraph (b) of the first paragraph of this Section 8.02.

#### Section 8.03 Survival of Certain Provisions.

Notwithstanding the foregoing, any provisions of the Bond Resolution and this Indenture which relate to the maturity of Bonds, interest payments and dates thereof, exchange, transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, nonpresentment of Bonds, the holding of money in trust, and repayments to the Borrower from the Bond Fund, the rebate of money to the United States in accordance with Section 4.09 hereof, and the rights and duties of the Trustee in connection with all of the foregoing, shall remain in effect and be binding upon the Trustee and the Holders notwithstanding the release and discharge of this Indenture. The provisions of this Article shall survive the release, discharge and satisfaction of this Indenture. The obligations of the Borrower to pay the Trustee its fees and expenses hereunder shall survive the release, discharge and satisfaction of this Indenture.

**ARTICLE IX**  
**COVENANTS AND AGREEMENTS**  
**OF THE ISSUER**

Section 9.01 Covenants and Agreements of the Issuer.

In addition to any other covenants and agreements of the Issuer contained in this Indenture or the Bond Resolution, the Issuer further covenants and agrees with the Holders and the Trustee as follows:

(a) Payment of Bond Service Charges. The Issuer will cause all Bond Service Charges to be paid solely from the sources provided herein, on the dates, at the places and in the manner provided in this Indenture.

(b) Revenues and Assignment of Revenues. The Issuer will not assign the Revenues or create or authorize to be created any debt, lien or charge thereon, other than the assignment thereof under this Indenture.

(c) Recordings and Filings. To the extent possible under applicable law, as in effect in the jurisdiction in which the Trust Estate is located, the Issuer shall cooperate with the Trustee to maintain the priority of the security interest herein created in the Trust Estate as a first lien thereon, and warrant, protect, preserve and defend its interest in the Trust Estate and the security interest of the Trustee therein and all rights of the Trustee under this Indenture against all actions, proceedings, claims and demands of all Persons, all paid for solely from the Trust Estate.

(d) Inspection of Project Books. All books, instruments and documents in the Issuer's possession relating to the Project and the Revenues shall be open to inspection and copying at all times during the Issuer's regular business hours by any accountants or other agents of the Trustee which the Trustee may designate from time to time.

(e) Register. At reasonable times and under reasonable regulations established by the Trustee, the Register may be inspected and copied (at the expense of the person making such copies) by the Borrower, the Trustee, by Holders of 25% or more in principal amount of the Bonds then Outstanding, or a designated representative thereof.

(f) Rights and Enforcement of the Loan Agreement. The Trustee may enforce, in its name or in the name of the Issuer, all rights of the Issuer for and on behalf of the Holders, except for Reserved Rights, and may enforce all covenants, agreements and obligations of the Borrower under and pursuant to the Loan Agreement, regardless of whether the Issuer is in default in the pursuit or enforcement of those rights, covenants, agreements or obligations. The Issuer, however, will do all things and take all actions on its part necessary to comply with covenants, agreements, obligations, duties and responsibilities on its part to be observed or performed under the Loan Agreement, and will take all actions within its authority to keep the Loan Agreement in effect in accordance with the terms thereof.

(g) Issuer Not to Adversely Affect Federal Tax Status of Bonds. The Issuer covenants that it (i) will take, or require to be taken, all actions that may be reasonably required

of the Issuer to maintain the Federal Tax Status of the Bonds, and (ii) will not take or authorize to be taken any actions that would adversely affect the Federal Tax Status of the Bonds under the provisions of the Code.

**Section 9.02 Observance and Performance of Covenants, Agreements, Authority and Actions.**

The Issuer will observe and perform faithfully at all times all covenants, agreements, authority, actions, undertakings, stipulations and provisions to be observed or performed on its part under the Bond Resolution, the Issuer Documents and the Bonds which are executed, authenticated and delivered under this Indenture.

The Issuer represents:

(a) It is duly authorized by the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Bonds, to execute and deliver the Issuer Documents and to provide the security for payment of the Bond Service Charges in the manner and to the extent set forth in this Indenture.

(b) All actions required on its part to be performed for the issuance, sale and delivery of the Bonds and for the execution and delivery of the Issuer Documents have been taken duly and effectively.

(c) The Bonds will be valid and enforceable limited obligations of the Issuer according to their terms.

**Section 9.03 Enforcement of Issuer's Obligations.**

Each obligation of the Issuer required to be undertaken pursuant to the Bond Resolution, the Issuer Documents and the Bonds is binding upon the Issuer, subject to Section 2.04 and Section 12.08 hereof.

**ARTICLE X**

**AMENDMENTS TO LOAN AGREEMENT AND NOTE**

**Section 10.01 Amendments Not Requiring Consent of Holders.**

Without the consent of or notice to the Holders, the Issuer, the Borrower, the Investor Member, the Subordinate Lender and the Trustee may consent to any amendment, change or modification of the Loan Agreement or the Note, as may be required (a) by the provisions of the Note or the Loan Agreement, (b) for the purpose of curing any ambiguity, inconsistency or formal defect or omission in the Loan Agreement or the Note, (c) in connection with an amendment or to effect any purpose for which there could be an amendment of this Indenture pursuant to Section 7.02 hereof, or (d) in connection with any other change therein which is not to the prejudice of the Issuer, the Trustee or the Holders of the Bonds, in the judgment of the Trustee.

Section 10.02 Amendments Requiring Consent of Holders.

Except for the amendments, changes or modifications contemplated in Section 10.01 hereof, neither the Issuer nor the Trustee shall consent to:

(a) any amendment, change or modification of the Loan Agreement or the Note which would change the amount or time as of which Loan Payments and Eligible Funds are required to be paid, without the giving of notice as provided in this Section of the proposed amendment, change or modification and receipt of the written consent thereto of the Holders of all of the then Outstanding Bonds affected by such amendment, change or modification, or

(b) any other amendment, change or modification of the Loan Agreement or the Note, without the giving of notice as provided in this Section of the proposed amendment, change or modification and receipt of the written consent thereto of the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding affected by such amendment, change or modification.

The consent of the Holders shall be obtained as provided in Section 7.03 hereof with respect to Supplemental Indentures.

If the Issuer or the Borrower shall request at any time the consent of the Trustee to any proposed amendment, change or modification of the Loan Agreement or the Note contemplated in subparagraphs (a) or (b) of this Section, upon being indemnified satisfactorily with respect to expenses, the Trustee shall cause notice of the proposed amendment, change or modification to be provided in the manner which is required by Section 7.03 hereof with respect to notice of Supplemental Indentures. The notice shall set forth briefly the nature of the proposed amendment, change or modification and shall state that copies of the instrument or document embodying it are on file at the Designated Office of the Trustee for inspection by all Holders.

Section 10.03 Opinion of Bond Counsel.

Before the Issuer and the Trustee shall consent to any amendment, change or modification of any of the documents described in Sections 10.01 and 10.02 there shall be delivered to the Trustee and the Issuer an Opinion of Bond Counsel to the effect that such amendment, change or modification will not, in and of itself, adversely affect the Federal Tax Status of the Bonds.

Section 10.04 Responsibilities of the Trustee.

Notwithstanding anything else contained herein, the Trustee shall not be required to enter into any amendment, change, or modification of any of the documents described in Section 10.01 and 10.02 which affects the Trustee's own rights, duties or immunities under this Indenture or any other Financing Document.

Section 10.05 Opinion of Counsel.

Before the Trustee shall consent to any amendment, change or modification of any of the documents described in Sections 10.01 and 10.02 there shall be delivered to the Trustee and the

Issuer an Opinion of Counsel that (a) any proposed amendment, change, or modification of any of the documents described in Sections 10.01 and 10.02 is authorized or permitted by the provisions of this Indenture and is not inconsistent herewith, and (b) it is proper for the Trustee to join in the execution of that amendment, change, or modification under the provisions of this Article.

## **ARTICLE XI**

### **MEETINGS OF HOLDERS**

#### **Section 11.01 Purposes of Meetings.**

A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this Article XI, to take any action (a) authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Bonds, (b) under any provision of this Indenture or (c) authorized or permitted by law.

#### **Section 11.02 Call of Meetings.**

The Trustee may (but shall not be obligated to) call at any time a meeting of Holders pursuant to Section 11.01 to be held at any reasonable time and place the Trustee shall determine. Notice of such meeting, setting forth the time, place and generally the subject thereof, shall be mailed by first-class mail, postage prepaid, not fewer than 15 nor more than 90 days prior to the date of the meeting to the Holders at their addresses as they appear on the Register on the fifteenth day preceding such mailing, which fifteenth day, preceding the mailing, shall be the record date for the meeting.

At any time, the Issuer or the Borrower, or the Holders of at least 25% in aggregate principal amount of the Bonds then Outstanding, shall have requested the Trustee to call a meeting of Holders, by written request setting forth the purpose of the meeting, and the Trustee shall not have mailed the notice of the meeting within 20 days after receipt of the request, then the Issuer, the Borrower and the Investor Member or the Holders of Bonds in the amount above specified may determine the time and the place of the meeting and may call the meeting to take any action authorized in Section 12.01, by mailing notice thereof as provided above.

Any meetings of Holders shall be valid without notice, if the Holders of all Bonds then Outstanding are present in person or by proxy, or if notice is waived before or after the meeting by the Holders of all Bonds Outstanding who were not so present at the meeting, and if the Issuer, the Borrower and the Trustee are either present by duly authorized representatives or have waived notice, before or after the meeting.

#### **Section 11.03 Voting.**

To be entitled to vote at any meeting of Holders, a Person shall (a) be a Holder of one or more Outstanding Bonds as of the record date for the meeting as determined above, or (b) be a person appointed by an instrument or document in writing as proxy by a Person who is a Holder as of the record date for the meeting, of one or more Outstanding Bonds. Each Holder or proxy

shall be entitled to one vote for each \$100,000 principal amount of Bonds held or represented by it.

The vote upon any resolution submitted to any meeting of Holders shall be by written ballots on which shall be subscribed the signatures of the Holders of Bonds or of their representatives by proxy and the identifying number or numbers of the Bonds held or represented by them.

#### Section 11.04 Meetings.

Notwithstanding any other provisions of this Indenture, the Trustee may make any reasonable regulations which it may deem to be advisable for meetings of Holders, with regard to:

- (a) proof of the holding of Bonds and of the appointment of proxies,
- (b) the appointment and duties of inspectors of votes,
- (c) recordation of the proceedings of those meetings,
- (d) the execution, submission and examination of proxies and other evidence of the right to vote, and
- (e) any other matters concerning the conduct, adjournment or reconvening of meetings which it may think fit.

The Trustee shall appoint a temporary chair of the meeting by an instrument or document in writing, unless the meeting shall have been called by the Issuer, the Borrower or by the Holders, as provided in Section 11.02, in which case the Issuer, the Borrower or the Holders calling the meeting, as the case may be, shall appoint a temporary chair in like manner. A permanent chair and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority in principal amount of the Bonds represented at the meeting and entitled to vote.

The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at the meeting and their counsel, any representatives of the Trustee and its counsel, any representatives of the Issuer and its counsel and any representatives of the Borrower and its counsel.

#### Section 11.05 Miscellaneous.

Nothing contained in this Article XI shall be deemed or construed to authorize or permit any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Bonds by reason of any call of a meeting of Holders or any rights conferred expressly or impliedly hereunder to make a call.

## ARTICLE XII

### MISCELLANEOUS

#### Section 12.01 Limitation of Rights.

With the exception of rights conferred expressly in this Indenture, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the parties hereto, the Remarketing Agent, the Borrower, the Investor Member and the Holders of the Bonds any legal or equitable right, remedy, power or claim under or with respect to this Indenture or any covenants, agreements, conditions and provisions contained herein. This Indenture and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the parties hereto, the Remarketing Agent, the Borrower, the Investor Member and the Holders of the Bonds, as provided herein.

#### Section 12.02 Severability.

In case any section or provision of this Indenture, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Indenture, or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Indenture or any other covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Indenture, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein.

Any illegality, invalidity or inoperability shall not affect any legal, valid and operable section, provision, covenant, agreement, stipulation, obligation, act, action, part or application, all of which shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law from time to time.

#### Section 12.03 Notices.

Except as provided in Section 6.02 hereof, it shall be sufficient service or giving of any notice, request, complaint, demand or other instrument or document, if it is duly mailed by first-class mail, postage pre-paid, or is forwarded by overnight courier service, delivery charges pre-paid. Notices to the Issuer, the Borrower, the Investor Member, the Special Limited Partner, the Trustee and the Remarketing Agent shall be delivered to their respective Notice Address.

Duplicate copies of each notice, request, complaint, demand or other instrument or document given hereunder by the Issuer, the Trustee or the Borrower or the Investor Member to one or both of the others also shall be given to the others.

The Issuer, the Trustee, the Borrower, the Investor Member, the Special Limited Partner, the Permanent Lender, the Remarketing Agent and the Rating Agency may, by notice given hereunder, designate any further or different addresses to which subsequent demands, notices,

approvals, consents, requests, opinions or other communications shall be sent or Persons to whose attention the same shall be directed.

In connection with any notice mailed pursuant to the provisions of this Indenture, a certificate of the Trustee, the Issuer, the Borrower, the Investor Member or the Holders of the Bonds, whichever or whoever mailed that notice, that the notice was so mailed shall be conclusive evidence of the proper mailing of the notice.

#### Section 12.04 Suspension of Mail and Courier Service.

If because of the suspension of delivery of first-class mail or of delivery by overnight courier services, or for any other reason, the Trustee shall be unable to mail by the required class of mail or forward by overnight courier service any notice required to be given by the provisions of this Indenture, the Trustee shall give such notice in such other manner as in the judgment of the Trustee shall most effectively approximate the required mailing or forwarding thereof, and the giving of that notice in that manner for all purposes of this Indenture shall be deemed to be in compliance with the requirement of this Section. Except as otherwise provided herein, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

#### Section 12.05 Payments Due on Saturdays, Sundays and Holidays.

If any Interest Payment Date or a date of maturity of the principal of any Bonds is a Saturday, Sunday or a day on which the Trustee is required, or authorized or not prohibited, by law (including without limitation, executive orders) to close and is closed, then payment of interest and principal need not be made by the Trustee on that date, but that payment may be made on the next succeeding Business Day on which the Trustee is open for business with the same force and effect as if that payment were made on the Interest Payment Date or date of maturity, and no interest shall accrue for the period after that date.

#### Section 12.06 Instruments of Holders.

Any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, required under this Indenture to be executed by any Holder may be in any number of concurrent writings of similar tenor and may be executed by that Holder in person or by an agent or attorney appointed in writing. Proof of (a) the execution of any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, (b) the execution of any writing appointing any agent or attorney, and (c) the ownership of Bonds, shall be sufficient for any of the purposes of this Indenture, if made in the following manner, and if so made, shall be conclusive in favor of the Trustee with regard to any action taken thereunder, namely:

(i) The fact and date of the execution by any person of any writing may be proved by the certificate of any officer in any jurisdiction, who has power by law to take acknowledgments within that jurisdiction, that the person signing the writing acknowledged that execution before that officer, or by affidavit of any witness to that execution; and

(ii) The fact of ownership of Bonds shall be proved by the Register maintained by the Trustee.

Nothing contained herein shall be construed to limit the Trustee to the foregoing proof, and the Trustee may accept any other evidence of the matters stated therein which it deems to be sufficient. Any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, of the Holder of any Bond shall bind every future Holder of the same Bond, with respect to anything done or suffered to be done by the Issuer, the Borrower or the Trustee pursuant to that writing.

Section 12.07 Priority of this Indenture.

This Indenture shall be superior to any liens which may be placed upon the Revenues or any other funds or accounts created pursuant to this Indenture.

Section 12.08 No Recourse.

No recourse shall be had for the payment of the principal of (or premium, if any) or the interest on the Bonds, or for any claim based thereon, or otherwise in respect thereof, or based on or in respect of this Indenture or any indenture supplemental hereto, against any commissioner, trustee, member, officer, agent, employee, counsel or director, as such, past, present or future, of the Issuer or any successor, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance thereof and as part of the consideration for the issue thereof, expressly waived and released.

Section 12.09 Binding Effect.

This Indenture shall inure to the benefit of and shall be binding upon the Issuer and the Trustee and their respective successors and assigns, subject, however, to the limitations contained herein.

Section 12.10 Counterparts.

This Indenture 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 12.11 Governing Law.

This Indenture and the Bonds shall be deemed to be contracts 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, without regard to conflicts of laws principles.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Issuer and the Trustee have caused this Trust Indenture to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

**WEST VIRGINIA HOUSING  
DEVELOPMENT FUND**

(SEAL)

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

ATTEST:

By: \_\_\_\_\_  
Assistant Secretary

[Issuer Signature Page to Trust Indenture]

UMB Bank, N.A.  
as Trustee

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

[Trustee Signature Page to Trust Indenture]

**EXHIBIT A**

**LEGAL DESCRIPTION**

**FRANKLIN MANOR APARTMENTS DEVELOPMENT**

A-3

3900331.3 047586 RSIND

## EXHIBIT B

### BOND FORM

NOTICE: Unless this certificate is presented by an authorized representative of The Depository Trust Company to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

REGISTERED  
NO. R-1

REGISTERED  
[\$5,500,000]

**WEST VIRGINIA HOUSING DEVELOPMENT FUND  
MULTIFAMILY HOUSING REVENUE BOND, SERIES 2024  
(FRANKLIN MANOR)**

NEITHER THE DIRECTORS OR OFFICERS OF THE ISSUER NOR ANY PERSON EXECUTING THE BONDS SHALL BE LIABLE PERSONALLY ON THE BONDS BY REASON OF THE ISSUANCE THEREOF. THE BONDS AND THE INTEREST THEREON SHALL NOT BE A DEBT OF THE STATE OF WEST VIRGINIA (THE "STATE") OR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE ISSUER) AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE ISSUER) SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL SUCH BONDS BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE ISSUER PLEDGED THEREFOR PURSUANT TO THE INDENTURE. THE BONDS SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. THE ISSUER HAS NO TAXING POWER.

INTEREST RATE:      MATURITY DATE:      DATED AS OF:      CUSIP

As described below      \_October 1, 2027\_      September \_\_, 2024

REGISTERED OWNER:      CEDE & CO.

PRINCIPAL AMOUNT:      FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS

INITIAL MANDATORY TENDER DATE:      \_\_October 1, 2026\_\_

The West Virginia Housing Development Fund (the "**Issuer**"), a public body corporate and governmental instrumentality of the State of West Virginia, 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, the Principal Amount specified above on the Maturity Date specified above (subject to the rights of redemption and tender set forth herein), and to pay from

those sources interest on the unpaid principal balance of said Principal Amount calculated at the aforesaid Interest Rate on (a) April 1 and October 1 of each year beginning April 1, 2025 , (b) each Redemption Date, (c) each Mandatory Tender Date, (d) the Maturity Date, and (e) the date of acceleration of the Bonds (the “**Interest Payment Dates**”) until the 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.

This Bond shall bear interest during each Interest Period at a rate per annum equal to the Interest Rate. Interest on the Bonds shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

For purposes of calculating such interest:

“**Interest Period**” means, initially, the period from the Closing Date through and including March 31, 2025, and thereafter, the period commencing on each succeeding Interest Payment Date and ending on the last day of that month preceding the next Interest Payment Date.

“**Interest Rate**” means \_\_\_\_% to but not including the Initial Mandatory Tender Date and thereafter, the applicable Remarketing Rate.

“**Remarketing Rate**” means the interest rate or rates established pursuant to Section 2.02(c) of the Indenture and borne by the Bonds then Outstanding from and including each Remarketing Date to, but not including, the next succeeding Remarketing Date or the final Maturity Date of the Bonds, as applicable.

The principal of this Bond is payable upon presentation and surrender hereof at the designated corporate trust office of the trustee, presently UMB Bank, N.A. (the “**Trustee**”). Interest is payable on each Interest Payment Date by check or draft mailed to the person in whose name this Bond (or one or more predecessor bonds) is registered (the “**Holder**”) at the close of business on the fifth Business Day preceding that Interest Payment Date (the “**Regular Record Date**”) on the registration books for this issue maintained by the Trustee, as registrar, at the address appearing therein. Any interest which is not timely paid or duly provided for shall cease to be payable to the Holder hereof (or of one or more predecessor bonds) as of the Regular Record Date, and shall be payable to the Holder hereof (or of one or more predecessor bonds) at the close of business on a Special Record Date to be fixed by the Trustee for the payment of that overdue interest. Notice of the Special Record Date shall be mailed to Holders not less than ten days prior thereto. 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. While the Bonds are held in a book-entry system and in certain other circumstances, all as provided in the Indenture, principal of and interest on this Bond is required to be paid by wire transfer or other arrangement, other than any payment of the entire unpaid principal amount hereof.

The Bonds, and the premium, if any, and the interest thereon, are limited obligations of the Issuer, and are payable solely from the sources pledged therefor under the Indenture. NEITHER THE DIRECTORS OR OFFICERS OF THE ISSUER NOR ANY PERSON

EXECUTING THE BONDS SHALL BE LIABLE PERSONALLY ON THE BONDS BY REASON OF THE ISSUANCE THEREOF. THE BONDS AND THE INTEREST THEREON SHALL NOT BE A DEBT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE ISSUER) AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE ISSUER) SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL SUCH BONDS BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE ISSUER PLEDGED THEREFOR PURSUANT TO THE INDENTURE. THE BONDS SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. THE ISSUER HAS NO TAXING POWER.

No recourse under or upon any obligation, covenant or agreement contained in the Indenture or in any Bond or under any judgment obtained against the Issuer, or by the enforcement of any assessment or by any legal or equitable proceedings by virtue of any constitution or statute or otherwise or under any circumstances under or independent of the Indenture, shall be had against any commissioner, officer, agent or employee, as such, past, present or future, of the Issuer, whether serving in his or her official or individual capacity, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the owner of any Bond issued thereunder or otherwise of any sum that may be due and unpaid by the Issuer upon any such Bond. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise of any such incorporator, commissioner, officer, agent or employee, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the owner of any Bond of any sum that may remain due and unpaid upon the Bonds or any of them is, by the acceptance hereof, hereby expressly waived and released as a condition of and consideration for the execution of the Indenture and the issuance of the Bonds.

This Bond is one of a duly authorized issue of Multifamily Housing Revenue Bonds, Series 2024 (Franklin Manor) (the “**Bonds**”), issuable under the Trust Indenture dated as of September 1, 2024 (the “**Indenture**”), between the Issuer and the Trustee, aggregating in principal amount \$5,500,000] and used for the purpose of financing a loan (the “**Loan**”) to be made to EPD2 FMA, LP a West Virginia limited partnership (the “**Borrower**”). The Loan will be used by the Borrower to pay a portion of the costs of acquiring, rehabilitating, equipping and improving the Project, as defined in the Indenture, as further provided in the Loan Agreement dated as of even date with the Indenture (the “**Loan Agreement**”), between the Issuer and the Borrower. The Bonds are 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 Indenture. The Bonds are issued pursuant to, under authority of and in compliance with the laws of West Virginia, and particularly the West Virginia Housing Development Fund Act, constituting Article 18 of Chapter 31 of the Code of West Virginia, 1931, as amended (the “**Act**”), and a resolution duly adopted by the Issuer on December 20, 2023. The Bonds are subject to redemption and tender prior to their stated maturity as follows:

(a) Optional Redemption. The Bonds are subject to optional redemption in whole or in part by the Issuer at the written direction of the Borrower on the Initial Remarketing Date at a redemption price of 100% of the principal amount of such Bonds to be redeemed plus accrued

interest thereto. If the Bonds are not redeemed in whole on the Initial Remarketing Date, the Borrower, in consultation with the Remarketing Agent, may establish an optional redemption date with respect to any subsequent Remarketing Period and, thereafter, the Bonds are subject to optional redemption in whole or in part by the Issuer at the written direction of the Borrower on or after the applicable redemption date at a redemption price of 100% of the principal amount of such Bonds to be redeemed plus accrued interest to the applicable redemption date.

(b) Mandatory Tender. The Bonds are subject to mandatory tender in whole on each Mandatory Tender Date. Holders will not have the right to elect to retain their Bonds. Upon presentation and surrender of the Bonds by the Holder on the date fixed for tender, the Holder shall be paid the principal amount of the Bonds to be tendered, plus accrued interest on such Bonds to the tender date.

Reference is made to the Indenture for a more complete description of the Project, 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 Trustee and the Holders of the Bonds, and the terms and conditions upon which the Bonds are issued and secured. Each Holder assents, by its acceptance hereof, to all of the provisions of the Indenture.

The Borrower is required by the Loan Agreement to cause the Permanent Lender (as defined in the Indenture) to deliver on its behalf Eligible Funds to the Trustee to be used to secure payment of the principal of and interest (the “**Bond Service Charges**”) on the Bonds. In the Indenture, the Issuer has assigned to the Trustee, to provide for the payment of the Bond Service Charges on the Bonds, the Issuer’s right, title and interest in and to the Loan Agreement, except for Reserved Rights as defined in the Indenture. To secure its compliance with certain covenants in the Loan Agreement, the Borrower has executed and delivered the Regulatory Agreement (the “**Bond Regulatory Agreement**”) among itself, the Trustee and the Issuer, dated as of even date with the Indenture.

Copies of the Indenture, the Loan Agreement, and the Bond Regulatory Agreement, are on file in the designated corporate trust office of the Trustee.

The Bond Service Charges on the Bonds are payable solely from the Revenues, as defined and as provided in the Indenture (being, generally, the amounts payable under the Loan Agreement and any unexpended proceeds of the Bonds), and are an obligation of the Issuer only to the extent of the availability of Revenues. The Bonds are not secured by an obligation or pledge of any money raised by taxation and do not represent or constitute a debt or pledge of the faith and credit of the Issuer.

The Bonds are issuable only as fully-registered bonds and, except as hereinafter provided, in printed or typewritten form, registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York (“**DTC**”), which shall be considered to be the Holder for all purposes of the Indenture, including, without limitation, payment by the Issuer of Bond Service Charges, and receipt of notices to, giving of consents by and exercise of rights of, Holders. There shall be a single Bond representing each maturity, and all Bonds shall be immobilized in the custody of DTC with the owners of beneficial interests in those Bonds (the “**book entry interests**”) having no right to receive from the Issuer Bonds in the form of physical

securities or certificates. Ownership of book entry interests in the Bonds shall be shown by book entry on the system maintained and operated by DTC, its participants (the “**Participants**”) and certain persons acting through the Participants, and transfers of ownership of book entry interests shall be made only by that book entry system, the Issuer and the Trustee having no responsibility therefor. DTC is to maintain records of the positions of Participants in the Bonds, and the Participants and persons acting through Participants are to maintain records of the purchasers and owners of book entry interests in the Bonds. The Bonds as such shall not be transferable or exchangeable, except for transfer to another Depository (as defined in the Indenture) or to another nominee of a Depository, without further action by the Issuer and otherwise at the expense of the Borrower.

If any Depository determines not to continue to act as a Depository for the Bonds for use in a book entry system, the Issuer may attempt to have established a securities depository/book entry system relationship with another qualified Depository under the Indenture. If the Issuer does not or is unable to do so, the Issuer and the Trustee, after the Trustee has made provision for notification of the owners of book entry interests by the then Depository, shall permit withdrawal of the Bonds from the Depository, and authenticate and deliver Bond certificates in fully registered form (in denominations of \$5,000 or any integral multiple of \$1,000 in excess thereof) to the assignees of the Depository or its nominee, all at the cost and expense (including costs of printing or otherwise preparing and delivering replacement Bond certificates) of those persons requesting such authentication and delivery, if the event is not the result of Issuer action or inaction (including action at the request of the Borrower).

The Indenture permits certain amendments or supplements to the Indenture, the Loan Agreement, the Bond Regulatory Agreement and the Note not prejudicial to the Holders to be made without the consent of or notice to the Holders, and certain other amendments or supplements thereto to be made with the consent of the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding.

The Holder of each Bond has only those remedies provided in the Indenture.

The Bonds shall not constitute the personal obligation, either jointly or severally, of any officer or director of the Issuer.

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

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 (a) precedent to and in the issuing of the Bonds in order to make them legal, valid and binding limited obligations of the Issuer, and (b) precedent to and in the execution and delivery of the Indenture and the Loan Agreement; that payment in full for the Bonds has been received; and that the Bonds do not exceed or violate any constitutional or statutory limitation.

In the event of any conflict between the terms of this Bond and the Indenture, the terms of the Indenture shall control.

IN WITNESS OF THE ABOVE, the Issuer has caused this Bond to be to be executed and delivered by the manual or facsimile signature of its duly authorized officer and attested by the manual or facsimile signature of its Assistant Secretary as of the day and year first written above.

**WEST VIRGINIA HOUSING  
DEVELOPMENT FUND**

(SEAL)

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

ATTEST:

By: \_\_\_\_\_  
Assistant Secretary

## **CERTIFICATE OF AUTHENTICATION**

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

Date of Registration and Authentication: September \_\_, 2024.

**UMB Bank, N.A.**  
as Trustee

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

## 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.

Dated: \_\_\_\_\_

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 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

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

## DTC FAST RIDER

Each Bond shall remain in the Trustee's custody subject to the provisions of the FAST Balance Certificate Agreement currently in effect between the Trustee and DTC.

**EXHIBIT C**  
**FORM OF REQUISITION**  
**(Costs of Issuance Fund)**

UMB Bank, N.A., as Trustee

Re: [\$5,500,000] West Virginia Housing Development Fund Multifamily Housing  
Revenue Bonds, Series 2024 (Franklin Manor)

Trustee:

You are requested to disburse funds from the Costs of Issuance Fund pursuant to Section 4.05 of the Indenture in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the "Requisition"). The terms used in this requisition shall have the meaning given to those terms in the Trust Indenture dated as of September 1, 2024 (the "Indenture"), by and between the West Virginia Housing Development Fund, as issuer, and UMB Bank, N.A. as trustee, securing the above referenced Bonds.

REQUISITION NO.: \_\_\_\_\_

PAYMENT DUE TO: \_\_\_\_\_

AMOUNT TO BE DISBURSED: \$\_\_\_\_\_

PAYMENT INSTRUCTIONS:

The undersigned, on behalf of EPD2 FMA, LP, a West Virginia limited partnership, certifies that:

(a) the expenditures for which money is requisitioned by this Requisition represent proper charges against the Costs of Issuance Fund, have not been included in any previous requisition and are set forth in the Schedule attached to this Requisition, with invoices attached for any sums for which reimbursement is requested; and

(b) the money requisitioned is not greater than those necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Costs of Issuance.

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

Date of Requisition: \_\_\_\_\_

[Signature Page Follows]

**EPD2 FMA, LP,**  
a West Virginia limited partnership

By: \_\_\_\_\_  
Authorized Signatory

[Signature Page to Requisition (Costs of Issuance Fund) –Franklin Manor]

**EXHIBIT D**  
**REQUISITION**

(Permanent Loan Fund)

UMB Bank, N.A.,  
Kansas City, Missouri

Re:    [\$5,500,000] West Virginia Housing Development Fund Multifamily Housing Revenue  
     Bonds, Series 2024 (Franklin Manor)

Ladies and Gentlemen:

Pursuant to Section 4.10 of the Indenture (as defined below), you are requested to disburse funds from the Permanent Loan Fund in the amount(s), to the person(s) and for the purpose(s) set forth in this Requisition and the Indenture. The terms used in this Requisition and not otherwise defined herein shall have the meanings given to those terms in the Trust Indenture (the “Indenture”), dated as of September 1, 2024, by and between the West Virginia Housing Development Fund and UMB Bank, N.A. as Trustee, securing the above-referenced Bonds.

1.     REQUISITION NO.: \_\_\_\_\_ ; TRANSFER FROM [WVHDF 538 LOAN  
ACCOUNT][ERA2 LOAN ACCOUNT]

- (A)    TRANSFER TO COLLATERAL FUND: \$ \_\_\_\_\_
- (B)    TRANSFER TO PERMANENT LENDER: \$ \_\_\_\_\_
- (C)    TRANSFER TO BORROWER: \$ \_\_\_\_\_

DATE OF REQUISITION: \_\_\_\_\_ , \_\_\_\_\_

**WEST VIRGINIA HOUSING DEVELOPMENT FUND,**  
**as Permanent Lender**

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

Authorized Officer

---

**LOAN AGREEMENT**

Dated as of September 1, 2024

between

WEST VIRGINIA HOUSING DEVELOPMENT FUND

and

EPD2 FMA, LP

---

\$5,500,000

West Virginia Housing Development Fund  
Multifamily Housing Revenue Bonds, Series 2024  
(Franklin Manor)

## INDEX

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

	Page
Preamble .....	1

### ARTICLE I

#### DEFINITIONS

Section 1.1. Use of Defined Terms .....	2
Section 1.2. Interpretation .....	2
Section 1.3. Captions and Headings .....	3

### ARTICLE II

#### REPRESENTATIONS

Section 2.1. Representations of the Issuer .....	3
Section 2.2. Representations, Warranties and Covenants of the Borrower .....	3

### ARTICLE III

#### PLAN OF FINANCING

Section 3.1. Issuance of Bonds; Application of Proceeds .....	6
Section 3.2. The Loan .....	7
Section 3.3. Permanent Loan .....	7
Section 3.4. Acquisition, Rehabilitation, Installation, Equipment and Improvement .....	8
Section 3.5. Plans and Specifications .....	8
Section 3.6. Disbursements from the Project Fund .....	9
Section 3.7. [RESERVED] .....	11
Section 3.8. Borrower Required to Pay Costs in Event Project Fund Insufficient .....	11
Section 3.9. Completion Date .....	12
Section 3.10. Remarketing of Bonds .....	12
Section 3.11. Investment of Fund Money .....	12
Section 3.12. Rebate Calculations and Payments .....	12

### ARTICLE IV

#### LOAN PAYMENTS; ELIGIBLE FUNDS AND ADDITIONAL PAYMENTS

Section 4.1. Loan Repayment; Delivery of Note .....	13
Section 4.2. Eligible Funds to Trustee .....	14
Section 4.3. Bond Fund and Collateral Fund .....	14

Section 4.4.	Additional Payments.....	14
Section 4.5.	Place of Payments.....	16
Section 4.6.	Obligations Unconditional.....	16
Section 4.7.	Assignment of Agreement and Revenues; Trustee is Third Party Beneficiary.....	16

## ARTICLE V

### ADDITIONAL AGREEMENTS AND COVENANTS

Section 5.1.	Right of Inspection.....	17
Section 5.2.	Borrower to Maintain its Existence; Sale of Project.....	17
Section 5.3.	Indemnification.....	18
Section 5.4.	Tax Covenants.....	20
Section 5.5.	Affirmative Covenants.....	20
Section 5.6.	Other Indebtedness.....	22
Section 5.7.	Nature of Business.....	22
Section 5.8.	Continuing Disclosure.....	22

## ARTICLE VI

### PREPAYMENT AND TERMINATION

Section 6.1.	Optional Prepayment.....	22
Section 6.2.	[Reserved].....	23
Section 6.3.	Borrower's Obligations Upon Tender of Bonds.....	23
Section 6.4.	Option to Terminate.....	23

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

Section 7.1.	Events of Default.....	23
Section 7.2.	Remedies on Default.....	25
Section 7.3.	No Remedy Exclusive.....	25
Section 7.4.	Agreement to Pay Attorneys' Fees and Expenses.....	26
Section 7.5.	No Waiver.....	26
Section 7.6.	Notice of Default.....	26
Section 7.7.	Investor Member's Cure Rights.....	26

## ARTICLE VIII

### MISCELLANEOUS

Section 8.1.	Term of Agreement.....	26
Section 8.2.	Amounts Remaining in Funds.....	26
Section 8.3.	Notices.....	27
Section 8.4.	Extent of Covenants of the Issuer; No Personal Liability.....	27

Section 8.5.	Limited Liability of the Issuer .....	27
Section 8.6.	Limited Liability of Borrower .....	28
Section 8.7.	Binding Effect.....	28
Section 8.8.	Amendments and Supplements.....	28
Section 8.9.	Execution Counterparts.....	29
Section 8.10.	Severability .....	29
Section 8.11.	Governing Law .....	29

Exhibit A – FORM OF NOTE

Exhibit B – FORM OF DISBURSEMENT REQUEST

Exhibit C – FORM OF COMPLETION CERTIFICATE

Exhibit D – SOURCES AND USES

## LOAN AGREEMENT

**THIS LOAN AGREEMENT** is made and entered into as of September 1, 2024 between the **WEST VIRGINIA HOUSING DEVELOPMENT FUND**, a public body corporate and governmental instrumentality of the State of West Virginia (together with its successors and assigns, the “**Issuer**”), and **EPD2 FMA, LP**, a West Virginia limited partnership (the “**Borrower**”), under the following circumstances summarized in the following recitals (the capitalized terms not defined in the recitals being used therein as defined in Article I hereof):

### RECITALS

WHEREAS, the Issuer has been created pursuant to certain Acts of the Legislature of the State of West Virginia (the “State”), constituting Article 18 of Chapter 31 of the Code of West Virginia, 1931, as amended (the “Act”); and

WHEREAS, the Issuer is permitted under the Act to issue bonds to make loans for the construction, rehabilitation, improvement, purchase, or refinancing of residential housing in the State of West Virginia; and

WHEREAS, the Issuer determined it to be in furtherance of the public purposes of the Act to issue its Multifamily Housing Revenue Bonds, Series 2024 (Franklin Manor) in the aggregate principal amount of \$5,500,000 (the “Bonds”) pursuant to a Trust Indenture (the “Indenture”), dated as of even date with this Agreement, between the Issuer and UMB Bank, N.A, as trustee (the “Trustee”) and to use the proceeds of the Bonds to make a loan in the aggregate principal amount of \$5,500,000 (the “Loan”) to the Borrower, to finance, refinance or reimburse a portion of the costs of the acquisition, rehabilitation and equipping of a 48-unit multifamily housing development to be owned and operated as an affordable multifamily rental housing project to be known as Franklin Manor Apartments, located at 700 West Burke Street, Martinsburg, West Virginia (the “Project”), the development will be occupied by persons of low or moderate income in compliance with Section 142(d) of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, the Project is to be rehabilitated on the respective parcels of land described in Exhibit A of the Indenture (collectively, the “Land”); and

WHEREAS, the obligations of the Borrower to make payments to the Issuer under this Loan Agreement will be evidenced by a Note dated September \_\_, 2024 (the “Note”) in the principal amount of \$5,500,000; and

WHEREAS, contemporaneously with the issuance of the Bonds and the making of the Loan by the Issuer, the Borrower is obtaining a separate mortgage loan with respect to the Project in the principal amount of \$[4,520,000] (the “WVHDF RD 538 Mortgage Loan”), from the Issuer in its capacity as maker of the WVHDF RD 538 Mortgage Loan (the “WVHDF RD 538 Lender”), as described herein; and

WHEREAS, the WVHDF RD 538 Mortgage Loan will be guaranteed under the United States Department of Agriculture (“USDA”) Rural Development Section 538 program, as amended, and the regulations promulgated thereunder; and

WHEREAS, the obligations of the Borrower to make payments to the WVHDF RD 538 Lender under the WVHDF RD 538 Mortgage Loan will be evidenced by a promissory note effective as of the Closing Date (the “WVHDF RD 538 Note”), which WVHDF RD 538 Note will be secured by a Credit Line Deed of Trust, Security Agreement and Fixture Filing for the benefit of the WVHDF RD 538 Lender, effective as of the Closing Date (the “WVHDF RD 538 Mortgage”); and

WHEREAS, contemporaneously with the issuance of the Bonds and the making of the Loan by the Issuer, the Borrower is obtaining a separate mortgage loan with respect to the Project in the principal amount of \$[1,558,000] (the “ERA2 Loan”) from the Issuer in its capacity as maker of the ERA2 Loan (the “ERA2 Lender”), as described herein; and

WHEREAS, the obligations of the Borrower to make payments to the ERA2 Lender under the ERA2 Loan will be evidenced by a promissory note effective as of the Closing Date (the “ERA2 Note”), which ERA2 Note will be secured by Credit Line Deed of Trust, Security Agreement and Fixture Filing for the benefit of the ERA2 Lender, effective as of the Closing Date (the “ERA2 Mortgage”); and

WHEREAS, the Issuer and the Borrower 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 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 of the Issuer or give rise to any pecuniary liability of the Issuer but shall be payable solely out of Revenues):

## **ARTICLE I**

### **DEFINITIONS**

Section 1.1. Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement, the words and terms in this Agreement shall have the meanings set forth in the Trust Indenture (the “Indenture”), dated as of the date of this Agreement between the Issuer and the Trustee.

Section 1.2. Interpretation. Any reference herein to the Issuer or to any officer or director thereof includes 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 Holders, the Trustee 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.

Section 1.3. 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.

## **ARTICLE II**

### **REPRESENTATIONS**

Section 2.1. Representations of the Issuer. The Issuer represents that: (a) it is a public body corporate and governmental instrumentality of the State; (b) it has or will have as of the Closing Date duly accomplished all conditions necessary to be accomplished by it prior to the issuance and delivery of the Bonds and the execution and delivery of the Issuer Documents; (c) it is not in violation of or in conflict with any provisions of the laws of the State that would impair its ability to carry out its obligations contained in the Issuer Documents; (d) it has the legal right and is empowered to enter into the transactions contemplated by the Issuer Documents; (e) it has duly authorized the execution, delivery and performance of the Issuer Documents; and (f) it will do all things in its power in order to maintain its existence or assure the assumption of its obligations under the Issuer Documents by any successor public body. The Issuer makes no representation or warranty, express or implied, that the proceeds of the Bonds will be sufficient to finance the acquisition, rehabilitation and equipping of the Project or that the Project will be adequate or sufficient for the Borrower’s intended purpose.

Section 2.2. Representations, Warranties and Covenants of the Borrower. The Borrower represents, warrants and covenants that:

(a) The Borrower is a limited partnership duly formed and in full force and effect under the laws of the State, is in good standing and duly qualified to transact business in the State and not in violation of any provision of any applicable Organizational Documents and is authorized to own and operate the Project in the State.

(b) The Borrower 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. The execution, delivery and performance of the Borrower Documents do not, and will not, violate any provision of law applicable to the Borrower 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, enforceable in accordance with their terms except as may be limited by laws relating to bankruptcy, insolvency, reorganization or moratorium or other similar laws affecting creditors’ rights.

(c) The Borrower was formed on [March 15, 2024]. The managing member of the Borrower is Eagle Point Development-Series 2, LLC a Maine limited liability company (the “Managing Member”). The Borrower does not currently operate or conduct any business except as related to the financing, ownership, operation and rehabilitation of the Project. The Borrower has no material assets or property other than its anticipated interest in the Project.

(d) The Managing Member (1) is a Maine limited liability company, duly qualified to transact business in the State, and (2) has the requisite legal authority to become and to act as the managing member of the Borrower.

(e) 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.

(f) The Borrower will use and operate the Project in a manner consistent with the Act and in accordance with the Bond Regulatory Agreement for as long as required by 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, the Borrower 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, the Code and the Bond Regulatory Agreement.

(g) The Project will be completed in accordance with the Plans and Specifications and the portion of the Project funded with the proceeds of the Bonds will constitute a “qualified residential rental project” within the meaning of Section 142(d) of the Code 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.

(h) The Project will be located entirely within the jurisdiction of the Issuer.

(i) The Borrower has obtained or will obtain all consents, approvals, permits, authorizations and orders of any governmental or regulatory agency that are required to be obtained by the Borrower as a condition precedent to the issuance of the Bonds, the execution and delivery of the Borrower Documents or the performance by the Borrower of its obligations thereunder, or that were or are required for the acquisition, rehabilitation, equipping and/or operation of the Project.

(j) No litigation at law or in equity or proceeding before any governmental agency involving the Borrower is pending or, to the best of its knowledge, threatened in which any liability of the Borrower is not adequately covered by insurance or in which any judgment or order would have a material adverse effect upon the business or assets of the Borrower or that would affect its existence or authority to do business, the acquisition, rehabilitation, equipping or operation of the Project, the validity of any Borrower Documents or the performance of its obligations thereunder.

(k) The Borrower is not in default in the payment of the principal of or interest on any of its indebtedness for borrowed money and is not in material default under any instrument under and subject to which any indebtedness has been incurred, and no event has

occurred and is continuing that, under the provisions of any such agreement, with the lapse of time or the giving of notice, or both, would constitute an event of default by the Borrower thereunder.

(l) The Borrower is not in default under or in violation of, and the execution, delivery and compliance by the Borrower with the terms and conditions of the Borrower Documents do not and will not conflict with or constitute or result in a default by the Borrower in any material respect under or violate, (i) the Borrower's organizational documents, (ii) any agreement or other instrument to which the Borrower is a party or by which it or its assets are bound, or (iii) to the best of its knowledge, any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the Borrower or its property, and no event has occurred and is continuing which, with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation.

(m) The Borrower has received and reviewed a copy of the Indenture and approves the terms and conditions thereof and agrees to the terms thereof.

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

(o) Neither the Borrower nor any related Person thereto shall acquire any Bonds in any amount.

(p) The Borrower will have fee interests in the Land and will have absolute ownership of the improvements and personal property comprising the Project, and there are no liens or encumbrances against such property except for those identified in the Title Policy.

(q) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing of the Project; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it or the Issuer is a party or of which it is a beneficiary; that it understands the risks inherent in such transactions, including, without limitation, the risk of loss of the Project; and that it has not relied on the Issuer or its counsel for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Agreement, the Bond Regulatory Agreement and the Indenture or otherwise relied on the Issuer or its counsel in any manner.

(r) The Project is, as of the Closing Date, in compliance with all requirements of the Bond Regulatory Agreement, including all applicable requirements of the Act and Code. The Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Bond Regulatory Agreement, including all applicable requirements of the Act and the Code. All current leases comply, and all future leases will comply, with all applicable laws and the Bond Regulatory Agreement. The Project

meets the requirements of this Agreement, the Bond Regulatory Agreement, the Act and the Code with respect to multifamily rental housing.

(s) The Borrower will not exercise any option to redeem the Bonds under the Indenture except upon the express written consent of the Investor Member.

(t) The proceeds of the Bonds shall be used or deemed used exclusively to pay costs that (i) are (A) costs of a type that are properly chargeable to capital account (or would be so chargeable with a proper election) 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 and that for the greatest number of buildings the proceeds of the Bonds shall be deemed allocated on a pro rata basis to each building in the Project and the land on which it is located so that each building and the land on which it is located will have been financed fifty percent (50%) or more by the proceeds of the Bonds for the purpose of complying with Section 42(h)(4)(B) of the Code; provided, however, the foregoing representation, covenant and warranty is made for the benefit of the Borrower and its members and neither the Trustee 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 members of the Borrower, any other affiliate of the Borrower or the holders of the Bonds 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 or the Indenture.

The Borrower acknowledges that the representations and covenants herein made by the Borrower have been expressly and specifically relied upon by the Issuer in determining to make the Loan to the Borrower and the Loan would not have been made but for such representations and covenants.

### **ARTICLE III**

#### **PLAN OF FINANCING**

Section 3.1. Issuance of Bonds; Application of Proceeds. To provide Loan funds for purposes of assisting the Borrower in paying Project Costs, the Issuer shall simultaneously with the execution and delivery hereof proceed with the issuance and delivery of the Bonds upon receipt by the Trustee of the items listed in Section 2.11 of the Indenture. The Issuer agrees to deposit the proceeds of sale of the Bonds in accordance with the Indenture.

The Bonds will be issued pursuant to the Indenture in the aggregate principal amount, will bear interest, will mature and will be subject to redemption, mandatory tender and remarketing as set forth therein. The Borrower hereby approves the terms and conditions of the Indenture and the Bonds, and the terms and conditions under which the Bonds will be issued, sold and delivered and will comply with those provisions of the Indenture that contemplate action by the Borrower, all as if the Borrower were a party to the Indenture.

Pending disbursement pursuant to Section 3.6 hereof, the proceeds of the Bonds deposited in the Project Fund shall constitute a part of the Revenues assigned by the Issuer to the Trustee as security for the payment of Bond Service Charges as provided in the Indenture.

Section 3.2. The Loan. The Issuer agrees, upon the terms and conditions herein, to make the Loan to the Borrower with the proceeds received by the Issuer from the sale of the Bonds by causing such proceeds to be deposited with the Trustee for disposition as provided in the Indenture. The obligation of the Issuer to fund the Loan shall be deemed fully discharged, and the principal amount of the Bonds shall be deemed fully advanced to the Borrower under the Note, upon the deposit of the proceeds of the Bonds with the Trustee. The Loan shall be evidenced by the Note payable to the Trustee.

Section 3.3. Permanent Loan.

(a) To provide and secure funds for the repayment of the Loan, and to provide for the delivery of certain Eligible Funds, the Borrower shall simultaneously with the execution and delivery hereof, proceed with obtaining the WVHDF RD 538 Mortgage Loan from the WVHDF RD 538 Lender. In particular, the Borrower will promptly take all necessary actions on its part to close the WVHDF RD 538 Mortgage Loan and to satisfy all other terms and conditions of the RD 538 Commitment (as defined in the Indenture) and the requirements of the WVHDF RD 538 Lender.

The Borrower represents that the WVHDF RD 538 Mortgage Loan is to be guaranteed by the USDA Rural Development Section 538 program, as amended, and the regulations promulgated thereunder, and that the WVHDF RD 538 Mortgage Loan will be in the an original principal amount of not less than \$[4,520,000]. The WVHDF RD 538 Mortgage Loan will be secured on a non-recourse basis pursuant to the WVHDF RD 538 Mortgage Loan Documents.

In connection with the WVHDF RD 538 Mortgage Loan, the Borrower shall execute and deliver such documents as may be customarily utilized for mortgage loans guaranteed under the USDA Rural Development Section 538 program, as amended, and the regulations promulgated thereunder, with such omissions, insertions and variations as may be permitted by such regulations and as may be consistent with the terms and provisions of this Agreement.

The WVHDF RD 538 Lender shall deliver to the Trustee from time to time on or after the Closing Date the WVHDF RD 538 Mortgage Loan proceeds in an aggregate principal amount of not less than \$[4,520,000] for deposit to the Permanent Loan Fund. Such proceeds shall be transferred from the Permanent Loan Fund to the Collateral Fund in installments as set forth in Section 4.10 of the Indenture and Section 4.2 herein to enable the Trustee to disburse Bond proceeds from the Project Fund as approved by the WVHDF RD 538 Lender in connection with completed and fully-executed disbursement requests in the form attached hereto as Exhibit B.

(b) To provide and secure funds for the repayment of the Loan, and to provide for the delivery of certain Eligible Funds, the Borrower shall simultaneously with the execution

and delivery hereof, proceed with obtaining the ERA2 Loan from the ERA2 Lender. In particular, the Borrower will promptly take all necessary actions on its part to close the ERA2 Loan and to satisfy the requirements of the ERA2 Lender.

The Borrower represents that the ERA2 Loan will be in the an original principal amount of \$[1,558,000]. The ERA2 Loan will be secured on a non-recourse basis pursuant to the ERA2 Loan Documents.

The ERA2 Lender shall deliver to the Trustee from time to time, on or after the Closing Date ERA2 Loan proceeds in an aggregate principal amount of not less than [\$1,558,000] to the Permanent Loan Fund. Such proceeds shall be transferred from the Permanent Loan Fund to the Collateral Fund in installments as set forth in Section 4.10 of the Indenture and Section 4.2 herein to enable the Trustee to disburse Bond proceeds from the Project Fund as approved by the ERA2 Lender in connection with completed and fully-executed disbursement requests in the form attached hereto as Exhibit B.

Section 3.4. Acquisition, Rehabilitation, Installation, Equipment and Improvement. The Borrower (a) has acquired fee interests in the Land, (b) shall rehabilitate, improve and equip the Project with all reasonable dispatch and in accordance with the Plans and Specifications, (c) shall pay when due all fees, costs and expenses incurred in connection with that acquisition, rehabilitation, installation, equipment and improvement from funds made available therefor in accordance with this Agreement or otherwise, except to the extent being contested in good faith, and (d) 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 equipping 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 the Borrower and any contracts made by the Borrower with respect thereto, whether acquisition contracts, construction contracts or otherwise, or any work to be done by the Borrower on the Project are made or done by the Borrower in its own behalf and not as agent or contractor for the Issuer. The Borrower agrees that it will compensate all workers employed in the rehabilitation, improvement, and equipping of the Project as required by law.

Section 3.5. Plans and Specifications. The Plans and Specifications have been or shall be filed with the Issuer. The Borrower may revise the Plans and Specifications from time to time, provided that no revision shall be made that would change the purpose of the Project to other than purposes permitted by the Act and the Bond Regulatory Agreement; and provided further that no material revision of the Plans and Specifications shall be made unless the Borrower has first delivered to the Issuer and the Trustee a narrative description of the proposed revision accompanied by a certificate of the Authorized Borrower Representative certifying (i) the change in Project Costs resulting from the material revision and that the moneys then on deposit in the Project Fund together with other identified available moneys will be sufficient to pay in full the Project Costs including the change in Project Costs resulting from such material revision, and (ii) that any such material revisions of the Plans and Specifications have been delivered to and approved (where applicable) by the Issuer.

The sources and uses contemplated by the plan of financing for the Project are set forth in Exhibit D hereto, and at or prior to the execution and delivery of this Agreement, the Borrower shall provide to the Issuer evidence acceptable to the Issuer, in its sole 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 anticipated 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 or to any information contained in Exhibit D shall be communicated in writing promptly to the Issuer. Copies of all documents evidencing that financing, and the security therefor, all in form reasonably acceptable to the Issuer, shall have been provided to the Issuer.

Section 3.6. Disbursements from the Project Fund. Subject to the provisions below, disbursements from the Project Fund shall be made only to pay any of the following Project Costs:

(a) Costs incurred directly or indirectly for or in connection with the acquisition, rehabilitation, improvement and equipping of the Project, including costs incurred in respect of the Project for preliminary planning and studies; architectural, legal, engineering, accounting, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work.

(b) Premiums attributable to any surety bonds and insurance required to be taken out and maintained during the rehabilitation period with respect to the Project.

(c) Taxes, assessments and other governmental charges in respect of the Project that may become due and payable during the rehabilitation period.

(d) Costs incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract relating to the Project.

(e) Subject to the limitations set forth in the Tax Certificate and Agreement, Costs of Issuance of the Bonds, including, financial, legal, accounting, printing and engraving fees, charges and expenses, and all other such fees, charges and expenses incurred in connection with the authorization, sale, issuance and delivery of the Bonds, including, without limitation, the fees and expenses of the Trustee properly incurred under the Indenture that may become due and payable during the construction period.

(f) Any other costs, expenses, fees and charges properly chargeable to the cost of acquisition, rehabilitation, improvement and equipping of the Project.

(g) Payment of interest on the Bonds.

(h) Payments to the Rebate Fund.

Any disbursement from the Project Fund for the payment of Project Costs shall be made by the Trustee only upon satisfaction of all of the following conditions:

(i) The receipt by the Trustee of notice and instruction of a completed disbursement request (a “Disbursement Request”) in the form attached hereto as Exhibit B, signed by an Authorized Borrower Representative and approved by the Permanent Lender, providing the amount of the disbursement request (a “Disbursement Amount”) and the expected date of disbursement (a “Disbursement Date”).

(ii) Promptly upon receipt of a completed and fully-executed Disbursement Request, the Trustee will confirm in writing to the Permanent Lender (A) the Disbursement Amount, (B) that the account balance of the Permanent Loan Fund is at least equal to the Disbursement Amount, (C) that the account balance of the Collateral Fund plus the account balance of the Project Fund will be at least equal to the then-outstanding principal amount of the Bonds after such disbursement and after effecting the related transfer from the Permanent Loan Fund to the Collateral Fund in accordance with Section 4.10 of the Indenture, and (D) whether the Trustee has actual knowledge that an Event of Default (as determined in accordance with Section 5.02(f) of the Indenture) or a Determination of Taxability has occurred. If an Event of Default or a Determination of Taxability has occurred to the knowledge of the Trustee, the Trustee shall make no further disbursements from the Project Fund so long as such Event of Default or Determination of Taxability continues to exist except in accordance with the final paragraph of Section 4.04 of the Indenture.

(iii) Upon the receipt of confirmation from the Trustee of the matters described in clause (ii) above, the Permanent Lender will deliver to the Trustee the requisition form in the form attached to the Indenture as Exhibit D, for the transfer by the Trustee of certain moneys in the Permanent Loan Fund to the Collateral Fund in the amount of the Disbursement Amount as indicated in the related Disbursement Request, in order to enable the Trustee to disburse funds from the Project Fund on the expected Disbursement Date.

(iv) Upon the receipt by the Trustee of such requisition form from the Permanent Lender, the Trustee shall in accordance with such requisition form transfer funds from the Permanent Loan Fund to the Collateral Fund in an amount equal to the Disbursement Amount as indicated in the related Disbursement Request as provided in Section 4.2 hereof. In the event that the amount of Eligible Funds received by the Trustee (in the aggregate or individually if indicated to be funded from more than one source in the Disbursement Request) does not equal the total amount of the Disbursement Request, the Trustee shall promptly return the amounts representing Permanent Loan proceeds to the Permanent Loan Fund and any such other Eligible Funds to the fund(s) or account(s) from which they came, and inform the Borrower and the Permanent Lender of such inadequacy of funds so that the Borrower can resubmit or correct the applicable Disbursement Request(s).

(v) Upon satisfaction of the conditions set forth in clauses (i) through (iv) above, the Trustee shall be unconditionally and irrevocably obligated to disburse funds

from the Project Fund in accordance with the Disbursement Request. If any conditions are not met, Permanent Loan proceeds must be transferred back to the Permanent Loan Fund. The Trustee shall disburse funds from the Project Fund in accordance with the instructions contained in the Disbursement Request (A) on the same Business Day that it receives Eligible Funds in the Collateral Fund provided the Trustee receives Eligible Funds in the Collateral Fund with respect to such Disbursement Request prior to 2:30 PM Local Time on such Business Day or (B) on the next succeeding Business Day if the Trustee receives Eligible Funds in the Collateral Fund after 2:30 PM Local Time. If for any reason the Trustee is not able to disburse a corresponding amount of Bond proceeds from the Project Fund immediately following receipt in the Collateral Fund of Permanent Loan proceeds transferred from the Permanent Loan Fund, the Trustee shall promptly transfer such Permanent Loan proceeds back to the Permanent Loan Fund.

(vi) The Borrower hereby acknowledges and agrees that it shall submit disbursement requests to the Trustee no more frequently than once each calendar month. Each such disbursement request shall be consecutively numbered. Proceeds of the Bonds disbursed pursuant to the provisions of this Agreement may only be used to pay those Project Costs identified in the Sources and Uses of Funds attached hereto as Exhibit D, as it may be amended pursuant to the agreement of the Permanent Lender and the Borrower.

The Borrower's right to request disbursements from the Project Fund is limited to the principal amount of the Loan.

The Borrower agrees that it will not request disbursement for any item not described in, or the cost for which item is other than as described in, the notice of public hearing pertaining to the Bonds unless the Borrower provides to the Permanent Lender, with a copy to the Trustee and the Issuer, an Opinion of Bond Counsel to the effect that such disbursement will not adversely affect the Federal Tax Status of the Bonds.

Any money in the Project Fund remaining after the Completion Date and payment, or provision for payment, in full of the Project Costs, at the direction of the Authorized Borrower Representative, shall promptly be paid into the Bond Fund for payment of Bond Service Charges.

Notwithstanding any provision of this Agreement or any provision of the Indenture to the contrary, the Trustee shall not disburse funds from the Project Fund unless and until the Trustee confirms that the account balance of the Collateral Fund plus the account balance of the Project Fund, less the amount of the requested disbursement from the Project Fund, is at least equal to then-outstanding principal amount of the Bonds.

### Section 3.7. [RESERVED]

Section 3.8. Borrower Required to Pay Costs in Event Project Fund Insufficient. If money in the Project Fund is 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. The Borrower shall pay all Costs of Issuance of the Bonds in excess of the amount permitted by the Tax Certificate and Agreement. The Borrower

shall not be entitled to any reimbursement for any such additional Project Costs or payment of Costs of Issuance from the Issuer, the Trustee or any Holder; nor shall it be entitled to any abatement, diminution or postponement of any Loan Payments or other amounts to be paid under this Agreement.

Section 3.9. Completion Date. The Borrower shall notify the Issuer and the Trustee of the Completion Date by the delivery of a Completion Certificate signed by the Authorized Borrower Representative substantially in the form of Exhibit C attached hereto. The Completion Certificate shall be delivered as promptly as practicable after the occurrence of the events and conditions referred to in paragraphs (a), (b), and (d) of the Completion Certificate and an accountant's determination has been made that the representation in Section 2.2(t) herein is true and correct.

Section 3.10. Remarketing of Bonds. The Borrower is hereby granted the right to (a) request a remarketing of the Bonds in the manner and to the extent set forth in Section 3.07 of the Indenture and (b) with the written consent of the Remarketing Agent (which consent shall not be unreasonably withheld, conditioned or delayed), designate the length of the Remarketing Period and the related Mandatory Tender Date in the manner and to the extent set forth in Sections 3.05 and 3.07 of the Indenture.

Section 3.11. Investment of Fund Money. At the written request of the Authorized Borrower Representative, any money held as part of any of the Special Funds or the Rebate Fund shall be invested or reinvested by the Trustee in Eligible Investments as provided in the Indenture. The Issuer (to the extent within its control) and the Borrower each 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 Section 148 of the Code. No provision of this Agreement shall be construed to impose upon the Trustee any obligation or responsibility for compliance with arbitrage regulations.

The Borrower shall provide the Issuer with, and the Issuer may base its certifications as authorized by the Tax Certificate and Agreement on, a certificate of an Authorized Borrower Representative for inclusion in the transcript of proceedings for the Bonds, setting 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.

Section 3.12. Rebate Calculations and Payments. If required by the terms of the Tax Certificate and Agreement, the Borrower shall appoint a Rebate Analyst, the expense of which shall be borne by the Borrower.

At the times required by the Tax Certificate and Agreement, the Borrower shall cause the Rebate Analyst to calculate the Rebate Amount as of the end of that Bond Year or the date of such payment and the Rebate Analyst shall notify the Trustee and the Borrower of that amount. If the amount then on deposit in the Rebate Fund created under the Indenture is less than the Rebate Amount (taking into account the amount or amounts, if any, previously paid to the United

States), the Borrower shall, within 30 days after the date of the aforesaid calculation, deposit or cause to be deposited to the credit of the Rebate Fund an amount sufficient to cause the Rebate Fund to contain an amount equal to the Rebate Amount. The obligation of the Borrower to make or cause to be made such payments shall remain in effect and be binding upon the Borrower notwithstanding the release and discharge of the Indenture or the termination of this Agreement. The Borrower shall obtain such records of the computations made pursuant to this Section as are required under Section 148(f) of the Code and shall retain such records for at least six (6) years after the maturity or retirement of the Bonds.

The Borrower further covenants that, during the term of the Bonds, in the event the Borrower sells or otherwise disposes of the Project (subject to Section 5.2 hereof), it will require that the transferee execute a covenant similar to that in this Section in the sale or other documents concerning the disposition and will require such transferee to include such a covenant in future transfer documents. The special covenants of the Borrower in this Section shall survive the defeasance or payment in full of the Bonds notwithstanding any other provision of this Agreement until the requirements for payment of any Rebate Amount have been fully satisfied.

## **ARTICLE IV**

### **LOAN PAYMENTS; ELIGIBLE FUNDS AND ADDITIONAL PAYMENTS**

Section 4.1. Loan Repayment; Delivery of Note. In consideration of and in repayment of the Loan, the Borrower shall deliver or cause to be delivered to the Trustee, on or before each Bond Payment Date, Loan Payments, equal to the amount necessary to pay interest due on and principal of the Bonds due on such Bond Payment Date. All such Loan Payments shall be paid to the Trustee in accordance with the terms of the Note for the account of the Issuer and shall be held and disbursed in accordance with the provisions of the Indenture and this Agreement.

The Borrower shall be entitled to a credit against the Loan Payments required to be made with respect to the Bonds on any date equal to the available money in the Bond Fund or transferred thereto from the Collateral Fund or the Project Fund for the payment of Bond Service Charges due on that date.

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

The Note shall secure equally and ratably all Outstanding Bonds, except that, so long as no Event of Default has occurred and is continuing hereunder, payments by the Borrower on the Note shall be used by the Trustee to make a like payment of Bond Service Charges and shall constitute Loan Payments.

Upon payment in full, in accordance with the Indenture, of the Bond Service Charges on any or all Bonds, whether at maturity or otherwise, or upon provision for the payment thereof having been made in accordance with the provisions of the Indenture, (a) the Note shall be deemed fully paid, the obligations of the Borrower thereunder shall be terminated, and the Note shall be surrendered by the Trustee to the Borrower, and shall be canceled by the Borrower, or

(b) an appropriate notation shall be endorsed thereon evidencing the date and amount of the principal payment (or prepayment) equal to the Bonds so paid, or with respect to which provision for payment has been made, and that Note shall be surrendered by the Trustee to the Borrower for cancellation if all Bonds shall have been paid (or provision made therefor) and canceled as aforesaid. Unless the Borrower is entitled to a credit under express terms of this Agreement or the Note, all payments on the Note shall be in the full amount required thereunder.

Section 4.2. Eligible Funds to Trustee. In consideration of and as a condition to the disbursement of Bond proceeds from the Project Fund to pay Project Costs, and to secure the Borrower's obligation to make Loan Payments, \$\_\_\_\_\_ of Permanent Loan proceeds shall be transferred from the Permanent Loan Fund to the Collateral Fund in installments as set forth in Section 4.10 of the Indenture to enable the Trustee to disburse the amount of the proposed disbursements from the Project Fund. All amounts in the Permanent Loan Fund and the Collateral Fund shall be transferred or disbursed, as applicable, in accordance with the provisions of the Indenture. Upon the receipt of Eligible Funds in the Collateral Fund and the satisfaction of the other conditions set forth in Section 3.6 hereof, the Trustee shall be unconditionally and irrevocably obligated to disburse an equal amount of funds from the Project Fund at the request of the Borrower and subject to the approval of the Permanent Lender as provided in Section 3.6 hereof. In no event may funds held in the Collateral Fund, or funds held in the Permanent Loan Fund representing \$5,500,000 of Permanent Loan proceeds, be used to pay Project Costs; funds in the Permanent Loan Fund representing Permanent Loan proceeds in excess of \$5,500,000 may be transferred to the Borrower in accordance with Section 4.10 of the Indenture for the payment by the Borrower of Project Costs not payable from proceeds of the Bonds.

Section 4.3. Bond Fund and Collateral Fund. The Borrower and the Issuer each acknowledges that any interest of either the Borrower or the Issuer in the Bond Fund or the Collateral Fund and any money deposited therein is subordinate to the interest of the Holders therein.

Section 4.4. Additional Payments. The Borrower shall pay as Additional Payments hereunder the following (*provided* that Additional Payments shall not be paid from the Special Funds):

(a) Whether out of the proceeds of the Permanent Loan (but subject to the applicable Permanent Loan Documents) or other funds, all Costs of Issuance of the Bonds and all expenses incurred in closing the Permanent Loan.

(b) All Extension Payments and other sums required under Section 3.07 of the Indenture in order to revise or extend the Mandatory Tender Date or remarket the Bonds, and the Borrower further agrees to execute any and all certificates required by the Issuer, the Trustee or the Remarketing Agent in order to effectuate such revision, extension or remarketing.

(c) To the Trustee, (i) the Ordinary Trustee Fees and Expenses and (ii) amounts due to the Trustee for Extraordinary Services and Extraordinary Expenses, in each case, to the extent that the funds available under the Indenture for the payment thereof are not sufficient and available therefor.

(d) To the Issuer (i) the Ordinary Issuer Fees and (ii) the Extraordinary Issuer Fees and Expenses, in each case to the extent that the funds available under the Indenture for the payment thereof are not sufficient and available therefor.

(e) All costs of printing any replacement Bonds required to be issued under the Indenture to the extent such costs are not paid by the Holders.

(f) To the extent not paid by the Trustee from the Expense Fund, all of the fees and expenses of the Rebate Analyst (including, but not limited to, the Rebate Analyst Fee) and any other necessary consultant employed by the Borrower, the Trustee or the Issuer in connection with any of the requirements imposed by Section 4.09 of the Indenture and the Tax Certificate and Agreement to the extent that the funds available under the Indenture for the payment thereof are not sufficient and available therefor. The Borrower shall provide or cause to be provided all information and money (including money necessary to make deposits to the Rebate Fund required by the Indenture and the Tax Certificate and Agreement and the fees and expenses of the Rebate Analyst to the extent available moneys in the Bond Fund under the Indenture are inadequate to pay such amounts) to the Trustee and the Rebate Analyst to enable the Trustee and the Rebate Analyst to comply with the Indenture and the Tax Certificate and Agreement.

(g) To the Dissemination Agent, the Dissemination Agent Fee to the extent the funds available in the Expense Fund are not sufficient and available therefor, as well as any other costs and expenses in order to provide for compliance with the terms of the Continuing Disclosure Agreement.

(h) To the Remarketing Agent, the Remarketing Agent Fee and any Remarketing Expenses.

In the event the Borrower is in default under any provision of any of the Borrower Documents beyond all applicable notice and cure periods, if any, the Borrower shall be liable to, and upon demand shall pay to, the Issuer, the Trustee and the Permanent Lender, all reasonable fees and disbursements of such persons and their agents (including reasonable attorneys' fees and expenses) which are reasonably connected therewith or incidental thereto except to the extent such fees and disbursements are paid from money available therefor under the Indenture.

To provide for certain of the anticipated Additional Payments, the Borrower agrees to cause Eligible Funds to be deposited into the Expense Fund and the Costs of Issuance Fund the amounts required under Section 4.02(b) of the Indenture, and authorizes the Trustee to pay, from money on deposit in the Costs of Issuance Fund and the Expense Fund, the amounts provided to be paid from the Costs of Issuance Fund or the Expense Fund in accordance with Sections 4.05 and 4.08, respectively, of the Indenture. All such amounts shall be paid directly to the parties entitled thereto for their own account as and when such amounts become due and payable.

Upon the payment, prepayment, or incurrence of any such cost, expense, or liability described in this Section by any such party, the Additional Payments in respect thereof shall be payable promptly upon written demand to the Borrower, which demand shall be accompanied by invoices or other appropriate documentation concerning the nature, amount and incurrence of

such cost, expense or liability. If the Additional Payments payable under this Section are not paid promptly upon such demand, such Additional Payments shall bear interest from the date of such payment or the incurrence thereof at the Interest Rate for Advances until the amount due shall have been fully paid.

The obligations of the Borrower under this Section shall survive the termination of this Agreement and the payment and performance of all of the other obligations of the Borrower hereunder and under the other Borrower Documents, including the Tax Certificate and Agreement.

Section 4.5. Place of Payments. The Borrower shall make all Loan Payments directly to the Trustee at its Designated Office. The WVHDF RD 538 Lender shall deliver, from time to time, on or after the Closing Date, directly to the Trustee at its Designated Office for deposit to the Permanent Loan Fund in accordance with Sections 4.06 and 4.10 of the Indenture, WVHDF RD 538 Mortgage Loan proceeds in an aggregate principal amount of not less than \$\_\_\_\_\_. The ERA2 Lender shall deliver, from time to time, on or after the Closing Date, directly to the Trustee at its Designated Office for deposit to the Permanent Loan Fund in accordance with Sections 4.06 and 4.10 of the Indenture, ERA2 Loan proceeds in an aggregate principal amount of not less than \$\_\_\_\_\_. Additional Payments shall be made by the Borrower directly to the person or entity to whom or to which they are due. Project Fund payments for or on behalf of the Borrower shall be made to the Permanent Lender or its designee

Section 4.6. Obligations Unconditional. The obligations of the Borrower to make Loan Payments, Additional Payments and any payments required of the Borrower under Sections 4.08 and 4.09 of the Indenture 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 Trustee or any other Person; provided that the Borrower may contest or dispute the amount of any such obligation arising under Section 4.08 of the Indenture so long as such dispute or contest does not result in an Event of Default under the Indenture.

Section 4.7. Assignment of Agreement and Revenues; Trustee is Third Party Beneficiary. To secure the payment of Bond Service Charges, the Issuer shall assign to the Trustee, by the Indenture, its rights under and interest in this Agreement (except for the Reserved Rights). The Borrower hereby agrees and consents to those assignments. The Issuer shall not attempt to further assign, transfer or convey its interest in the Revenues or this Agreement or create any pledge or lien of any form or nature with respect to the Revenues, Loan Payments or Eligible Funds hereunder.

The Trustee shall be a third party beneficiary to this Agreement.

## ARTICLE V

### ADDITIONAL AGREEMENTS AND COVENANTS

Section 5.1. Right of Inspection. At all reasonable times and upon reasonable prior written notice to the Borrower, the Borrower shall allow any duly authorized representative of the Issuer or the Trustee to visit and inspect the Project subject to the rights of the tenants of the Project, to examine and make copies of and from its books of record and account, and to discuss its affairs, finances, and accounts with its officers, and shall furnish to the Issuer and the Trustee any information reasonably required regarding its business affairs and financial condition within a reasonable time after receipt of written request therefor.

Section 5.2. Borrower to Maintain its Existence; Sale of Project. The Borrower shall maintain its existence, not dissolve or sell, transfer or otherwise dispose of all or substantially all of its assets and not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; provided, that it may do so if the surviving, resulting or transferee entity is other than the Borrower, it assumes in writing all of the obligations of the Borrower under the Borrower Documents and it has a net worth equal to or greater than that of the Borrower immediately prior to such consolidation, merger, sale or transfer. The Borrower shall not permit one or more other entities to consolidate with or merge into it; or take any action or allow any action to be taken to terminate the existence of the Borrower except as provided herein.

No sale, assignment or transfer of title to the Project, except as may be otherwise required by the Issuer or the Permanent Lender, shall be made unless (a) the Issuer and the Permanent Lender consent to such assignment or transfer, (b) the transferee or assignee, as the case may be, assumes all the duties of the Borrower under the Borrower Documents, provided that such assumption may contain an exculpation of the assignee from personal liability with respect to any obligation hereunder, except the Borrower's obligation to indemnify the Issuer and the Trustee and reimburse the Issuer and the Trustee for the fees and expenses of the Issuer and the Trustee, respectively, and (c) no Event of Default as certified in writing to the Issuer and the Trustee by the Borrower shall have occurred and be continuing under the Indenture or this Agreement. Each of the Issuer and the Trustee shall consent to any such assignment or transfer if (i) the Permanent Lender notifies it in writing that the aforesaid condition (a) is satisfied, (ii) the Issuer and the Trustee receive an Opinion of Bond Counsel, at the expense of the Borrower, to the effect that such transfer or assignment would not adversely affect the Federal Tax Status of the Bonds, and (iii) the Issuer and the Trustee receive written confirmation from the Rating Agency that such transfer or assignment will not result in a withdrawal or reduction in any rating on the Outstanding Bonds by the Rating Agency (if the Bonds are then rated by the Rating Agency). Upon the assumption of the duties of the Borrower by an assignee as provided herein, the outgoing Borrower shall be released from all executory obligations so assumed; provided, however, the Borrower shall not be released from its obligation to pay or reimburse the fees and expenses of the Issuer and the Trustee and to indemnify the Trustee and the Issuer without the express written consent of the Trustee and the Issuer, as applicable, which consent shall not be unreasonably withheld, conditioned or delayed. Nothing contained in this Section shall be construed to supersede any provisions regarding assignment and transfer of the Project contained in the Permanent Loan Documents.

Notwithstanding anything to the contrary contained herein or in any other Borrower Document, and subject to the consent of the Issuer as required by the Permanent Loan Documents, the following shall be permitted and shall not require the prior written approval of Issuer or Trustee: (a) the transfer by Investor Member of its interest in Borrower in accordance with the terms of Borrower's Organizational Documents, (b) the removal of the managing member of Borrower in accordance with the Organizational Documents and the replacement thereof with Investor Member or any of its affiliates or an entity under common control with Investor Member, (c) the transfer of ownership interests in Investor Member, (d) upon the expiration of the tax credit compliance period, the transfer of the interests of Investor Member in Borrower to Borrower's managing member or any of its affiliates, (e) any amendment to the Organizational Documents to memorialize the transfers or removal described above, (f) admission of \_\_\_\_\_ as a member of the Borrower and (g) any transfers of indirect or direct ownership interests in the managing member of the Borrower, to the extent that the control of the Borrower does not change as a result thereof. The parties agree that this Section shall control to the extent of any conflict in any Borrower Documents.

Section 5.3. Indemnification. (a) Subject to the provisions of subsections (b) and (c) hereof, the Borrower hereby agrees to pay, indemnify and hold harmless the Issuer and the Trustee, the commissioners, directors, officers, agents, representatives, attorneys and employees of the Issuer, the Trustee and their respective employees, attorneys, agents, trustees and representatives (collectively, the "Indemnified Persons") from any and all losses, damages, costs, expenses and fees (including all reasonable attorneys' fees), causes of action, suits, allegations, claims, demands, judgments and liabilities of whatsoever nature or kind (including, but not limited to, any documentary stamp or transfer taxes due and payable in connection with the Loan, if any, litigation and court costs, amounts paid in settlement by or with the approval of the Borrower and amounts paid to discharge judgments) directly or indirectly resulting from or arising out of or relating to:

- (i) the issuance, offering, sale or delivery of the Bonds;
- (ii) the design, rehabilitation, installation, operation, use, occupancy, maintenance, management or ownership of the Project by the Borrower and any predecessors in title;
- (iii) the enforcement of (a) the Bond Regulatory Agreement or (b) the provisions of the Financing Documents and any other document executed by the Borrower in connection with issuance of the Bonds and the making of the Loan and (c) the obligations of the Borrower imposed hereby or thereby;
- (iv) any untruthful, misleading or inaccurate information supplied by the Borrower relating to the Project, the Borrower, the Project Manager or to the terms of financing relating to the Project;
- (v) any injury to or death of any person or damage to property in or upon the Project or growing out of or connected with the operation, use, non-use, maintenance, rehabilitation, installation, condition or occupancy of the Project or any part thereof and by any predecessors in title, including any and all acts or operations relating to any

rehabilitation or repair performed by the Borrower and by any predecessors in title in connection with the Project, other than that caused by any gross negligence or willful act of the Issuer or anyone acting on its behalf;

(vi) any violation, breach or alleged breach of any agreement, covenant, representation, warranty or condition of this Agreement on the part of the Borrower or any entity related to or acting on behalf of the Borrower (except in the case of a breach alleged by the Issuer or the Trustee and such alleged breach is not found by a court of competent jurisdiction);

(vii) any determination of taxability with respect to the Bonds, including the fees and expenses of the Issuer and its counsel in responding to any inquiry or audit by the Internal Revenue Service or resulting litigation or settlement in connection therewith;

(viii) the deposit, storage, disposal, burial, dumping, injecting, spilling, leaking, or other placement or release in, on or from the Project of hazardous materials or the violation or alleged violation of any federal, state or local environmental law, regulation, order, consent decree or administrative action, or official interpretation thereof in connection with the Project or on the Land;

(ix) any and all other losses, costs, damages, expenses and liabilities of whatsoever nature or kind (including, but not limited to, any documentary stamp or transfer taxes due and payable in connection with the Loan, if any, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement by or with the approval of the Borrower and amounts paid to discharge judgments) directly or indirectly resulting from, arising out of, or related to the issuance, offering, sale or delivery of the Bonds;

(x) any and all losses, claims, damages, liabilities or expenses whatsoever caused by any untrue or misleading statement, or alleged untrue or misleading statement, of a material fact contained in any offering or disclosure document or other offering materials relating to the sale or remarketing of the Bonds (collectively, "Disclosure Statement") or the omission or alleged omission of any material fact of any Disclosure Statement, necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. Notwithstanding the foregoing, the Borrower shall have no indemnification obligation with respect to any statement or omission for which the indemnified party is responsible; and

(xi) the performance by the Trustee of its duties under the Indenture and any Financing Document to the extent such performance is done pursuant to the terms thereof.

(b) Notwithstanding the foregoing, the Trustee shall not be indemnified hereunder for any claims or damages arising from its own gross negligent acts or omissions or from any willful misconduct by the Trustee with respect to the provisions of the Indenture.

(c) After receipt by the Indemnified Persons of notice (notice to the Indemnified Persons being service with respect to the filing of any legal action, receipt of any claim in writing or similar form of actual notice) of any claim as to which they assert a right to

indemnification, the Indemnified Persons will promptly notify the Borrower of such claim. The Indemnified Persons will provide notice to the Borrower promptly, but in no event later than fifteen (15) Business Days following their receipt of a filing relating to a legal action or thirty (30) days following their receipt of any other claim.

(d) The provisions of this Section shall be, insofar as they relate solely to the Issuer, in addition to and not limited by the provisions of Section 8.6 hereof.

Section 5.4. Tax Covenants. The Borrower, for the benefit of the Issuer and each Holder, 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, to maintain the Federal Tax Status of the Bonds. The Borrower 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 (other than an action required by USDA under the WVHDF RD 538 Mortgage Loan Documents), any actions that would adversely affect such Federal Tax Status. The Borrower agrees that it will not make any changes in the Project which will result in a violation of the limitation of the maturity of the Bonds under Section 147(b) of the Code. The covenants of the Borrower herein with respect to preservation of such Federal Tax Status of the Bonds are made expressly subject to the WVHDF RD 538 Mortgage Loan Documents.

If the Borrower becomes aware of any situation, event or condition which would adversely affect the Federal Tax Status of the Bonds, the Borrower shall promptly give written notice thereof to the Issuer, the Permanent Lender and the Trustee.

The Issuer covenants that it will take, or require to be taken, all actions that may be required of the Issuer to maintain the Federal Tax Status of the Bonds. It will not take or authorize to be taken any actions that would adversely affect such Federal Tax Status under the Code.

The Borrower and the Issuer have entered into the Tax Certificate and Agreement and the Bond Regulatory Agreement for purposes of assuring that the Federal Tax Status of the Bonds will be maintained.

Section 5.5. Affirmative Covenants. (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 the Project. All damage to apartment units shall be repaired promptly and apartment 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 the requirements of USDA or indicating deviations therefrom, reflecting all financial transactions.

(c) Payment of Taxes, Etc. The Borrower shall promptly pay and discharge: all taxes, assessments, fees, and other Governmental charges or levies or imposed upon it or upon any of its properties, income or profits, 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 its properties; any indebtedness heretofore or hereafter incurred by it when due, and discharge, perform and observe 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 any of its properties; provided, however, that the Borrower shall not be required to pay any of the foregoing if (a) the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings, (b) the Borrower shall have set aside on its books adequate reserves with respect thereto and (c) the title of the Borrower to, and its right to use, its properties is not materially and adversely affected thereby. The Borrower hereby agrees that, in the event it fails to pay or cause to be paid taxes, assessments, fees and other Governmental charges or levies or the premium on any required insurance, the Trustee may make such payment, but is not obligated to do so, and the Trustee shall be reimbursed by the Borrower therefor with interest on the amount so advanced at the Interest Rate for Advances.

(d) Insurance.

The Borrower shall:

(i) Maintain or cause to be maintained at all times insurance of such types and in such amounts as may be required by the Permanent Loan Documents and the Financing Documents.

(ii) Furnish on the Closing Date and on each anniversary thereof a certificate of an insurance consultant that all insurance as may be required by the Permanent Loan Documents and the Financing Documents has been obtained and is in force.

(e) [Reserved.]

(f) Notice of Default. In the event that any Event of Default occurs, the Borrower shall give prompt notice in writing of such happening to the Trustee and the Issuer.

(g) Performance of Contracts, Etc. Except to the extent contested in good faith, the Borrower shall perform according to and shall comply with all of its contractual obligations and all requirements of law if nonperformance thereof would materially and adversely affect the business or credit of the Borrower on an individual basis or would materially impair the ability of the Borrower to perform this Agreement, the Bond Regulatory Agreement or the Note or any other agreement or instrument herein or therein contemplated.

(h) [Reserved.]

(i) Cooperation in Perfecting Security Interests, Etc. The Borrower shall promptly perform such acts as may be necessary or advisable to perfect and maintain any lien provided for in this Agreement or in any agreement or document contemplated herein or therein, or otherwise to carry out the intent of this Agreement. The Borrower shall, and shall promptly execute, deliver and perform or cause to be done, executed, delivered and performed all such documents, instruments, agreements, things and acts, including, without limitation, financing statements, continuation statements and mortgages as may be necessary or advisable to perfect or

maintain a lien on any and all assets or rights owned by the Borrower, or any interest of the Borrower therein, and the Trustee and its officers, employees and authorized agents, or any of them, are hereby irrevocably appointed the attorneys in fact of the Borrower to do all acts and things which the Trustee may deem necessary or advisable to preserve, perfect and continue perfected any lien in favor of the Trustee. The Trustee shall not be responsible for the initial filing of financing statements.

(j) 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, if any, whether or not such cleanup problems have resulted from the order or request of a municipal, state, federal, administrative or judicial authority, or otherwise. The foregoing covenant shall not constitute or create a waiver of any rights the Borrower may have to pursue any legal rights or remedies against any third party for any environmental claims.

(k) Non-discrimination. The Borrower will not and will require each contractor, subcontractor and commercial tenant of the Project to covenant that it will not discriminate by reason of race, creed, color, handicap, national origin or sex in the employment of any Person employed by it in connection with the Project or working in or on the Project. The Borrower will require each 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 or sex.

Section 5.6. Other Indebtedness. So long as no Event of Default hereunder shall have occurred and be continuing, the Borrower shall be permitted to incur any indebtedness for any Project Cost or other obligation or payment due under this Agreement, the Indenture or the Bond Regulatory Agreement.

Section 5.7. Nature of Business. The Borrower will not change the general character of its business as conducted at the date hereof, or engage in any type of business not reasonably related to its business as normally conducted.

Section 5.8. Continuing Disclosure. The Borrower hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Agreement or the Indenture, failure of the Borrower to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default hereunder or under the Indenture or a default with respect to the Bonds or the Permanent Loan Documents. The Borrower will provide to the Trustee and the Issuer copies of the annual financial statements of the Project and notices of material events provided pursuant to the Continuing Disclosure Agreement.

## **ARTICLE VI**

### **PREPAYMENT AND TERMINATION**

Section 6.1. Optional Prepayment. Provided no Event of Default shall have occurred and be continuing, the Borrower may deliver money to the Trustee in addition to Loan Payments or Additional Payments required to be made as a prepayment, in whole or in part, of the Loan

and direct the Trustee to use the money so delivered for the purpose of purchasing Bonds, in accordance with the Indenture. Pending application for those purposes, any money so delivered shall be held by the Trustee in a special account in the Bond Fund and delivery of such money shall not operate to abate or postpone Loan Payments or Additional Payments otherwise becoming due or to alter or suspend any other obligations of the Borrower under this Agreement.

Section 6.2. [Reserved].

Section 6.3. Borrower's Obligations Upon Tender of Bonds. If any Tendered Bond is not remarketed on any Mandatory Tender Date and a sufficient amount is not available in the Collateral Fund, the Negative Arbitrage Account of the Bond Fund, and the Project Fund as provided in Section 3.05(e) of the Indenture for the purpose of paying the purchase price of such Bond, the Borrower will cause to be paid to the Trustee by the applicable times provided in the Indenture, an amount equal to the amount by which the principal amount of all Bonds tendered and not remarketed, together with interest accrued to the Mandatory Tender Date, exceeds the amount otherwise available pursuant to Section 3.05(e) of the Indenture.

Section 6.4. Option to Terminate. The Borrower shall have the option to cancel or terminate this Agreement at any time when (a) the Indenture shall have been released in accordance with its provisions, and (b) sufficient money or security acceptable to the Issuer and the Trustee are on deposit with the Trustee or the Issuer, or both, to meet all Loan Payments and Additional Payments due or to become due through the date on which the last of the Bonds is then scheduled to be retired or redeemed, or, with respect to Additional Payments to become due, provisions satisfactory to the Trustee and the Issuer are made for paying such amounts as they come due. Such option shall be exercised by the Authorized Borrower Representative, on behalf of the Borrower, giving the Issuer and the Trustee five days' notice in writing of such cancellation or termination and such cancellation or termination shall become effective at the end of such notice period. The provisions of this Section shall not be deemed to permit a prepayment of the Note other than in accordance with its terms.

## **ARTICLE VII**

### **EVENTS OF DEFAULT AND REMEDIES**

Section 7.1. Events of Default. Each of the following shall be an Event of Default hereunder:

(a) The Borrower shall fail to pay any Loan Payment on or prior to the date on which that Loan Payment is due and payable to the extent amounts on deposit in the Bond Fund, including amounts transferred from the Collateral Fund and the Project Fund are insufficient to pay the Bond Service Charges due on the next Bond Payment Date;

(b) The Borrower shall fail to observe and perform any other agreement, term or condition contained in this Agreement or any other Financing Document and the continuation of such failure for a period of thirty (30) days after written notice thereof shall have been given to the Borrower and the Investor Member by the Issuer or the Trustee, or for such longer period as the Issuer and the Trustee may agree to in writing; provided, that if the failure is other than the

payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the Borrower institutes curative action within the applicable period and diligently pursues that action to completion, which must be resolved within 180 days after the aforementioned notice;

(c) The Borrower shall: (i) admit in writing its inability to pay its debts generally as they become due; (ii) have an order for relief entered in any case commenced by or against it under the federal bankruptcy laws, as now or hereafter in effect, which is not dismissed within ninety (90) days; (iii) commence a proceeding under any other federal or state bankruptcy, insolvency, reorganization or similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for ninety days; (iv) make an assignment for the benefit of creditors; or (v) have a receiver or trustee appointed for it or for the whole or any substantial part of its property which appointment is not vacated within a period of ninety (90) days;

(d) Any representation or warranty made by the Borrower herein or any statement in any report, certificate, financial statement or other instrument furnished in connection with this Agreement or with the purchase of the Bonds shall at any time prove to have been false or misleading in any adverse material respect when made or given; and

(e) There shall occur an “Event of Default” (as defined in the Indenture) by the Borrower or an event of default beyond applicable notice and cure periods under the Bond Regulatory Agreement.

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, the Borrower shall not be deemed in default during the continuance of such inability. However, the Borrower shall promptly give notice to the Trustee and the Issuer of the existence of an event of Force Majeure and shall use commercially reasonable efforts to remove the effects thereof; provided that the settlement of strikes or other industrial disturbances shall be entirely within its discretion.

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

(i) acts of God; strikes, lockouts or other industrial disturbances; acts of terrorism or 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; pandemics; 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 subsisting, any one or more of the following remedial steps may be taken:

(a) If acceleration of the principal amount of the Bonds has been declared pursuant to Section 6.03 of the Indenture, the Trustee shall declare all Loan Payments to be due and payable together until any other amounts payable by the Borrower under this Agreement and the Note whereupon the same shall become immediately due and payable;

(b) The Trustee may exercise any or all or any combination of the remedies specified in this Agreement or any other Financing Document;

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

(d) The Issuer or the Trustee 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 Bond Regulatory 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, neither the Issuer nor the Trustee shall 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 or the Trustee at no cost or expense to the Issuer or the Trustee. Any amounts collected as Loan Payments or applicable to Loan Payment and any other amounts which would be applicable to payment of Bond Service Charges collected pursuant to action taken under this Section shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture or, if the Outstanding Bonds have been paid and discharged in accordance with the provisions of the Indenture, shall be paid as provided in Section 4.15 of the Indenture for transfers of remaining amounts in the Bond Fund.

The provisions of this Section are subject to the further limitation that the rescission by the Trustee of its declaration that all 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 remedy conferred upon or reserved to the Issuer or the Trustee by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, the Bond Regulatory Agreement or the Note, or

now or hereafter existing at law, in equity or by statute. 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 Trustee 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 Trustee should incur expenses, including reasonable attorneys' fees and expenses, in connection with the enforcement of this Agreement, the Bond Regulatory Agreement or the Note or the collection of sums due thereunder, the Borrower shall reimburse the Issuer and the Trustee, as applicable, for the expenses so incurred upon demand.

Section 7.5. No Waiver. No failure by the Issuer or the Trustee 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. The Borrower shall notify the Trustee and the Issuer promptly in writing 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. Investor Member's Cure Rights. The Issuer hereby agrees that any cure of any Event of Default hereunder made or tendered by the Investor Member shall be deemed to be cure by the Borrower, and shall be accepted or rejected by the Issuer on the same basis as if made or tendered by the Borrower.

## **ARTICLE VIII**

### **MISCELLANEOUS**

Section 8.1. 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) pursuant to the Indenture 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 3.12, 4.4, 5.3, and 7.4 hereof, which shall survive any termination of this Agreement.

Section 8.2. Amounts Remaining in Funds. Subject to any applicable escheat laws, any amounts in the Bond Fund remaining unclaimed by the Holders of Bonds for four (4) years after the due date thereof (whether at stated maturity or otherwise), at the option of the Borrower, shall be deemed to belong to and shall be paid, at the written request of the Borrower, to the Borrower by the Trustee as overpayment of Loan Payments. With respect to that principal of and interest on the Bonds to be paid from money paid to the Borrower pursuant to the preceding sentence, the Holders of the Bonds entitled to such money shall look solely to the Borrower for

the payment of such money. Further, any amounts remaining in the Bond Fund, the Project Fund and any other Special Funds or accounts created under this Agreement, the Bond Regulatory Agreement or the Indenture (except for the Permanent Loan Fund) after all of the Outstanding Bonds shall be deemed to have been paid and discharged under the provisions of the Indenture and all other amounts required to be paid under this Agreement, the Note, the Bond Regulatory Agreement and the Indenture have been paid, shall, subject to Section 4.15 of the Indenture, be paid to the Borrower to the extent that such moneys are in excess of the amounts necessary to effect the payment and discharge of the Outstanding Bonds.

Section 8.3. Notices. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified 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 Member, the Permanent Lender or the Trustee shall also be given to the others. The Borrower, the Issuer, the Permanent Lender, Investor Member and the Trustee, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent. Notices given to the Trustee shall be subject to Section 5.02(n) of the Indenture.

Section 8.4. Extent of Covenants of the Issuer; No Personal Liability. All covenants, obligations and agreements of the Issuer contained in this Agreement and the Indenture 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 officer, director, agent or employee of the Issuer in other than his official capacity, and no officer, director, agent or employee of the Issuer 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 or in the Indenture.

Section 8.5. Limited Liability of the Issuer. All obligations of the Issuer incurred under the Indenture or in connection with the issuance of the Bonds shall be limited obligations of the Issuer, payable solely and only from Bond proceeds, Revenues and other amounts derived by the Issuer from the Trust Estate. The Bonds shall be payable solely from the Revenues and other funds and property pledged under the Indenture for the payment of the Bonds, and no owner or owners of any of the Bonds shall ever have the right to compel any exercise of the taxing power of the State or any political subdivision or other public body thereof, nor to enforce the payment thereof against any property of the State or any such political subdivision or other public body, including the Issuer except as provided in the Indenture.

No commissioner, officer, agent, representative, director, employee or attorney of the Issuer, including any person executing this Agreement, shall be liable personally hereunder or for any reason relating to the issuance of the Bonds. No recourse shall be had for the payment of the principal of or the interest on the Bonds, or for any claim based therein, or otherwise in respect thereof, or based on or in respect of this Agreement or any amendment hereto, against any officer, employee, director, agent or attorney, as such, of the Issuer or any successor whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or

penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue of the Bonds, expressly waived and released.

It is expressly understood and agreed by the parties to this Agreement that:

(a) The Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by the Trustee, the Borrower, any Bondholder or the Owner as to the existence of a fact or state of affairs required hereunder to be noticed by the Issuer.

(b) The Issuer shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Trustee or the Borrower.

(c) None of the provisions of this Agreement shall require the Issuer to expend or risk its own funds (apart from the proceeds of Bonds issued under the Indenture) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Agreement, unless it shall first have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred thereby.

Section 8.6. Limited Liability of Borrower. Anything in this Agreement to the contrary notwithstanding, the monetary obligations of the Borrower contained in this Agreement (except for fees, payments and indemnification under Sections 3.12, 4.4, 5.3 and 7.4 hereof) shall be limited obligations payable solely from the income and assets of the Project and neither the Borrower nor any partner, Investor Member, manager, member, director, official or officer of the Borrower shall have any personal liability for the satisfaction of any obligation of the Borrower or claim against the Borrower, arising out of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, neither the Issuer nor the Trustee may assert any claim arising hereunder against the Borrower's interest in the Project, any reserve or deposit made with the Permanent Lender or with any other entity that is required by USDA in connection with the WVHDF RD 538 Mortgage Loan, or in the rents or other income of the Project for the payment of any charge due hereunder.

Section 8.7. Binding Effect. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Issuer, the Borrower, the Trustee and their respective permitted successors and assigns provided that this Agreement may not be assigned by the Borrower (except in connection with a sale or transfer of assets pursuant to Section 5.2 hereof) and may not be assigned by the Issuer except to the Trustee pursuant to the Indenture 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 8.8. Amendments and Supplements. Except as otherwise expressly provided in this Agreement or the Indenture, subsequent to the issuance of the Bonds and prior to all conditions provided for in the Indenture for release of the Indenture having been met, this Agreement, the Bond Regulatory Agreement and the Note may not be effectively amended,

changed, modified, altered or terminated except in accordance with the provisions of Article X of the Indenture, as applicable.

Section 8.9. 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 8.10. Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court 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 8.11. 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, without regard to conflicts of laws principles.

[Remainder of Page Intentionally Left Blank]

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

**WEST VIRGINIA HOUSING  
DEVELOPMENT FUND**

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

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Assistant Secretary

[Issuer Signature Page to Loan Agreement]

**EPD2 FMA, LP**  
a West Virginia limited partnership

By:

By:

By: \_\_\_\_\_  
Authorized Signatory

[Borrower Signature Page to Loan Agreement]

**EXHIBIT A**  
**FORM OF NOTE**

This Note has not been registered under the Securities Act of 1933. Its transferability is restricted by the Trust Indenture and the Loan Agreement referred to herein.

\$5,500,000

September \_\_, 2024

EPD2 FMA, LP, a West Virginia limited partnership (the “**Borrower**”), for value received, promises to pay in installments to the West Virginia Housing Development Fund (the “**Issuer**”), the principal amount of

FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000)

and to pay interest on the unpaid balance of such principal sum from and after the date hereof at the rate or rates set forth in the Bonds (as defined below), until the payment of such principal sum has been made or provided for, and to pay the other amounts owing from time to time hereunder, all as set forth below. Interest shall be calculated on the basis of a 360-day year of twelve 30-day months. Interest on this Note shall be paid in Federal Reserve funds on each Interest Payment Date set forth in the Bonds.

This Note has been executed and delivered by the Borrower to UMB Bank, N.A., as Trustee (the “**Trustee**”) under the Indenture hereinafter referred to, pursuant to a certain Loan Agreement (the “**Loan Agreement**”), dated as of September 1, 2024, between the Issuer and the Borrower. Terms used but not otherwise defined herein shall have the respective meanings ascribed thereto in the Loan Agreement or the below-defined Indenture, as applicable.

Under the Loan Agreement, the Issuer has loaned the Borrower the principal proceeds received from the sale of the Issuer’s \$5,500,000 Multifamily Housing Revenue Bonds, Series 2024 (Franklin Manor) (the “**Bonds**”) to assist in the financing of the Project, and the Borrower has agreed to repay such loan by making payments (“**Loan Payments**”) at the times and in the amounts set forth in this Note for application to the payment of Bond Service Charges on the Bonds as and when due. The Bonds have been issued, concurrently with the execution and delivery of this Note, pursuant to, and are secured by, the Trust Indenture (the “**Indenture**”), dated as of September 1, 2024, between the Issuer and the Trustee.

To provide funds to pay the principal of and interest on the Bonds as and when due as specified herein, the Borrower hereby agrees to and shall make Loan Payments in Federal Reserve funds on each Interest Payment Date in an amount equal to the Bond Service Charges on the Bonds payable on such Interest Payment Date. 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 in Federal Reserve funds on any other date on which any Bond Service Charges on the Bonds shall be due and payable, whether at maturity, upon acceleration or otherwise, in an amount equal to those Bond Service Charges.

If payment or provision for payment in accordance with the Indenture is made in respect of the Bond Service Charges on the Bonds from money other than Loan Payments, this Note shall be deemed paid to the extent such payments or provision for payment of Bonds has been

made. Consistent with the provisions of the immediately preceding sentence, the Borrower shall have credited against its obligation to make Loan Payments any amounts transferred from the Project Fund or the Collateral Fund to the Bond Fund. Subject to the foregoing, all Loan Payments shall be in the full amount required hereunder.

All Loan Payments shall be made to the Trustee at its Designated Office for the account of the Issuer and deposited in the Bond Fund created by the Indenture. Except as otherwise provided in the Indenture, the Loan Payments shall be used by the Trustee to pay the Bond Service Charges on the Bonds as and when due.

In addition to the principal and interest payments required under the Loan Agreement, the Borrower shall also pay rebate calculations and payments under Section 3.12 of the Loan Agreement, Additional Payments under Section 4.4 of the Loan Agreement, indemnification-related payments under Section 5.3 of the Loan Agreement, other fees and expenses under Section 7.4 of the Loan Agreement, as well as any other amounts owed under the Loan Agreement, when due and in accordance with the terms and provisions and subject to the limitations set forth therein.

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 Trustee or any other person.

This Note is subject to prepayment, in whole or in part, upon the terms and conditions set forth in Article VI of the Loan Agreement. Any prepayment is subject to satisfaction of any applicable notice, deposit or other requirements set forth in the Agreement or the Indenture.

Whenever an Event of Default under Section 6.01 of the Indenture shall have occurred and, as a result thereof, the principal of and any premium on all Bonds then Outstanding, and interest accrued thereon, shall have been declared to be immediately due and payable pursuant to Section 6.03 of the Indenture, the unpaid principal amount of and any premium and accrued interest on this Note shall also be due and payable in Federal Reserve funds 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.

The payment obligations of this Note are non-recourse to the Borrower to the extent set forth in Section 8.6 of the Loan Agreement.

Notwithstanding other provisions in the Loan Agreement, and so long as USDA or a successor or assign of USDA is the insurer or holder of the W VHDF RD 538 Note, no obligation of the Borrower under the Loan Agreement shall be payable except from “non-Project sources,” which are funds not derived from: (i) revenues of the Project or (ii) any USDA-required reserve or deposit in connection with the W VHDF RD 538 Mortgage Loan. Enforcement of the covenants in the Loan Agreement will not result in, and none of the Issuer, the Trustee or the Bondholder has or shall be entitled to assert, any claim against the Project, any USDA-required reserves or deposits in connection with the W VHDF RD 538 Mortgage Loan, the proceeds of the

WVHDF RD 538 Note, the assets of the Borrower, or rents, deposits or other income of the Project, except from “non-Project Sources”.

*(Remainder of page intentionally left blank)*

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

**FRANKLIN MANOR**  
a West Virginia limited partnership

By:

By:

By: \_\_\_\_\_  
Authorized Signatory

## ENDORSEMENT

Pay to the order of UMB Bank, N.A., without recourse, as Trustee under the Indenture referred to in the within mentioned Note, as security for the Bonds issued under the Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

### WEST VIRGINIA HOUSING DEVELOPMENT FUND

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

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Assistant Secretary

Dated: September \_\_, 2024

## EXHIBIT B

### FORM OF DISBURSEMENT REQUEST

STATEMENT NO. \_\_\_\_\_ REQUESTING DISBURSEMENT OF FUNDS FROM  
PROJECT FUND PURSUANT TO SECTION 3.6 OF THE LOAN AGREEMENT

Pursuant to Section 3.6 of the Loan Agreement (the “**Loan Agreement**”) between the West Virginia Housing Development Fund (the “**Issuer**”) and EPD2 FMA, LP, a West Virginia limited partnership (the “**Borrower**”) dated as of September 1, 2024, the undersigned Authorized Borrower Representative hereby requests and authorizes UMB Bank, N.A. as Trustee (the “**Trustee**”), as depositary of the Project Fund created under the Trust Indenture between the Issuer and the Trustee dated as of September 1, 2024 (the “**Indenture**”), to make a disbursement out of the money deposited in the Project Fund.

Disbursement is subject to the following conditions:

- (1) The amount of this disbursement shall be \$\_\_\_\_\_.
- (2) The expected disbursement date is \_\_\_\_\_[date of disbursement]\_\_\_\_\_.

(3) The disbursement is conditioned on the transfer by the Trustee, pursuant to a requisition from the Permanent Lender, from the Permanent Loan Fund to the Collateral Fund of an amount of immediately available funds equal to the amount of the requested disbursement:

_____ WVHDF 538 RD Lender (from the Permanent Loan Fund)	Amount: \$_____
_____ ERA2 Lender (from the Permanent Loan Fund)	Amount: \$_____

(4) The disbursement shall be made in the amounts, for the purpose(s), to the party(s), and in accordance with the wire instructions for each payee set forth on Schedule 1 hereto.

In connection with the foregoing request and authorization, the undersigned Authorized Borrower Representative hereby certifies that:

(a) Each item for which disbursement is requested hereunder is properly payable out of the Project Fund in accordance with the terms and conditions of the Loan Agreement and none of those items has formed the basis for any disbursement heretofore made from said Project Fund.

(b) Each such item is or was necessary in connection with the acquisition, rehabilitation, installation, equipment or improvement of the Project, as defined in the Indenture.

(c) Each item for which disbursement is requested hereunder, and the cost for each such item, is as described in the information statement filed by the Issuer in connection with the issuance of the Bonds (as defined in the Indenture), as required by Section 149(e) of the Code; provided that if any such item is not as described in that information statement, attached hereto is an Opinion of Bond Counsel to the effect that such disbursement will not adversely affect the Federal Tax Status of the Bonds.

(d) There is no current or existing event of default pursuant to the terms of the Loan Agreement or the Bond Regulatory Agreement and no event exists that by notice or passage of time or both would constitute an event of default under any of the foregoing documents.

(e) No amount for which disbursement is sought formed the basis for any prior disbursement.

(f) Each item for which disbursement is sought was or is necessary in connection with the Project and qualifies for disbursement pursuant to the provisions of the Loan Agreement.

(g) No representation or warranty of the Borrower contained in the Loan Agreement or the Bond Regulatory Agreement is materially incorrect or inaccurate, and there has been no event of default under the terms of any of those documents and no event shall exist which by notice, passage of time or both would constitute an event of default under any of those documents.

(h) This statement shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the Trustee for its actions taken pursuant hereto.

(i) No Determination of Taxability (as defined in the Indenture) has occurred with respect to the Bonds.

This statement constitutes the approval of the Borrower of each disbursement hereby requested and authorized.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: Authorized Borrower Representative

\_\_\_\_\_

Lender Approval(s):

The foregoing Disbursement Request is hereby acknowledged and approved by:

WEST VIRGINIA HOUSING DEVELOPMENT  
FUND, as WVHDF 538 RD Lender and/or ERA2  
Lender, as applicable

By: \_\_\_\_\_  
Its: Authorized Officer

**Schedule 1**

<b><u>Purpose</u></b>	<b><u>Amount</u></b>	<b><u>Payee</u></b>	<b><u>Payee Wire Instructions</u></b>
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**EXHIBIT C**

**\$5,500,000**

**West Virginia Housing Development Fund  
Multifamily Housing Revenue Bonds, Series 2024  
(Franklin Manor)**

**COMPLETION CERTIFICATE**

Pursuant to Section 3.9 of the Loan Agreement (the “**Loan Agreement**”) between the West Virginia Housing Development Fund (the “**Issuer**”) and EPD2 FMA, LP a West Virginia limited partnership (the “**Borrower**”) dated as of September 1, 2024, and relating to the captioned Bonds, the undersigned Authorized Borrower hereby certifies that (with capitalized words and terms used and not defined in this Certificate having the meanings assigned or referenced in the Loan Agreement):

(a) The rehabilitation of the Project was substantially completed and available and suitable for use as multifamily housing on [insert completion date], such date being the completion date of the Franklin Manor Apartments Development.

(b) The acquisition, rehabilitation, equipping and improvement 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.

(c) The costs of the Project financed with the Loan were \$\_\_\_\_\_.

(d) The applicable Government having jurisdiction over the Project has issued all required certificates of occupancy with respect to each building in the Project.

(e) At least 95% of the proceeds of the Bonds were expended for qualified Project costs as described in the Tax Certificate and Agreement.

(f) This Certificate is given without prejudice to any rights against third parties that now exist or subsequently may come into being.

IN WITNESS WHEREOF, the Authorized Borrower Representative has set his or her hand as of the \_\_\_\_ day of \_\_\_\_\_.

Authorized Borrower Representative

\_\_\_\_\_

# **EXHIBIT D** **SOURCES AND USES**

## **Sources of Funds**

Bond Proceeds	\$[chart entries to come]
WVHDF RD 538 Mortgage Loan	
ERA2 Loan	
Tax Credit Equity	
Transferred Reserves	
Operations Income	
Deferred Developer Fee	
<b>Total</b>	<b>\$</b>

## **Uses of Funds**

Acquisition Costs	\$
Construction Costs	
Soft Costs	
Reserves	
Costs of Issuance	
Carrying Costs	
Developer Fee	
Payment of Bond Principal	
<b>Total</b>	<b>\$</b>

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**BOND PURCHASE AGREEMENT**

Dated September \_\_, 2024

by and among

**STIFEL, NICOLAUS & COMPANY, INCORPORATED,**

**WEST VIRGINIA HOUSING DEVELOPMENT FUND**

and

**EPD2 FMA, LP**

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Relating to:

**\$5,100,000**

**West Virginia Housing Development Fund  
Multifamily Housing Revenue Bonds, Series 2024  
(Franklin Manor)**

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## TABLE OF CONTENTS

	Page
Section 1. Definitions and Background. ....	1
Section 2. Purchase and Sale. ....	1
Section 3. Issue Price. ....	2
Section 4. Closing. ....	2
Section 5. Official Statement; Disclosure Matters. ....	2
Section 6. Representations of the Issuer. ....	5
Section 7. Representations and Warranties of the Borrower. ....	6
Section 8. Covenants of the Issuer. ....	8
Section 9. Covenants of the Borrower. ....	9
Section 10. Conditions of Closing. ....	10
Section 11. Actions and Events at the Closing. ....	13
Section 12. Termination of Agreement. ....	14
Section 13. Fees and Expenses. ....	15
Section 14. Indemnification. ....	16
Section 15. Limitation of Liability. ....	18
Section 16. Miscellaneous. ....	18
Section 17. Survival of Certain Representations and Obligations. ....	19
Section 18. Prohibition on Boycotts. ....	19
EXHIBIT A TERMS OF BONDS .....	A-1
EXHIBIT B PROPOSED FORM OF SUPPLEMENTAL OPINION OF BOND COUNSEL .....	B-1
EXHIBIT C FORM OF OPINION OF COUNSEL TO THE BORROWER .....	C-1
EXHIBIT D FORM OF BORROWER’S RULE 15c2-12 CERTIFICATE .....	D-1
EXHIBIT E FORM OF ISSUE PRICE CERTIFICATE .....	E-1

## **BOND PURCHASE AGREEMENT**

Stifel, Nicolaus & Company, Incorporated (the “*Underwriter*”), on its own behalf and not as your fiduciary, hereby offers to enter into this Bond Purchase Agreement dated September \_\_, 2024 (this “*Purchase Contract*”) with the West Virginia Housing Development Fund (together with its successors and assigns, the “*Issuer*”) and EPD2 FMA, LP, a West Virginia limited partnership (the “*Borrower*”), for the sale by the Issuer and the purchase by the Underwriter of the Bonds defined below which are being issued by the Issuer for the benefit of the Borrower. The Underwriter is an “underwriter” as defined in Section 2(a)(11) of the Securities Act of 1933, as amended (the “*1933 Act*”). This offer is made subject to the written acceptance hereof by the Issuer and the Borrower and delivery of such acceptance (in the form of one or more counterparts hereof) at or prior to 5:00 p.m., Eastern Time, on the date hereof, and will expire if not so accepted at or prior to such time (or such later time as the Underwriter may agree in writing). Upon such acceptance, this Purchase Contract will be binding upon each of the Issuer, the Borrower and the Underwriter.

### **Section 1. Definitions and Background.**

1.1 Capitalized terms used in this Purchase Contract but not defined herein have the meanings assigned to them in the Trust Indenture by and between the Issuer and UMB Bank, N.A., a national banking association (the “*Trustee*”) dated as of September 1, 2024 (the “*Indenture*”).

1.2 This Purchase Contract is for the sale and delivery of the Issuer’s Multifamily Housing Revenue Bonds, Series 2024 (Franklin Manor) (the “*Bonds*”) which are being issued by the Issuer to provide financing for the Project. The Bonds will be issued pursuant to (i) that certain resolution of the Issuer adopted August 28, 2024 (the “*Bond Resolution*”), (ii) the West Virginia Housing Development Fund Act, constituting Article 18 of Chapter 31 of the Code of West Virginia, 1931, as amended (the “*Act*”), and (iii) the terms of the Indenture. The Bonds will be payable from sources pledged under the Indenture, including the moneys and securities from time to time held by the Trustee in the funds and accounts established under the terms of the Indenture (collectively, the “*Trust Estate*”). In connection with the issuance of the Bonds, the Issuer will execute and deliver this Purchase Contract; the Indenture; the Loan Agreement by and between the Issuer and the Borrower (the “*Loan Agreement*”) dated as of September 1, 2024; the Tax Certificate and Agreement, made and executed by the Issuer and the Borrower, dated as of the Closing Date (the “*Tax Certificate and Agreement*”); and the Regulatory Agreement, by and among the Issuer, the Borrower and the Trustee, effective as of the Closing Date (the “*Bond Regulatory Agreement*”) (collectively, the “*Issuer Documents*”); and the Borrower will execute and deliver this Purchase Contract, the Loan Agreement, the Continuing Disclosure Agreement, the Remarketing Agreement, the Tax Certificate and Agreement, and the Bond Regulatory Agreement (collectively, the “*Borrower Documents*”). The Issuer Documents and the Borrower Documents are collectively referred to herein as the “*Financing Documents*.”

### **Section 2. Purchase and Sale.**

2.1 Subject to the terms and conditions set forth in this Purchase Contract, the Underwriter hereby agrees to purchase from the Issuer and the Issuer hereby agrees to sell to the Underwriter, at the Closing (as hereafter defined), \$5,100,000 aggregate principal amount of its Bonds at a price set forth in Exhibit A attached hereto.

2.2 The Bonds will (i) be issued pursuant to the Indenture and (ii) have the payment related terms (that is, the dated date, maturity date, interest rate and price) set forth in Exhibit A attached hereto, and will otherwise correspond to the description thereof contained in the hereinafter-defined Official Statement.

2.3 The Issuer, the Borrower and the Underwriter each acknowledges and agrees that (i) the purchase and sale of the Bonds pursuant to this Purchase Contract is an arm's-length commercial transaction among the Issuer, the Borrower and the Underwriter, (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriter is and has been acting solely as a principal and is not acting as the agent, municipal advisor, financial advisor, or fiduciary of the Issuer or the Borrower, (iii) the Underwriter has not assumed individually or collectively any advisory or fiduciary responsibility in favor of the Issuer or the Borrower with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has advised or provided other services or is currently advising or providing other services to the Issuer or the Borrower on other matters) and the Underwriter has no contractual obligation to the Issuer or the Borrower with respect to the offering contemplated hereby except the obligations expressly set forth in this Purchase Contract, and (iv) the Issuer and the Borrower have consulted their own legal, financial, accounting, tax and other advisors to the extent they deem appropriate in connection with the offering of the Bonds. The primary role of the Underwriter is to purchase the Bonds for resale to investors in an arm's-length commercial transaction among the Issuer, the Borrower and the Underwriter. The Underwriter has financial and other interests that differ from those of the Issuer. Nothing in the foregoing paragraph is intended to limit the Underwriter's obligations of fair dealing under MSRB Rule G-17.

### **Section 3. Issue Price.**

The Underwriter will provide to the Issuer an executed Issue Price Certificate dated the Closing Date (as defined herein) in the form attached as Exhibit E hereto or other form reasonably required by Bond Counsel in order to establish the issue price of the Bonds.

The Underwriter reserves the right to change such prices as it deems necessary in connection with the offering of the Bonds. Concessions from the public offering price may be allowed to selected dealers and special purchasers. The Borrower authorizes the Underwriter to complete the supplement to the Official Statement to insert the reoffering price for the Bonds selected by the Underwriter in its complete discretion.

### **Section 4. Closing.**

Subject to the terms and conditions hereof, the delivery of the Bonds and the payment of the purchase price of the Bonds as set forth in Exhibit A hereof (the "*Closing*") will take place at 10:00 a.m. Eastern Time on September \_\_, 2024, or at such other time or on such other date mutually agreed upon by the Issuer, the Borrower and the Underwriter, which date shall be referred to herein as the "*Closing Date*."

### **Section 5. Official Statement; Disclosure Matters.**

5.1 The Issuer and the Borrower each hereby (a) confirms its consent to the use by the Underwriter of the Preliminary Official Statement dated September \_\_, 2024, relating to the Bonds (the "*Preliminary Official Statement*") in the marketing of the Bonds and (b) authorizes the Underwriter to prepare, use and distribute (at the expense of the Borrower) the Official Statement dated September \_\_, 2024, relating to the Bonds (the "*Official Statement*") in final form in connection with the offering and sale of the Bonds.

5.2 The Issuer and the Borrower each agrees to the extent required and permitted by applicable law to cooperate (at the sole cost and expense of the Borrower) with the Underwriter so as to enable the Underwriter to comply with the requirements of Rule 15c2-12 ("*Rule 15c2-12*") under the Securities Exchange Act of 1934, as amended (the "*1934 Act*"), and any other rules of the Securities and Exchange

Commission (the “SEC”) and the Municipal Securities Rulemaking Board (the “MSRB”), in connection with the offer and sale of the Bonds.

5.3 The Issuer and the Borrower hereby make the following representations in subsection (a) and (b) respectively:

(a) The Issuer hereby certifies and agrees that the information in the Preliminary Official Statement as of its date and the Official Statement under the captions “THE ISSUER” and “ABSENCE OF LITIGATION – The Issuer” has been “deemed final” by the Issuer as of its date, except for final information as to the offering prices, interest rates, selling compensation, amount of proceeds, delivery dates, other terms depending on such factors, and other information permitted to be omitted under part (b)(1) of Rule 15c2-12.

(b) The Borrower hereby certifies and agrees that the Preliminary Official Statement and the Official Statement have been “deemed final” by the Borrower as of their dates, except for final information as to the offering prices, interest rates, selling compensation, amount of proceeds, delivery dates, other terms depending on such factors, and other information permitted to be omitted under part (b)(1) of Rule 15c2-12.

5.4 The Issuer and the Borrower hereby make the following representations in subsection (a) and (b), respectively:

(a) The Issuer hereby represents that the information in the Preliminary Official Statement, as of its date, and the Official Statement, as of its date and the Closing Date, under the captions “THE ISSUER” and “ABSENCE OF LITIGATION – The Issuer” is true and correct and does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(b) The Borrower hereby represents that the information in the Preliminary Official Statement, as of its date, and the Official Statement, as of its date and the Closing Date, is true and correct and does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

5.5 The Issuer and the Borrower will, at the expense of the Borrower, supply to the Underwriter the Official Statement, in such quantity as may be requested by the Underwriter no later than the earlier of (i) seven (7) business days after the date of this Purchase Contract or (ii) one (1) business day prior to the Closing Date, in order to permit the Underwriter to comply with Rule 15c2-12, and the applicable rules of the MSRB, with respect to distribution of the Official Statement. The Borrower shall provide to the Underwriter the Official Statement, including any amendments thereto, in word-searchable PDF format as described in the MSRB’s Rule G-32 no later than one (1) business day prior to the Closing Date to enable the Underwriter to comply with MSRB Rule G-32.

5.6 During the period commencing on the date of this Purchase Contract and ending on the earlier of (a) 90 days from the End of the Underwriting Period or (b) the time when the Official Statement is available to any person from the MSRB, but in no case less than 25 days following the End of the Underwriting Period (the “Update Period”), if any event shall occur which would cause the Official Statement to contain any untrue statement of a material fact or to omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading, and in the judgment of the Underwriter, such event requires the preparation and publication of

a supplement or amendment to the Official Statement, the Issuer (to the extent of the provisions referred to in Section 5.4(a) hereof) and the Borrower will, at the expense of the Borrower, prepare or cooperate in the preparation of such supplement or amendment to the Official Statement in a form approved by the Underwriter and furnish or cooperate in the furnishing to the Underwriter (at the sole expense of the Borrower) a reasonable number of copies of an amendment of, or a supplement to the Official Statement so that, as supplemented or amended, it will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading. If the Official Statement is so supplemented or amended prior to the Closing, the approval by the Underwriter of a supplement or amendment to the Official Statement shall not preclude the Underwriter from thereafter terminating this Purchase Contract in accordance with the provisions of Section 12(c) hereof. The “*End of the Underwriting Period*” means the later of the delivery of the Bonds by the Issuer to the Underwriter or when the Underwriter no longer retains (directly or as a syndicate member) an unsold balance of the Bonds for sale to the public; provided, that the “*End of the Underwriting Period*” shall be deemed to be the Closing Date, unless the Underwriter otherwise notifies the Issuer and the Borrower in writing prior to such date that there is an unsold balance of the Bonds, in which case the End of the Underwriting Period shall be deemed to be extended for 30 days. The deemed End of the Underwriting Period may be extended for two additional periods of 30 days each upon receipt of an additional written notification from the Underwriter containing the same information as required in the initial written notice.

5.7 If, during the Update Period, the Issuer becomes aware of any event relating to the information concerning the Issuer under the captions “THE ISSUER” and “ABSENCE OF LITIGATION – The Issuer” of the Official Statement which would cause such portions of the Official Statement to contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading, the Issuer will promptly notify the Underwriter of such event.

5.8 The Issuer shall promptly advise the Underwriter, during the Update Period, of any action, suit, proceeding, inquiry or investigation against the Issuer, of which the Issuer has actual knowledge, seeking to prohibit, restrain or otherwise affect the use of the Preliminary Official Statement or the Official Statement in connection with the offering, sale or distribution of the Bonds.

5.9 If, during the Update Period, the Borrower becomes aware of any event which would cause the Preliminary Official Statement or the Official Statement to contain any untrue statement of a material fact or to omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading, the Borrower will promptly notify the Underwriter and the Issuer of such event.

5.10 The Borrower shall promptly advise the Underwriter, during the Update Period, of any action, suit, proceeding, inquiry or investigation against the Borrower, of which they receive written or actual notice, seeking to prohibit, restrain or otherwise affect the use of the Preliminary Official Statement or the Official Statement in connection with the offering, sale or distribution of the Bonds.

5.11 The Borrower represents and warrants to the Underwriter and the Issuer that neither the Borrower nor any affiliates thereof are in default under any undertakings with respect to continuing disclosure requirements designed to comply with Rule 15c2-12 in connection with any issue of municipal securities.

## **Section 6. Representations of the Issuer.**

6.1 In addition to the representations contained in Section 5 herein, the Issuer hereby makes the following representations to the Underwriter:

(a) The Issuer is a public body corporate and governmental instrumentality of the State of West Virginia (the “State”), and has full power and authority under the Act to adopt the Bond Resolution and to enter into and to perform its obligations under the Issuer Documents; and when executed and delivered by the respective parties thereto, the Issuer Documents will constitute the legal, valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors’ rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitation on legal remedies against units of government of the State;

(b) By official action of the Issuer prior to or concurrently with the acceptance hereof, the Issuer has approved and authorized the distribution of the Preliminary Official Statement and the Official Statement and authorized and approved the execution and delivery of the Issuer Documents and the consummation by the Issuer of the transactions contemplated thereby;

(c) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending, or threatened against the Issuer seeking to restrain or enjoin the sale or issuance of the Bonds, or in any way contesting or affecting any proceedings of the Issuer taken concerning the sale thereof, the pledge or application of any moneys or security provided for the payment of the Bonds, in any way contesting the validity or enforceability of the Issuer Documents or contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or the existence or powers of the Issuer relating to the sale of the Bonds;

(d) The execution and delivery by the Issuer of the Issuer Documents and compliance with the provisions on the Issuer’s part contained therein will neither (i) conflict with or constitute a material breach of or default under any law, administrative regulation, judgment or decree to which the Issuer is subject, (ii) conflict with any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Issuer is a party or is otherwise subject, nor (iii) result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the Issuer under the terms of any such law, administrative regulation, judgment, decree, loan agreement, financing agreement, indenture, bond, security, note, resolution, agreement or other instrument, except as provided by the Issuer Documents;

(e) Except as may be required under Blue Sky or other securities laws of any state and for filings to be made with the Internal Revenue Service on Form 8038, to the Issuer’s knowledge, there is no consent, approval, authorization or other order of, or filing with, or certification by, any state court, or state or federal governmental agency, or public body of any state required for the execution and delivery of the Issuer Documents or the consummation by the Issuer of the transactions on its part contemplated herein or therein, which has not been duly obtained or made on or prior to the date hereof;

(f) Upon delivery of the Bonds, the Issuer will have good right, full power and lawful authority to pledge and assign the Trust Estate described in the Indenture to the Trustee as provided in the Indenture and the Bond Resolution;

(g) The Issuer has complied in all material respects with the Bond Resolution and the Issuer Documents; and

(h) The Bonds, when delivered in accordance with the Indenture and paid for by the Underwriter on the Closing Date as provided herein, will be validly issued and outstanding special, limited obligations of the Issuer entitled to all the benefits and security of the Indenture.

6.2 The execution and delivery of this Purchase Contract by the Issuer shall constitute a representation by the Issuer to the Underwriter that the representations and agreements contained in this Section are true as of the date hereof; provided, however, that as to information furnished by the Borrower pursuant to this Purchase Contract, the Issuer is relying solely on such information in making the Issuer's representations and agreements, and as to all matters of law the Issuer is relying on the advice of Bond Counsel; and provided further, that no member, officer, agent or employee of the Issuer shall be individually liable for the breach of any representation, or agreement contained herein.

6.3 It is understood that the representations and covenants of the Issuer contained in this Section 6 and elsewhere in this Purchase Contract shall not create any general obligation or liability of the Issuer, and that any obligation or liability of the Issuer hereunder or under the Issuer Documents is payable solely out of the Trust Estate established under the Indenture. It is further understood and agreed that the Issuer makes no representations, except as set forth in paragraph 5.4(a) above, as to the Official Statement, or as to (i) the financial condition, results of operation, business or prospects of the Borrower or the Project, (ii) any statements (financial or otherwise), representations, documents or certification provided or to be provided by the Borrower in connection with the offer or sale of the Bonds, or (iii) the correctness, completeness or accuracy of such statements, representations, documents or certifications.

## **Section 7. Representations and Warranties of the Borrower.**

7.1 In addition to the representations and warranties made in Section 5 herein, the Borrower hereby makes the following representations and warranties to the Underwriter and the Issuer, all of which will continue in effect subsequent to the purchase of the Bonds:

(a) The Borrower is a limited partnership duly organized and existing under and pursuant to the laws of the State and is qualified to own the Project and conduct its business in the State.

(b) The Borrower has, and as of the Closing Date will have, full legal right, power and authority to (i) execute and deliver the Borrower Documents, (ii) assist in the preparation, distribution and use of the Preliminary Official Statement and the Official Statement, and (iii) otherwise consummate the transactions contemplated by the Borrower Documents.

(c) The Borrower has duly authorized the (i) execution and delivery of the Borrower Documents, (ii) performance by the Borrower of the obligations contained in the Borrower Documents, (iii) preparation of the Preliminary Official Statement and the Official Statement, and (iv) consummation by the Borrower of all of the transactions contemplated by the Borrower Documents.

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

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

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

(g) There is no legal action, suit, proceeding, investigation or inquiry at law or in equity, before or by any court, agency, arbitrator, public board or body or other entity or person, pending or, to the best knowledge of the Borrower, threatened against or affecting the Borrower or any partner or member of the Borrower, in their respective capacities as such, nor, to the knowledge of the Borrower, any basis therefor, (i) which would restrain or enjoin the issuance or delivery of the Bonds, the use of the Preliminary Official Statement or the Official Statement in the marketing of the Bonds or the collection of revenues pledged under or pursuant to the Borrower Documents or (ii) which would in any way contest or affect the organization or existence of the Borrower or the entitlement of any officer of the Borrower to its position or (iii) which would contest or have a material and adverse effect upon (A) the due performance by the Borrower of the transactions contemplated by the Preliminary Official Statement, the Official Statement or the Borrower Documents, (B) the validity or enforceability of the Bonds, the Borrower Documents or any other agreement or instrument to which the Borrower is a party and that is used or contemplated for use in the consummation of the transactions contemplated hereby and thereby, (C) the exclusion from gross income for federal income tax purposes of the interest on the Bonds or (D) the financial condition or operations of the Borrower, (iv) which contests in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or (v) which questions the power or authority of the Borrower to carry out the transactions on its part contemplated by the Preliminary Official Statement, the Official Statement and the Borrower Documents, or the power of the Borrower to own or operate the Project. The Borrower is not subject to any judgment, decree or order entered in any lawsuit or proceeding brought against it that would have such an effect.

(h) On the Closing Date, the Borrower shall not have granted any interests in or rights or options to sell the Bonds to any other party.

(i) All permits (including building permits), licenses and authorizations necessary for the ownership and operation of its Project in the manner contemplated by the Preliminary Official Statement, the Official Statement and each of the Borrower Documents have been obtained or will be obtained, and said ownership and operation are not in conflict with any zoning or similar ordinance applicable to the Project. The Project conforms to all material environmental regulations.

(j) None of the Borrower, any guarantor of the Borrower or any “related person” to the Borrower within the meaning of Section 147 of the Code has acquired or shall acquire, pursuant to any arrangement, formal or informal, any Bonds.

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

(l) On the Closing Date, each of the representations and warranties of the Borrower contained in the Borrower Documents and all other documents executed by the Borrower in connection with the Bonds shall be true, correct and complete in all material respects.

(m) As of the Closing Date, the Borrower will not be in material default under any document, instrument or commitment to which the Borrower is a party or to which any of its property is subject which default would or could reasonably be expected to adversely affect the ability of the Borrower to carry out its obligations under the Borrower Documents. As of the Closing Date, the Borrower will be in compliance with all of its obligations under the Bond Regulatory Agreement.

(n) The Borrower is in compliance with all of its prior continuing disclosure undertakings entered into pursuant to Rule 15c2-12, if any.

7.2 Each of the representations and warranties set forth in this Section 7 will survive the Closing.

7.3 Any certificate signed by any officer of the Borrower and delivered to the Underwriter in connection with the delivery of the Bonds will be deemed to be a representation and warranty by the Borrower to the Underwriter as to the statements made therein.

## **Section 8. Covenants of the Issuer.**

The Issuer hereby makes the following covenants with the Underwriter:

(a) Prior to the Closing, the Issuer will not supplement or amend the Official Statement or cause the Official Statement to be supplemented or amended without providing reasonable notice of such proposed supplement or amendment to the Underwriter. Neither the receipt by the Underwriter of notice of a proposed supplement or amendment nor the consent by the Underwriter to such supplement or amendment shall abrogate the Underwriter’s rights under Section 12(c) hereof.

(b) Prior to the Closing, the Issuer will not amend, terminate or rescind, and will not agree to any amendment, termination or rescission of the Issuer Documents without the prior written consent of the Underwriter.

(c) Prior to the Closing, except as provided in the Issuer Documents, the Issuer will not create, assume or guarantee any indebtedness payable from, or pledge or otherwise encumber, the revenues, assets, properties, funds or interests which will be pledged pursuant to the Indenture, including, without limitation, the Bonds or the Issuer Documents.

(d) The Issuer will not take any action which will in any way cause the proceeds of the Bonds to be applied in a manner other than as provided in the Indenture and described in the

Official Statement or which would cause the interest on the Bonds to be includable in the gross income of the holders thereof for federal income tax purposes.

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

(f) The Issuer will reasonably cooperate with the Underwriter upon request, without cost to the Issuer, in the qualification of the Bonds for offering and sale and the determination of their eligibility for investment under the laws of such jurisdictions as the Underwriter may designate; provided that the foregoing shall not require the Issuer to expend its own funds, execute a general or special consent to service of process or to qualify as a foreign corporation in connection with such qualification in any foreign jurisdiction.

(g) The Issuer will not adopt any amendment of or supplement to the Official Statement to which, after having been furnished a copy, the Underwriter shall reasonably object in writing and if any event relating to or affecting the Issuer or the Borrower shall occur as a result of which it is necessary, in the opinion of the Underwriter, to amend or supplement the Official Statement in order to make the Official Statement so that it does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, the Issuer shall cause to be forthwith prepared and furnished (at the sole expense of the Borrower) to the Underwriter a reasonable number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Underwriter) that will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

#### **Section 9. Covenants of the Borrower.**

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

(a) The Borrower will not supplement or amend the Official Statement or cause the Official Statement to be supplemented or amended without providing reasonable notice of such proposed supplement or amendment to the Underwriter and the Issuer. It is understood pursuant to Section 12(c) that, in the event there arises an event or condition which, in the reasonable judgment of the Underwriter, requires the Official Statement to be amended or supplemented or has a material and adverse effect upon the marketability of the Bonds or the ability of the Underwriter to enforce contracts for the sale of the Bonds, the Underwriter shall have the right, pursuant to Section 12(c) hereof, to terminate this Purchase Contract without liability. Neither the receipt by the Underwriter of notice of a proposed supplement or amendment nor the consent by the Underwriter to such supplement or amendment shall abrogate the Underwriter's rights under Section 12(c) hereof.

(b) The Borrower will not adopt any amendment of or supplement to the Official Statement to which, after having been furnished a copy, the Underwriter shall reasonably object in writing and if any event relating to or affecting the Issuer or the Borrower shall occur as a result of which it is necessary, in the opinion of the Underwriter, to amend or supplement the Official Statement in order to make the Official Statement not misleading in light of the circumstances existing at the time it is delivered to the Underwriter, the Borrower shall cause to be forthwith prepared and furnished (at the sole expense of the Borrower) to the Underwriter a reasonable

number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Issuer and the Underwriter) that will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(c) Prior to the Closing, the Borrower will not amend, terminate or rescind, and will not agree to any amendment, termination or rescission of the Borrower Documents without the prior written consent of the Underwriter.

(d) Prior to the Closing, the Borrower will not create, assume or guarantee any indebtedness payable from, or pledge or otherwise encumber, the revenues, assets, properties, funds or interests which will be pledged pursuant to the Indenture, including, without limitation, the Bonds or the Financing Documents.

(e) The Borrower will cooperate with the Issuer to cause the Bonds to be delivered to the address and at the time specified by the Underwriter in conjunction with the Closing.

(f) The Borrower will not take or omit to take any action which will in any way cause the proceeds of the Bonds, or other moneys on deposit in any fund or account in connection with the Bonds, to be applied in a manner other than as provided in the Indenture and described in the Preliminary Official Statement or the Official Statement and will not take or omit to take any action which would cause the interest on the Bonds to be includable in the gross income of the holders thereof for federal income tax purposes.

(g) The Borrower will cooperate with the Underwriter in the qualification of the Bonds for offering and sale and the determination of their eligibility for investment under the laws of such jurisdictions as the Underwriter may designate.

(h) The Borrower agrees to cause the necessary amount to be paid to the Trustee and/or the escrow agent on the Closing Date to pay costs of issuance.

(i) The Borrower agrees to provide the Underwriter, at the Borrower's expense, a reasonable number of additional copies of the Financing Documents as the Underwriter shall request.

#### **Section 10. Conditions of Closing.**

10.1 The obligations of the Underwriter to consummate at the Closing the transactions contemplated hereby are subject to receipt by the Underwriter of the items described in Section 10.2 hereof and to the satisfaction of the following conditions:

(a) The Underwriter will not have discovered any material error, misstatement or omission in the representations and warranties made in this Purchase Contract, which representations and warranties will be deemed to have been made again at and as of the time of the Closing and will then be true in all material respects.

(b) The Issuer and the Borrower will have performed and complied with all agreements and conditions required by this Purchase Contract to be performed or complied with by such respective parties at or prior to Closing.

(c) The Bonds, the Financing Documents and the Official Statement shall each have been executed and delivered by each of the parties thereto, shall be in full force and effect on and as of the Closing Date and shall not have been amended, modified or supplemented prior to the Closing except as may have been agreed to in writing by the Underwriter and no event of default shall exist under any such documents.

(d) The Underwriter will have received orders for all of the Bonds (or such amount of the Bonds as is acceptable to the Underwriter) and (a) such orders have not been withdrawn at the time of the Closing and (b) the market price or marketability, at the initial offering price set forth in the Official Statement, of the Bonds shall not have been adversely affected, in the reasonable judgment of the Underwriter.

(e) The Borrower shall have entered into the Continuing Disclosure Agreement containing covenants meeting the requirements of Rule 15c2-12 under the 1934 Act.

(f) The Issuer shall have received the executed Issue Price Certificate of the Underwriter, substantially in the form attached to this Purchase Contract as Exhibit E.

10.2 In addition to the conditions set forth in Section 10.1, the obligations of the Underwriter to consummate at the Closing the transactions contemplated hereby are subject to receipt by the Underwriter of the following items:

(a) An approving opinion of Bond Counsel, dated the Closing Date, relating to the validity of the Bonds and the tax-exempt status of the Bonds, substantially in the form attached to the Official Statement as Appendix F, and a letter of such counsel, addressed to the Underwriter, to the effect that such opinion may be relied upon, together with a supplemental opinion of Bond Counsel, dated the Closing Date, substantially in the form attached hereto as Exhibit B.

(b) An opinion of counsel to the Borrower, dated the Closing Date, satisfactory in form and substance to the Underwriter, the Trustee, Bond Counsel and the Issuer and in substantially the form attached hereto as Exhibit C.

(c) An opinion of Tiber Hudson LLC, counsel to the Underwriter, satisfactory in form and substance to the Underwriter.

(d) A certificate of the Issuer, dated the Closing Date and signed by an authorized official or officer of the Issuer, to the effect that (i) each of the Issuer's representations contained herein and in all other Issuer Documents, which representations will be deemed to have been made again at and as of the time of Closing, are true and correct in all material respects; (ii) the Issuer has performed and complied with all agreements and conditions required by this Purchase Contract to be performed or complied with by it at or prior to the Closing; and (iii) the information contained in the Preliminary Official Statement and the Official Statement under the captions "THE ISSUER" and "ABSENCE OF LITIGATION – The Issuer" is true and correct in all material respects and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(e) Evidence that a public hearing has been duly held and the issuance of the Bonds has been duly approved as required by the Code.

(f) A certificate of the Issuer, dated the Closing Date and signed by an authorized officer of the Issuer, in form and substance satisfactory to the Underwriter and Bond Counsel, respecting certain tax matters as may be reasonably required by Bond Counsel to enable it to give its opinion.

(g) A certificate of the Borrower, dated the Closing Date and signed by its authorized representative, to the effect that:

(i) each of the Borrower's representations and warranties contained herein and in all Borrower Documents, which representations and warranties will be deemed to have been made again at and as of the time of Closing, are true and correct in all material respects;

(ii) the Borrower has performed and complied with all agreements and conditions required by this Purchase Contract to be performed or complied with by it at or prior to the Closing;

(iii) since the date of the Official Statement and except as set forth therein, there has not been any material adverse change in the Borrower's operations, financial or otherwise;

(iv) the information contained in the Preliminary Official Statement and the Official Statement is true and correct and does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading;

(v) there is no action, suit, proceeding, inquiry or investigation, at law or in equity, or before or by any court, public board or body pending or, to the best knowledge of the Borrower, threatened against or affecting the Borrower or any of its affiliates, nor, to the best knowledge of the Borrower, is there any basis therefor, wherein an unfavorable decision, ruling or finding would, in any way, adversely affect the transactions contemplated by the Loan Agreement or the operation and management of the Project, or that might result in any material adverse change in the business, operations, properties, assets, liabilities or condition (financial or other) of the Borrower or that affects the information in the Preliminary Official Statement and the Official Statement; and

(vi) such other matters as the Underwriter may reasonably request.

(h) A certificate of the Borrower, dated the Closing Date and signed by its authorized representative, in form and substance satisfactory to the Underwriter, the Issuer and Bond Counsel, respecting certain tax matters as may be reasonably required by Bond Counsel to enable it to give its opinion.

(i) A certificate of the Trustee, dated the Closing Date and signed by an authorized officer of the Trustee, in form and substance satisfactory to the Underwriter.

(j) The Borrower's 15c2-12 Certificate, substantially in the form attached hereto as Exhibit D, duly executed by the Borrower.

(k) Certified copies of the organizational documents of the Borrower and copies of the resolutions or actions of its partners (if applicable) authorizing the execution and delivery of the Borrower Documents.

(l) The Financing Documents (or certified copies thereof) duly executed and delivered by the respective parties thereto, with such amendments, modifications or supplements as may have been agreed to by the Issuer, Bond Counsel and the Underwriter.

(m) Written evidence satisfactory to the Underwriter that Moody's Investors Service, Inc. (the "Rating Agency") has issued a rating of "Aaa/VMIG 1" for the Bonds and such rating shall be in effect on the Closing Date.

(n) Such additional legal opinions, certificates, instruments and other documents as the Underwriter, the Issuer or Bond Counsel may reasonably deem necessary to evidence the truth and accuracy as of the Closing Date of the respective representations and warranties of the Issuer and the Borrower herein contained and of the Official Statement, and to evidence compliance by the Issuer and the Borrower with this Purchase Contract and all applicable legal requirements, and the due performance and satisfaction by the Issuer and the Borrower at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Issuer and the Borrower.

10.3 If any of the conditions set forth in Section 10.1 or 10.2 hereof have not been met on the Closing Date, the Underwriter may, at its sole option, terminate this Purchase Contract or proceed to Closing upon waiving any rights under this Purchase Contract with respect to any such condition. If this Purchase Contract is terminated pursuant to this Section 10, no party will have any rights or obligations to any other, except as provided in Section 13 hereof.

#### **Section 11. Actions and Events at the Closing.**

The following events will take place at the Closing:

(a) The Issuer will cause the Trustee to deliver the Bonds to the Underwriter. The Bonds so delivered will be in the form required by the Indenture, duly authenticated by the Trustee, and will be fully registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York.

(b) The Issuer and the Borrower, as applicable, will deliver or cause to be delivered to the Underwriter at the offices of Bond Counsel, or at such other place or places as the Issuer, the Borrower and the Underwriter may mutually agree upon, the materials described in Section 10.1 and Section 10.2 hereof.

(c) The Underwriter will deliver to the Trustee, for the account of the Issuer, a wire, payable in immediately available funds, in an amount equal to the purchase price of the Bonds as set forth in Exhibit A hereto.

## **Section 12. Termination of Agreement.**

The Underwriter may terminate this Purchase Contract, without liability therefor, by notifying the Issuer and the Borrower at any time prior to the Closing, if:

(a) Legislation is enacted or introduced in the Congress or recommended to the Congress for passage by the President of the United States, or favorably reported for passage to either house of the Congress of the United States by a committee of such house to which such legislation has been referred for consideration, or a decision is rendered by a court established under Article III of the Constitution of the United States or by the Tax Court of the United States, or an order, ruling, regulation (final, temporary or proposed), press release, statement or other form of notice or official statement is issued or made: (i) by or on behalf of the President, the Treasury Department of the United States or the Internal Revenue Service with the purpose or effect, directly or indirectly, of imposing federal income taxation upon such interest as would be received by the owners of the Bonds, or (ii) by or on behalf of the SEC, or any other governmental entity having jurisdiction of the subject matter, to the effect that obligations of the general character of the Bonds or any arrangements underlying the Bonds, are not exempt from registration under the 1933 Act, or that the Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended;

(b) The declaration of a general banking moratorium by federal, New York or State authorities, or general suspension of trading in securities on the New York Stock Exchange any other national securities exchange, or the establishment by the New York Stock Exchange, by the SEC, by any federal or state agency or by the decision of any court, of any limitation on prices for such trading, or any outbreak or escalation of hostilities or occurrence of any other national or international calamity or crisis, or escalation of such calamity or crisis, the effect of which on the financial markets of the United States shall be such as to make it impracticable for the Underwriter to proceed with the purchase and offering of the Bonds;

(c) Any event or condition which, in the reasonable judgment of the Underwriter, (i) renders untrue any statement of a material fact in the Official Statement, and the Issuer and the Borrower do not agree to supplement or amend the Official Statement to correct the deficiency, or (ii) causes the Official Statement to omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, and the Issuer and the Borrower do not agree to supplement or amend the Official Statement to correct the deficiency, or (iii) has a material adverse effect upon the marketability of the Bonds, or (iv) would materially and adversely affect the ability of the Underwriter to enforce contracts for the sale of the Bonds;

(d) The imposition by the New York Stock Exchange or other national securities exchange, or any governmental entity, of any restrictions not now in force with respect to any of the Bonds or obligations of the general character of the Bonds or securities generally, or the increase of any such restrictions now in force, including those relating to the extension of credit by, or the charge to the net capital requirements of the Underwriter;

(e) An order, decree or injunction of any court of competent jurisdiction, or order, filing, regulation or official statement by the SEC, or any other governmental entity having jurisdiction of the subject matter, issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds or the issuance, offering or sale of the Bonds or any arrangements underlying the Bonds, as contemplated hereby or by the Preliminary Official

Statement or the Official Statement, is or would be in violation of the federal securities laws as then in effect;

(f) The rating on the Bonds shall have been downgraded or withdrawn by the Rating Agency; or

(g) A material disruption in commercial banking, securities settlement, payment, or clearance services shall have occurred.

### **Section 13. Fees and Expenses.**

13.1 The Borrower shall pay to the Underwriter a fee in the amount of \$\_\_\_\_\_ plus \$\_\_\_\_\_ for certain fees and expenses (the "Underwriter's Fee"), payable in immediately available funds on the Closing Date from which the Underwriter will pay certain expenses. The Underwriter's Fee shall not include the fee of the Underwriter's counsel. The Borrower acknowledges that it has had an opportunity, in consultation with such advisors as it may deem appropriate, if any, to evaluate and consider the fees and expenses being incurred in connection with the issuance of the Bonds. The Borrower has agreed to pay the Underwriter's Fee set forth in this Section 13.1, and inclusive in the expense component of the Underwriter's Fee are actual expenses incurred or paid for by the Underwriter on behalf of the Borrower in connection with the marketing, issuance, and delivery of the Bonds, including, but not limited to, advertising expenses, the costs of any preliminary and final blue sky memoranda, CUSIP fees, and transportation, lodging, and meals for the Borrower's employees and representatives, if any.

13.2 The Borrower shall pay the costs of issuance of the Bonds, including all expenses incident to the performance of the Underwriter's and the Issuer's obligations hereunder, including, but not limited to, (i) the cost of the preparation, printing or other reproduction of this Purchase Contract, the Preliminary Official Statement and the Official Statement, as either may be supplemented or amended, the Indenture and the other Financing Documents in reasonable quantities for distribution; (ii) the cost of engraving, reproducing and signing the definitive Bonds; (iii) the reasonable fees and disbursements of all applicable legal counsel, including Bond Counsel, counsel to the Issuer, counsel to the Trustee (if any), and counsel to the Underwriter; (iv) the initial fees and costs of paying the Trustee and all paying agents, transfer agents and registrars; (v) the fees and expenses of the Issuer; (vi) CUSIP fees; (vii) the cost of qualifying the Bonds for sale in various states chosen by the Underwriter and the cost of preparing or printing any Preliminary Blue Sky Survey to be used in connection with such sale; (viii) the fees and expenses of the experts retained by the Borrower with respect to the acquisition, rehabilitation and financing of the Project; (ix) the fees of the Rating Agency in connection with the rating of the Bonds; (x) normal travel costs, including reasonable transportation and lodging; (xi) ordinary and reasonable meals hosted by the Underwriter that are directly related to the offering contemplated by this Purchase Contract; and (xii) all other applicable fees of professionals hired in conjunction with the issuance of the Bonds. Notwithstanding anything to the contrary, in the event the transaction contemplated hereby does not close, the Borrower shall pay all fees and expenses incurred in connection with the transaction.

13.3 In the event that the Issuer, the Borrower or the Underwriter shall have paid obligations of the other as set forth in this Section, appropriate adjustments will promptly be made.

13.4 In addition to the provisions set forth in Section 14 hereto, the Borrower shall indemnify the Issuer and the Underwriter with respect to the foregoing costs and expenses in the event that the purchase provided for herein is not consummated.

#### **Section 14. Indemnification.**

14.1 The Borrower will indemnify and hold harmless the Issuer and the Underwriter, and each of their officers, directors, employees, agents, officials, members, commissioners, board members and each person who “controls” (as such term is used in Section 15 of the 1933 Act and Section 20 of the 1934 Act) the Issuer and the Underwriter (each referred to individually as an “*Indemnified Party*” and collectively as the “*Indemnified Parties*”) against any losses, claims, expenses (including, without limitation, to the extent permitted by law, reasonable attorneys’ fees and expenses actually incurred), damages or liabilities, causes of action (whether in contract, tort or otherwise), suits, claims, demands and judgments of any kind, character and nature (collectively referred to herein as the “*Liabilities*”), joint or several, to which the Indemnified Parties may be threatened or become subject, caused by or directly or indirectly arising from or in any way relating to (i) the Bonds, the Project, the loan of the proceeds of the Bonds, this Purchase Contract or any document related to the Bonds, the Project or the loan of the proceeds of the Bonds or any transaction or agreement, written or oral, pertaining to the foregoing, (ii) any untrue statement or alleged untrue statement of any material fact contained in the Preliminary Official Statement or the Official Statement, or any supplement or amendment thereto, or (iii) any omission or alleged omission to state in the Preliminary Official Statement or the Official Statement a material fact necessary to be stated therein in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading. This indemnification provision shall not be construed as a limitation on any other liability which the Borrower may otherwise have to any indemnified person, provided that in no event shall the Borrower be obligated for double indemnification, in that the Borrower shall not be required to indemnify an Indemnified Party more than once with respect to a specific indemnification obligation arising as the result of a specific event. Notwithstanding the foregoing, the Borrower shall not be required to indemnify the Indemnified Parties for the gross negligence or willful misconduct of the Indemnified Parties.

14.2 The indemnity agreements in paragraph 14.1 of this Section 14 shall be in addition to any liability which the Borrower may otherwise have hereunder or under the other Borrower Documents, and shall extend on the same terms and conditions to each member, principal, official, officer, commissioner, board member, attorney or employee of the Borrower and to each person, if any, who “controls” (as such term is used in Section 15 of the 1933 Act and Section 20 of the 1934 Act) the Borrower.

14.3 Promptly after receipt by an Indemnified Party under paragraph 14.1 of this Section of notice of the commencement of any action against such Indemnified Party in respect of which indemnity or reimbursement may be sought against the Borrower under any such paragraph, such Indemnified Party will notify the Borrower in writing of the commencement thereof; provided that any delay or failure to give such notification shall be of no effect except to the extent that the Borrower is prejudiced thereby.

14.4 In case any action, claim or proceeding, as to which the Borrower is to provide indemnification hereunder, shall be brought against the Indemnified Party and the Indemnified Party notifies the Borrower of the commencement thereof, the Borrower may, or if so requested by the Indemnified Party shall, participate therein or assume the defense thereof, with counsel reasonably satisfactory to the Indemnified Party; provided that, except as provided below, the Borrower shall not be liable for the expenses of more than one separate counsel representing the Indemnified Parties in the action, claim or proceeding.

14.5 If the Borrower shall not have employed counsel to have charge of the defense of the action, claim or proceeding, or if any Indemnified Party shall have concluded reasonably that there may be a defense available to it or to any other Indemnified Party which is different from or in addition to those available to the Borrower or to any other Indemnified Party (hereinafter referred to as a “*separate defense*”), (i) the Borrower shall not have the right to direct the defense of the action, claim or proceeding on behalf of the Indemnified Party, and (ii) reasonable legal and other expenses incurred by the Indemnified Party

(including without limitation, to the extent permitted by law, reasonable attorney's fees and expenses actually incurred) shall be borne by the Borrower; provided, that the Borrower shall not be liable for the expenses of more than one additional separate counsel for each Indemnified Party with respect to such separate defenses. For the purpose of this paragraph, an Indemnified Party shall be deemed to have concluded reasonably that a separate defense is available to it or any other Indemnified Party if (a) such Indemnified Party shall have requested an unqualified written opinion from Independent Counsel to the effect that a separate defense exists, and such Independent Counsel shall have delivered such opinion to the Indemnified Party within ten (10) days after such request or (b) the Borrower agrees that a separate defense is so available. For purposes of this paragraph, Independent Counsel shall mean any attorney, or firm or association of attorneys, duly admitted to practice law before the supreme court of any state and not a full-time employee of any Indemnified Party. Nothing contained in this paragraph 14.5 will preclude any Indemnified Party, at its own expense, from retaining additional counsel to represent such party in any action with respect to which indemnity may be sought from the Borrower hereunder.

14.6 The Borrower agrees to reimburse any Indemnified Party for any reasonable expense (including reasonable fees and expenses of counsel) incurred as a result of producing documents, presenting testimony or evidence, or preparing to present testimony or evidence (based upon time expended by an Indemnified Party at its then current time charges), in connection with any court or administrative proceeding (including any investigation which may be preliminary thereto) arising out of or relating to any public distribution of the Bonds. The Borrower will not be required to reimburse any Indemnified Party if such court or administrative hearing arises out of the gross negligence of, willful misconduct or breach of, this Purchase Contract by an Indemnified Party.

14.7 In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in paragraph 14.1 or 14.2 of this Section 14 is for any reason held to be unavailable, the Borrower and the Indemnified Party shall contribute proportionately to the aggregate Liabilities to which the Borrower and the Indemnified Party may be subject, so that the Indemnified Party is responsible for that portion represented by the percentage that the fees paid by the Borrower to the Indemnified Party in connection with the issuance and administration of the Bonds bears to the aggregate offering price of the Bonds, with the Borrower responsible for the balance; provided, however, that in no case shall the Indemnified Party be responsible for any amount in excess of the fees paid by the Borrower to the Indemnified Party in connection with the issuance and administration of the Bonds; and provided, further, that the foregoing limitation on an Indemnified Party's liability or responsibility shall not be applicable if the indemnity provided for in paragraph 14.1 or 14.2 is unavailable or inapplicable due to the gross negligence or willful misconduct of any Indemnified Party. No person guilty of fraudulent misrepresentation (within Section 10(b) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such misrepresentation.

14.8 The Indemnified Parties, other than the Underwriter and the Issuer, shall be considered to be third-party beneficiaries of this Purchase Contract for purposes of this Section 14. The provisions of this Section 14 will be in addition to all liability which the Borrower may otherwise have and shall survive any termination and cancellation of this Purchase Contract, the offering and sale of the Bonds and the payment or provisions for payment of the Bonds.

14.9 Notwithstanding anything to the contrary in this Purchase Contract, the Issuer may employ its own counsel (whether one or more separate counsel) in any manner it deems appropriate and the Borrower shall indemnify the Issuer for fees and expenses of such counsel.

### **Section 15. Limitation of Liability.**

Notwithstanding any provision herein to the contrary, any member, officer, director, partner, agent, commissioner, board members or employee of the Issuer, the Underwriter or the Borrower, including any person executing this Purchase Contract, shall not bear any liability as a result of any failure of the Issuer, the Underwriter or the Borrower to perform the obligations of each, respectively, set forth in this Purchase Contract.

### **Section 16. Miscellaneous.**

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

If to the Underwriter:                      Stifel, Nicolaus & Company, Incorporated  
639 Loyola Avenue, Suite 200  
New Orleans, LA 70113  
Attention: John Sabatier

If to the Issuer:                                West Virginia Housing Development Fund  
5710 MacCorkle Avenue, SE  
Charleston, WV 25304  
Attention: Erica L. Boggess

If to the Borrower:                          EPD2 FMA, LP  
125 John Roberts Road, Suite 12  
South Portland, ME 04106  
Attention: Neil Martelle

16.2 This Purchase Contract will inure to the benefit of and be binding upon the parties hereto and their successors and assigns and, except as provided in Section 14 hereof will not confer any rights upon any other person. The terms “successor” and “assigns” will not include any purchaser of any of the Bonds from the Underwriter merely because of such purchase.

16.3 This Purchase Contract may not be assigned by any of the parties hereto prior to the Closing.

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

16.5 This Purchase Contract will be construed in accordance with and governed by the internal laws of the State, without regard to conflict of law principles of the State.

16.6 This Purchase Contract may be executed in several counterparts (including counterparts exchanged by email in PDF format), each of which will be regarded as an original and all of which will constitute one and the same document.

**Section 17. Survival of Certain Representations and Obligations.**

The respective agreements, covenants, representations, warranties and other statements of the Issuer and the Borrower and each of their respective officers set forth in or made pursuant to this Purchase Contract shall survive delivery of and payment for the Bonds and shall remain in full force and effect, regardless of any investigation, or statements as to the results thereof, made by or on behalf of the Underwriter.

**Section 18. Prohibition on Boycotts.**

By entering into this Purchase Contract, the Underwriter certifies that it and its parent company, wholly or majority-owned subsidiaries, and other affiliates, if any, are not currently engaged in, or for the duration of this Purchase Contract will not engage in, a boycott of goods or services from the State of Israel; companies doing business in or with the State of Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel. The Underwriter understands that “boycott” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations, but does not include an action made for ordinary business purposes.

If the foregoing is in accordance with your understanding, please sign and return to us two counterparts hereof and, upon the acceptance hereof by the Issuer and the Borrower, this Purchase Contract and such acceptance shall constitute the binding agreement among us as to the matters set forth above.

Very truly yours,

**STIFEL, NICOLAUS & COMPANY,  
INCORPORATED**

By:

\_\_\_\_\_  
John Sabatier  
Managing Director

[Signatures continue on following page]

[Issuer's signature page to Purchase Contract]

**WEST VIRGINIA HOUSING DEVELOPMENT FUND**

By:

\_\_\_\_\_  
Erica L. Boggess  
Executive Director

[Signatures continue on following page]

[Borrower's signature page to Purchase Contract]

**EPD2 FMA, LP,**  
a West Virginia limited partnership

By: Franklin Manor GP, LLC,  
a Maine limited liability company,  
its General Partner

By: Eagle Point Development – Series 2, LLC,  
a Maine limited liability company,  
its Managing Member

By: \_\_\_\_\_  
Richard Nelson, Jr.  
Manager

**EXHIBIT A**

**TERMS OF BONDS**

**Multifamily Housing Revenue Bonds, Series 2024  
(Franklin Manor)**

<b><u>Dated Date</u></b>	<b><u>Initial Mandatory Tender Date</u></b>	<b><u>Maturity Date</u></b>	<b><u>Principal Amount</u></b>	<b><u>Interest Rate</u></b>	<b><u>Price</u></b>
September __, 2024	October 1, 2026	October 1, 2027	\$5,100,000	___%	___%

## EXHIBIT B

### PROPOSED FORM OF SUPPLEMENTAL OPINION OF BOND COUNSEL

September \_\_, 2024

Stifel, Nicolaus & Company, Incorporated  
New Orleans, Louisiana

Re: \$[5,100,000] West Virginia Housing Development Fund Multifamily Housing Revenue  
Bonds, Series 2024 (Franklin Manor) (the “Bonds”)

Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the issuance and sale by the West Virginia Housing Development Fund (the “Issuer”), a public body corporate and governmental instrumentality of the State of West Virginia, organized and existing under Article 18 of Chapter 31 of the Code of West Virginia, 1931, as amended (the “Act”), of the above-referenced Bonds. The Bonds are being issued pursuant to the Act, the Bond Authorizing Resolution adopted by the Issuer on August 28, 2024, and a Trust Indenture dated as of September 1, 2024 (the “Indenture”) between the Issuer and UMB Bank, N.A., as trustee (the “Trustee”). Capitalized terms used herein and not otherwise defined shall have the meanings as set forth in the Indenture.

In connection with rendering this supplemental opinion, we have reviewed (i) the Official Statement (the “Official Statement”) prepared in connection with the offering of the Bonds, (ii) the Indenture, (iii) the Loan Agreement dated as of September 1, 2024 between the Issuer and EPD2 FMA, LP (the “Borrower”), (iv) the Regulatory Agreement dated as of September 1, 2024 (the “Bond Regulatory Agreement”) among the Issuer, the Borrower and the Trustee, (v) the Bond Purchase Agreement dated September \_\_, 2024 (“Bond Purchase Agreement”) among the Issuer, the Borrower, and Stifel, Nicolaus & Company, Incorporated, as the Underwriter, and (vi) such other documents, certificates and opinions to the extent we deemed necessary to render the opinions and conclusions set forth herein.

As to questions of fact material to our opinion, we are relying upon (i) representations of the Issuer and the Borrower contained in the documents underlying the issuance of the Bonds, (ii) certified proceedings and other certificates of public officials furnished to us and (iii) other certifications and opinions given to us, without undertaking to verify any of the foregoing by independent investigation.

We have assumed the accuracy and truthfulness of all public records and of all certifications, documents, written opinions and other proceedings provided to us, the authenticity of all documents submitted to us as originals, the genuineness of all signatures appearing on documents we have examined, the conformity to the originals of all documents submitted to us as certified or photostatic copies and the legal capacity of natural persons executing all executed documents.

Based on the foregoing, we are of the opinion as of the date hereof that:

1. The Bond Purchase Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding agreement of the Issuer, enforceable against the Issuer in accordance with its terms; provided that enforceability of the Bond Purchase Agreement is subject to and may be limited by the provisions of bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors’ rights generally, now or hereafter in effect, general principles of equity (regardless of whether such enforceability

is considered in a proceeding in equity or at law) and the limitations on legal remedies against political subdivisions in the State of West Virginia.

2. The Bonds are exempt securities within the meaning of Section 3(a)(2) of the Securities Act of 1933, as amended (the “1933 Act”) and, accordingly, the offer and sale thereof do not require registration under the 1933 Act or qualification of the Indenture under the Trust Indenture Act of 1939, as amended. No opinion is expressed with respect to the necessity of the registration of the Bonds under the “blue sky” or securities laws of any state, territory or possession of the United States or of the State of West Virginia.

3. The information contained in the Official Statement under the captions “THE BONDS” (excluding the information set forth under the subcaption “Book-Entry Only System” therein), “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS” and “TAX MATTERS” and the information in APPENDIX A – “DEFINITIONS OF CERTAIN TERMS,” APPENDIX B – “SUMMARY OF CERTAIN PROVISIONS OF THE TRUST INDENTURE,” APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT,” APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE BOND REGULATORY AGREEMENT” and APPENDIX F – “FORM OF BOND COUNSEL OPINION,” insofar as such information purports to summarize the Indenture, the Loan Agreement, the Bond Regulatory Agreement, the Bonds and the Internal Revenue Code of 1986, as amended, fairly summarize the documents and legal matters referred to therein.

This opinion is rendered for the sole benefit of the addressee listed above, and may not be delivered or circulated to any other parties or relied upon by any other parties without our prior written consent.

The opinions and conclusions set forth herein may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur, and we disclaim any obligations to update this letter. Our engagement with respect to the Bonds has concluded with their issuance.

Very truly yours,

## EXHIBIT C

### FORM OF OPINION OF COUNSEL TO THE BORROWER

September \_\_, 2024

Stifel, Nicolaus & Company, Incorporated  
639 Loyola Avenue, Suite 200  
New Orleans, LA 70113

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

**\$5,100,000**  
**West Virginia Housing Development Fund**  
**Multifamily Housing Revenue Bonds, Series 2024**  
**(Franklin Manor)**

Ladies and Gentlemen:

We have acted as counsel to EPD2 FMA, LP, a West Virginia limited partnership (the “Borrower”), in connection with the issuance of the above-captioned bonds (the “Bonds”) by the West Virginia Housing Development Fund (the “Issuer”).

Capitalized terms used but not defined herein have the meanings assigned to them in the Trust Indenture dated as of September 1, 2024, between the Issuer and UMB Bank, N.A., as trustee (the “Trustee”), or the hereinafter-defined Bond Purchase Agreement.

In our capacity as such counsel, in rendering the opinions set forth below, we have examined, among other things, originals or copies, certified or otherwise identified to our satisfaction, of the following documents: (i) the Preliminary Official Statement, dated September \_\_, 2024, of the Issuer relating to the Bonds (the “Preliminary Official Statement”); (ii) the Official Statement, dated September \_\_, 2024, of the Issuer relating to the Bonds (the “Official Statement”); (iii) the Regulatory Agreement, among the Issuer, the Trustee and the Borrower, dated as of September 1, 2024, and effective as of the date hereof; (iv) the Loan Agreement, dated as of September 1, 2024, between the Issuer and the Borrower; (v) the Bond Purchase Agreement, dated September \_\_, 2024, among the Issuer, the Underwriter named therein and the Borrower (the “Bond Purchase Agreement”); (vi) the Continuing Disclosure Agreement, dated as of September 1, 2024, between the Borrower and the Dissemination Agent named therein; (vii) the Remarketing Agreement, dated as of September 1, 2024, between the Borrower and the Remarketing Agent named therein; (viii) the promissory note, dated the Closing Date, executed by the Borrower; (ix) the Tax Certificate and Agreement, made and executed by the Issuer and the Borrower, dated as of the date hereof; and (x) such other documents, certificates and instruments as we have deemed necessary for the purposes of reaching the opinion expressed herein. We have also relied as to matters of fact upon a certificate of the Borrower and examined certain other certificates and documents.

In such examination, we have assumed the genuineness of all signatures (other than those relating to the Borrower), the authenticity of all documents submitted to us as originals, and the conformity to the original document of all documents submitted to us as photostatic or certified copies. We have assumed due authorization, execution and delivery of all documents referenced herein by the parties thereto other

than the Borrower and that each of such parties has full power, authority and legal right to execute and deliver each such instrument.

Based upon and subject to the foregoing, we are of the opinion that, as of the date hereof:

(i) The Borrower (a) is a limited partnership validly existing under the laws of the State of West Virginia (the “State”), (b) is in good standing and duly qualified to transact business in the State, and (c) has full power and authority to execute and deliver the documents listed above numbered (iii) through (ix) (the “Financing Documents”) and the Official Statement and to perform its obligations under each respective agreement.

(ii) The Financing Documents and the Official Statement have each been duly authorized, executed and delivered by the Borrower and the Financing Documents constitute legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, except as the enforcement thereof may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization and similar laws (including fraudulent conveyance laws) affecting the enforcement of creditors’ rights and remedies generally in effect from time to time, and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(iii) The execution and delivery of the Financing Documents and the performance by the Borrower of the terms of the respective agreements do not conflict with or violate any other document, instrument, decree, indenture or agreement by which the Borrower is bound.

(iv) No approval, authorization or other action by, or filing with, the State or any agency thereof, is required in connection with the execution and delivery by the Borrower of the Bond Purchase Agreement.

(v) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before any court or public body pending or, to the best of our knowledge, threatened, to challenge the right, power or authority of the Borrower to acquire, own and operate the Project or to perform its obligations under the Bond Purchase Agreement or the other Financing Documents.

(vi) The information in the Preliminary Official Statement and the Official Statement does not contain an untrue statement of fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading as of the date hereof.

We express no opinion as to any matter whatsoever, relating to the accuracy or completeness of any financial accounting or projection information furnished to any party, the accuracy or completeness of any representation made by our clients, the financial status of our clients, the ability of our clients to meet their obligations under any of the above-referenced agreements or any other related document.

Very truly yours,

## **EXHIBIT D**

### **FORM OF BORROWER'S RULE 15c2-12 CERTIFICATE**

**\$5,100,000**

**West Virginia Housing Development Fund  
Multifamily Housing Revenue Bonds, Series 2024  
(Franklin Manor)**

The undersigned hereby certifies and represents to Stifel, Nicolaus & Company, Incorporated (the "Underwriter") that the undersigned is authorized to execute and deliver this certificate on behalf of EPD2 FMA, LP, a West Virginia limited partnership (the "Borrower"), and hereby further certifies to the Underwriter as follows:

(a) This certificate is delivered to enable the Underwriter to comply with Securities and Exchange Commission Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule") in connection with the issuance and sale of the above-captioned securities (the "Bonds").

(b) In connection with the issuance and sale of the Bonds, there has been prepared a Preliminary Official Statement, dated September \_\_\_, 2024, relating to the Bonds (the "Preliminary Official Statement") setting forth information concerning the Bonds and the Borrower.

(c) As used herein, "Permitted Omissions" shall mean the offering price(s), interest rate(s), accreted values, yield to maturity, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings and other terms of the Bonds depending on such matters and the identity of the Underwriter(s), all with respect to the issuance and sale of the Bonds.

(d) The Preliminary Official Statement is, as of the date thereof, deemed final within the meaning of the Rule, except for Permitted Omissions.

(e) The section of the Preliminary Official Statement entitled "UNDERTAKING TO PROVIDE CONTINUING DISCLOSURE" describes the agreement the Borrower expects to make for the benefit of the Bondholders in the Continuing Disclosure Agreement dated as of September 1, 2024, executed by the Borrower and UMB Bank, N.A., as dissemination agent, by which the Borrower will undertake to provide continuing disclosure in accordance with the Rule.

Dated: September \_\_\_, 2024

[Remainder of page intentionally left blank]

[Signature page to Rule 15c2-12 Certificate]

IN WITNESS WHEREOF, I have hereunto set my hand as of the date set forth above.

**EPD2 FMA, LP,**  
a West Virginia limited partnership

By: Franklin Manor GP, LLC,  
a Maine limited liability company,  
its General Partner

By: Eagle Point Development – Series 2, LLC,  
a Maine limited liability company,  
its Managing Member

By: \_\_\_\_\_  
Richard Nelson, Jr.  
Manager

## EXHIBIT E

### FORM OF ISSUE PRICE CERTIFICATE

**\$5,100,000**

**West Virginia Housing Development Fund  
Multifamily Housing Revenue Bonds, Series 2024  
(Franklin Manor)**

The undersigned, on behalf of Stifel, Nicolaus & Company, Incorporated (the “Underwriter”), on behalf of itself, hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Bonds”).

1. Sale of the Bonds. As of the date of this certificate, for each Maturity of the Bonds, the first price at which at least 10% of such Maturity of the Bonds was sold to the Public is the respective price listed in Exhibit A attached to the Bond Purchase Agreement dated September \_\_, 2024, among the Underwriter, EPD2 FMA, LP, a West Virginia limited partnership (the “Borrower”), and the West Virginia Housing Development Fund (the “Issuer”).

2. Defined Terms.

(a) “*Issuer*” means the West Virginia Housing Development Fund, a public body corporate and governmental instrumentality of the State of West Virginia.

(b) “*Maturity*” means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.

(c) “*Public*” means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than the Underwriter or a related party to the Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(d) “*Underwriter*” means (i) Stifel, Nicolaus & Company, Incorporated, (ii) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (iii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (ii) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Underwriter’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer and the Borrower with respect to certain of the representations set forth in the Tax Certificate and Agreement and with respect to compliance with the federal income tax rules affecting the Bonds, and by Hawkins Delafield & Wood LLP, New York, New York, Bond Counsel, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal

Revenue Service Form 8038, and other federal income tax advice that it may give to the Issuer and the Borrower from time to time relating to the Bonds.

Dated: September \_\_, 2024

[Underwriter's signature page to Issue Price Certificate]

Dated as of the date hereof.

**STIFEL, NICOLAUS & COMPANY,  
INCORPORATED**

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

John Sabatier  
Managing Director

[Underwriter's signature page to Issue Price Certificate]

Dated as of the date hereof.

**STIFEL, NICOLAUS & COMPANY,  
INCORPORATED**

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

Z. Jason Barnett  
Managing Director

## NEW ISSUE – Book-Entry Only

RATING: Moody's "[Aaa/VMIG 1]"

SEE "RATING" herein.

*In the opinion of Hawkins Delafield & Wood LLP, Bond Counsel to the Issuer, under existing statutes and court decisions and assuming continuing compliance with certain tax covenants described herein, (i) interest on the Bonds is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), except that no opinion is expressed as to such exclusion of interest on any Bond for any period during which the Bond is held by a person who, within the meaning of Section 147(a) of the Code, is a "substantial user" of the facilities financed with the proceeds of the Bonds or a "related person," and (ii) interest on the Bonds is not treated as a preference item in calculating the alternative minimum tax under the Code; however, interest on the Bonds is included in the "adjusted financial statement income" of certain corporations that are subject to the alternative minimum tax under Section 55 of the Code. In the opinion of General Counsel to the Issuer, under existing statutes, the Bonds and the income therefrom shall at all times be exempt from taxation by the State of West Virginia (the "State") or any county, municipality or other governmental subdivision of the State, except for death and gift taxes, taxes on transfers, sales taxes, real property taxes and business and occupation taxes. See "TAX MATTERS" herein.*

\$5,100,000\*

**West Virginia Housing Development Fund  
Multifamily Housing Revenue Bonds, Series 2024  
(Franklin Manor)**

**Dated: Date of Delivery****Initial Interest Rate: \_\_\_\_%****Initial Offering Price: 100%\*****Maturity Date: October 1, 2027\*****Initial Mandatory Tender Date: October 1, 2026\*****CUSIP: \_\_\_\_\_**

The West Virginia Housing Development Fund (the "Issuer") is issuing its Multifamily Housing Revenue Bonds, Series 2024 (Franklin Manor) (the "Bonds") pursuant to a Trust Indenture dated as of September 1, 2024 (the "Indenture"), by and between the Issuer and UMB Bank, N.A., as trustee (the "Trustee"). The Bonds shall bear interest at the Initial Interest Rate set forth above (the "Initial Interest Rate") from their date to, but not including, the Initial Mandatory Tender Date set forth above (the "Initial Mandatory Tender Date"), payable on each April 1 and October 1 commencing April 1, 2025\*. See "THE BONDS" herein.

The Bonds are being issued to finance a loan (the "Loan") to EPD2 FMA, LP, a West Virginia limited partnership (the "Borrower"), to enable the Borrower to pay a portion of the cost of acquiring, rehabilitating and equipping of a 48-unit affordable multifamily rental housing project known as Franklin Manor Apartments, located at 700 West Burke Street, Martinsburg, West Virginia (the "Project"). The Loan will be made to the Borrower pursuant to a Loan Agreement, dated as of September 1, 2024 (the "Loan Agreement"), between the Issuer and the Borrower, under which the Borrower has agreed to provide, as described herein, payments to the Issuer in amounts sufficient to pay the principal of and interest on the Bonds when due. The Loan will be evidenced by a Promissory Note in the principal amount of \$5,100,000\* (the "Note") from the Borrower to the Issuer and endorsed to the Trustee.

The Bonds will be secured by the Revenues, to include the Special Funds (as defined herein) and other amounts constituting the Trust Estate pledged therefor, together with interest earnings thereon as described herein. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" herein. The Bonds are not secured by any lien or mortgage with respect to the Project.

The Bonds are subject to mandatory tender for purchase, subject to satisfaction of the applicable terms and conditions set forth in the Indenture, on the Initial Mandatory Tender Date. All Holders of Bonds must tender their Bonds for purchase on the Initial Mandatory Tender Date. The Bonds may be remarketed and a new interest rate for the Bonds may be determined on the Initial Mandatory Tender Date in accordance with the terms of the Indenture. If the Bonds are remarketed on the Initial Mandatory Tender Date, the terms of the Bonds after such date may differ materially from the description provided in this Official Statement. Therefore, prospective purchasers of the Bonds on and after the Initial Mandatory Tender Date cannot rely on this Official Statement, but rather must rely upon any disclosure documents prepared in connection with such remarketing.

The Bonds are also subject to optional redemption prior to maturity as set forth herein. See "THE BONDS—Redemption of Bonds—Optional Redemption" herein.

**NEITHER THE DIRECTORS OR OFFICERS OF THE ISSUER NOR ANY PERSON EXECUTING THE BONDS SHALL BE LIABLE PERSONALLY ON THE BONDS BY REASON OF THE ISSUANCE THEREOF. THE BONDS AND THE INTEREST THEREON SHALL NOT BE A DEBT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE ISSUER) AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE ISSUER) SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL SUCH BONDS BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE ISSUER PLEDGED THEREFOR PURSUANT TO THE INDENTURE. THE BONDS SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. THE ISSUER HAS NO TAXING POWER.**

*The Bonds are offered for delivery when, as and if issued and received by Stifel, Nicolaus & Company, Incorporated (the "Underwriter") and subject to the approval of legality by Hawkins Delafield & Wood LLP, New York, New York, Bond Counsel to the Issuer, and certain other conditions. Certain legal matters will be passed upon for the Underwriter by its counsel, Tiber Hudson LLC, Washington, D.C., for the Issuer by its counsel, Jackson Kelly PLLC, Charleston, West Virginia, and for the Borrower by its counsels, Kutak Rock LLP, Denver, Colorado, and \_\_\_\_\_. It is expected that the Bonds will be available in book-entry form through the facilities of DTC in New York, New York on or about September \_\_, 2024.*

*This cover page contains limited information for ease of reference only. It is not a summary of the Bonds or the security therefor. The entire Official Statement, including the Appendices, must be read to obtain information essential to make an informed investment decision.*

**STIFEL**

Date: September \_\_, 2024

\* Preliminary; subject to change.

No broker, dealer, salesman or other person has been authorized by the Issuer, to give any information or to make any representations other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Bonds by any person, in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale prior to the registration or qualification under the securities laws of such jurisdiction. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made under the Indenture shall, under any circumstances, create any implication that there has been no change in the affairs of the Issuer since the date hereof.

All quotations from and summaries and explanations of provisions of laws and documents herein do not purport to be complete and reference is made to such laws and documents for full and complete statements of their provisions. This Official Statement is not to be construed as a contract or agreement between the Issuer and the purchasers or owners of any of the Bonds. All statements made in this Official Statement involving estimates or matters of opinion, whether or not expressly so stated, are intended merely as estimates or opinions and not as representations of fact. The cover page hereof and the appendices attached hereto are part of this Official Statement. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale of the Bonds shall under any circumstances create any implication that there has been no change in the affairs of the Issuer since the date hereof.

THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY STATE SECURITIES LAWS, AND THE INDENTURE HAS NOT BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED, BECAUSE OF AVAILABLE EXEMPTIONS THEREFROM, AND THE ISSUER IS RELYING ON AN EXEMPTION FROM REGISTRATION BY QUALIFICATION UNDER THE WEST VIRGINIA SECURITIES ACT. THE BONDS HAVE NOT BEEN APPROVED, DISAPPROVED, ENDORSED OR RECOMMENDED BY THE WEST VIRGINIA SECURITIES COMMISSION OR ANY OTHER FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY, AND NONE OF THE FOREGOING HAS REVIEWED THIS OFFICIAL STATEMENT OR CONFIRMED THE ACCURACY OR TRUTHFULNESS THEREOF OR WHETHER IT IS COMPLETE. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE. PROSPECTIVE PURCHASERS SHOULD MAKE THEIR OWN DECISION WHETHER THIS OFFERING MEETS THEIR INVESTMENT OBJECTIVES AND FINANCIAL RISK TOLERANCE LEVEL.

The Underwriter has reviewed the information in this Official Statement pursuant to its responsibilities to investors under federal securities laws, but the Underwriter does not guarantee the accuracy or completeness of such information.

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UMB Bank, N.A., as Trustee, has not reviewed, provided or undertaken to determine the accuracy of any of the information contained in this Official Statement and makes no representation or warranty, express or implied, as to any matters contained in this Official Statement, including, but not limited to, (i) the accuracy or completeness of such information, (ii) the validity of the Bonds, or (iii) the tax-exempt status of the Bonds.

***CAUTIONARY INFORMATION REGARDING FORWARD-LOOKING STATEMENTS IN THIS  
OFFICIAL STATEMENT***

Certain statements included or incorporated by reference in this Official Statement constitute “forward-looking statements” within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21E of the United States Securities Exchange Act of 1934, as amended, and Section 27A of the United States Securities Act of 1933, as amended. Such statements are generally identifiable by the terminology used such as “plan,” “expect,” “estimate,” “budget” or other similar words. The achievement of certain results or other expectations contained in such forward-looking statements involves known and unknown risks, uncertainties and other factors which may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. No updates or revisions to those forward-looking statements will be issued if or when the expectations, or events, conditions or circumstances on which such statements are based change.

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## TABLE OF CONTENTS

	Page
INTRODUCTION .....	1
THE ISSUER.....	2
ELIGIBLE FUNDS AND DISBURSEMENT OF BOND PROCEEDS.....	3
THE BONDS .....	3
SECURITY AND SOURCES OF PAYMENT FOR THE BONDS .....	8
PRIVATE PARTICIPANTS .....	9
THE PROJECT .....	10
CERTAIN BONDHOLDERS’ RISKS.....	13
TAX MATTERS .....	15
UNDERWRITING .....	17
RATING .....	17
UNDERTAKING TO PROVIDE CONTINUING DISCLOSURE .....	17
CERTAIN LEGAL MATTERS .....	18
ABSENCE OF LITIGATION .....	18
ADDITIONAL INFORMATION .....	18
APPENDIX A    DEFINITIONS OF CERTAIN TERMS .....	A-1
APPENDIX B    SUMMARY OF CERTAIN PROVISIONS OF THE TRUST INDENTURE .....	B-1
APPENDIX C    SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT .....	C-1
APPENDIX D    SUMMARY OF CERTAIN PROVISIONS OF THE BOND REGULATORY AGREEMENT .....	D-1
APPENDIX E    FORM OF CONTINUING DISCLOSURE AGREEMENT .....	E-1
APPENDIX F    FORM OF BOND COUNSEL OPINION .....	F-1

## OFFICIAL STATEMENT

**\$5,100,000\***

**West Virginia Housing Development Fund  
Multifamily Housing Revenue Bonds, Series 2024  
(Franklin Manor)**

### INTRODUCTION

This Official Statement (this “Official Statement”) has been prepared in connection with the issuance of the above-captioned Bonds (the “Bonds”) by the West Virginia Housing Development Fund (the “Issuer”), a public body corporate and governmental instrumentality of the State of West Virginia (the “State”). The Board of Directors of the Issuer has authorized the issuance of the Bonds by its duly adopted Resolution dated August 28, 2024 (the “Bond Resolution”) and the Bonds are issued pursuant to a Trust Indenture dated as of September 1, 2024 (the “Indenture”), by and between the Issuer and UMB Bank, N.A., as trustee (the “Trustee”). Certain capitalized terms that are used in this Official Statement and not otherwise defined shall have the definitions ascribed to them in “APPENDIX A – DEFINITIONS OF CERTAIN TERMS” hereto.

The Bonds are to be issued pursuant to, under authority of and in compliance with the laws of West Virginia, and particularly the West Virginia Housing Development Fund Act, constituting Article 18 of Chapter 31 of the Code of West Virginia, 1931, as amended (the “Act”), for the purpose of providing funds to make a loan (the “Loan”) to EPD2 FMA, LP, a West Virginia limited partnership (the “Borrower”), to enable the Borrower to pay a portion of the cost of acquiring, rehabilitating and equipping of a 48-unit affordable multifamily rental housing project known as Franklin Manor Apartments, located at 700 West Burke Street, Martinsburg, West Virginia (the “Project”). See “PRIVATE PARTICIPANTS” and “THE PROJECT” herein.

The Loan will be made to the Borrower under a Loan Agreement dated as of September 1, 2024 (the “Loan Agreement”), by and between the Issuer and the Borrower. Pursuant to the Loan Agreement, the Borrower has agreed to make payments to the Issuer in amounts sufficient to pay the principal of and interest on the Bonds when due (the “Bond Service Charges”) to the extent that amounts otherwise available for such payment are insufficient therefor. The Loan will be evidenced by a promissory note in the principal amount of \$5,100,000\* (the “Note”) from the Borrower to the Issuer and endorsed to the Trustee.

Contemporaneously with the issuance of the Bonds, the Borrower is obtaining two separate mortgage loans (individually, the “WVHDF RD 538 Mortgage Loan” and the “ERA2 Loan,” and collectively, the “Permanent Loan”) each from the Issuer in its respective capacities as maker of the WVHDF RD 538 Mortgage Loan (the “WVHDF RD 538 Lender”) and as maker of the ERA2 Loan (the “ERA2 Lender”), in the principal amounts of \$4,520,000\* and \$1,558,000, respectively. The Borrower will cause a portion of these proceeds (the “Eligible Funds”) to be deposited into the Collateral Fund held by the Trustee under the Indenture for the purposes of securing the Bonds. Prior to the disbursement of amounts drawn from the Project Fund to pay costs of the Project, a like amount of Eligible Funds will be deposited to the Collateral Fund. See “ELIGIBLE FUNDS AND DISBURSEMENT OF BOND PROCEEDS” and “THE PROJECT — Plan of Financing” herein.

It is anticipated that the aggregate funds and Eligible Investments on deposit in the Project Fund and the Collateral Fund will, at all times, equal the principal amount of Bonds Outstanding. It is anticipated that the Bond Service Charges will be paid from amounts on deposit in the Bond Fund, the Collateral Fund and the Project Fund, and investment earnings thereon (without the need for reinvestment). Amounts on deposit in the Collateral Fund, the Negative Arbitrage Account of the Bond Fund and the Project Fund will be invested in Eligible Investments. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS” herein.

The Bonds shall bear interest on the outstanding principal amount thereof at the Initial Interest Rate set forth on the cover page hereof (the “Initial Interest Rate”) per annum from their date, to but not including, October 1, 2026\*

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\* Preliminary; subject to change.

(the “Initial Mandatory Tender Date”), payable on each April 1 and October 1, commencing April 1, 2025\* (each an “Interest Payment Date”) and on each Mandatory Tender Date.

The Bonds are subject to mandatory tender for purchase, subject to satisfaction of the applicable terms and conditions set forth in the Indenture, on the Initial Mandatory Tender Date. All Holders of Bonds must tender their Bonds for purchase on the Initial Mandatory Tender Date. A new interest rate for the Bonds may be determined on the Mandatory Tender Date in accordance with the terms of the Indenture. If the Bonds are remarketed on the Initial Mandatory Tender Date, the terms of the Bonds after such date may differ materially from the description provided in this Official Statement. Therefore, prospective purchasers of the Bonds on and after the Initial Mandatory Tender Date cannot rely on this Official Statement, but rather must rely upon any disclosure documents prepared in connection with such remarketing.

The Bonds are subject to redemption prior to maturity as set forth herein under “THE BONDS.”

Brief descriptions of the Issuer, the Borrower, the WVHDF RD 538 Mortgage Loan, the Project, the Bonds, the security for the Bonds, the Indenture, the Loan Agreement and the Bond Regulatory Agreement are included in this Official Statement. The summaries herein do not purport to be complete and are qualified in their entirety by reference to such documents, agreements and programs as may be referred to herein, and the summaries herein of the Bonds are further qualified in their entirety by reference to the form of the Bonds included in the Indenture and the provisions with respect thereto included in the aforesaid documents.

### **THE ISSUER**

*The following information has been provided by the Issuer for use herein. While the information is believed to be reliable, none of the Trustee, the Borrower, the Underwriter nor any of their respective counsel, members, officers or employees make any representations as to the accuracy or sufficiency of such information.*

The Issuer was established in 1968 as a governmental instrumentality of the State and a public body corporate. Its primary corporate purpose is to increase the supply of residential housing in the State for persons and families of low and moderate income and, among other things, it is empowered by the Act to provide construction and permanent mortgage financing to public and private sponsors of such housing. The Issuer is authorized under the Act to issue the Bonds.

Through its various programs, the Issuer has financed or assisted in the development or provisions of over 167,000 housing units in the State. In planning and operating its various programs, the management of the Issuer takes into consideration various economic and regulatory factors which affect its business activities and legislative mandate. Such factors, including prevailing economic conditions, mortgage interest rates, investment rates, the demand for housing, the cost of housing and of operating housing programs, the volume of mortgage lending activity in the State and other factors affecting the supply of housing in the State may affect the financing activities of the Issuer. The programs operated by the Issuer have been and may again be affected by State and federal administrative, regulatory and legislative actions.

The Issuer is governed by an eleven-member Board of Directors consisting of the Governor, Attorney General, Commissioner of Agriculture and Treasurer, all of whom serve ex-officio as public directors, and seven members chosen as private directors from the general public residing in the State. All public directors may designate representatives to serve on their behalf. The offices of Governor, Attorney General, Commissioner of Agriculture and Treasurer are elective and the current terms of such offices expire in January 2025. The Governor with the advice and consent of the State Senate appoints private directors for staggered terms of four years with no more than four of the private directors from the same political party. The Act designates the Governor or his or her designee as the Chair of the Board of Directors, and also provides that the Governor shall appoint the executive director, with the advice and consent of the State Senate, and that the executive director will serve at the Governor’s will and pleasure.

## **ELIGIBLE FUNDS AND DISBURSEMENT OF BOND PROCEEDS**

Simultaneously with the issuance of the Bonds, the Borrower will obtain the WVDHDF RD 538 Mortgage Loan from the WVDHDF RD 538 Lender and the ERA2 Loan from the ERA2 Lender and upon deposit of the proceeds of such loans into the Collateral Fund, shall become Eligible Funds under the Indenture. Over time, the Borrower will cause the WVDHDF RD 538 Lender and the ERA2 Lender to deliver to the Trustee Eligible Funds in the amount of each disbursement request, as approved by the WVDHDF RD 538 Lender and the ERA2 Lender, respectively, for deposit into the Collateral Fund as security for the Bonds in exchange for the release of a like amount of bond proceeds from the Project Fund, which shall be disbursed by the Trustee all in accordance with the Loan Agreement and the Indenture to pay Project Costs. The maximum aggregate amount of Eligible Funds to be deposited into the Collateral Fund over time will be \$5,100,000\*.

Bond Service Charges shall be payable as they become due, (i) in the first instance from the moneys on deposit in the Bond Fund (other than the Negative Arbitrage Account within the Bond Fund), (ii) next, from moneys on deposit in the Negative Arbitrage Account within the Bond Fund, (iii) next, from moneys on deposit in the Collateral Fund and transferred as necessary to the Bond Fund and (iv) thereafter, from moneys on deposit in the Project Fund and transferred as necessary to the Bond Fund. The Indenture provides that the amount of funds disbursed from the Project Fund on any given date for payment of Project Costs shall at all times equal the sum of Eligible Funds deposited in the Collateral Fund. Accordingly, the aggregate amount in the Collateral Fund and the Project Fund shall at all times equal 100% of the principal amount of the Bonds outstanding.

The Trustee will not act upon the delivery of a certified copy of the disbursement request of funds from the Project Fund, unless and until (i) an amount equal to or greater than the requested disbursement amount has been deposited in the Collateral Fund in accordance with the provisions of the Indenture and (ii) the Trustee has verified that the sum of the amount then held in the Collateral Fund and the amount then on deposit in the Project Fund, less the anticipated amount of the disbursement from the Project Fund, is at least equal to the then outstanding principal amount of the Bonds. Neither the WVDHDF RD 538 Lender nor the ERA2 Lender will deliver Eligible Funds until the Trustee has first confirmed in writing this calculation to the WVDHDF RD 538 Lender or the ERA2 Lender, as applicable. Upon receipt of Eligible Funds from the WVDHDF RD 538 Lender or the ERA2 Lender, the Trustee shall be unconditionally and irrevocably obligated to disburse Bond proceeds from the Project Fund in the amount of such Eligible Funds.

The amounts on deposit in the Project Fund, the Bond Fund and the Collateral Fund (collectively, the “Special Funds”) will be invested on the Closing Date in Eligible Investments. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Investment of Special Funds; Eligible Investments” herein. The amount by which the aggregate interest payments on the Bonds exceeds the expected investment earnings on Eligible Investments is required, pursuant to the Indenture and the Loan Agreement, to be deposited on the Closing Date to the Negative Arbitrage Account of the Bond Fund from or on behalf of the Borrower.

## **THE BONDS**

### **Terms of Bonds Generally**

The Bonds shall be issued in Authorized Denominations and shall mature on October 1, 2027\* (the “Maturity Date”). The Bonds are dated their date of delivery and shall bear interest at the Initial Interest Rate from their date of delivery, to but not including the Initial Mandatory Tender Date, payable on each Interest Payment Date, commencing April 1, 2025\*, and on each Mandatory Tender Date. Interest on the Bonds shall be computed on the basis of a 360-day year of 12 months of 30 days each.

The principal of and interest on any of the Bonds shall be payable in lawful money of the United States of America. Except as described below under the subcaption “Book-Entry-Only System,” (a) the principal of any Bond shall be payable when due to a Holder upon presentation and surrender of such Bond at the Designated Office of the Trustee or at the office, designated by the Trustee, of any paying agent and (b) interest on any Bond shall be paid on

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\* Preliminary; subject to change.

each Interest Payment Date by check or draft which the Trustee shall cause to be mailed on that date to the Person in whose name the Bond (or one or more Predecessor Bonds) is registered at the close of business of the Regular Record Date applicable to that Interest Payment Date on the Register at the address appearing therein.

## **Redemption of the Bonds**

**Optional Redemption.** The Bonds are subject to optional redemption in whole or in part by the Issuer at the written direction of the Borrower on the Initial Remarketing Date at a redemption price of 100% of the principal amount of such Bonds to be redeemed plus accrued interest thereto. If the Bonds are not redeemed in whole on the Initial Remarketing Date, the Borrower, in consultation with the Remarketing Agent, may establish an optional redemption date with respect to any subsequent Remarketing Period and, thereafter, the Bonds are subject to optional redemption in whole or in part by the Issuer at the written direction of the Borrower on or after the applicable redemption date at a redemption price of 100% of the principal amount of such Bonds to be redeemed plus accrued interest to the applicable redemption date. Notwithstanding the foregoing, the Bonds shall not be so subject to redemption until the Trustee receives a certificate from the Borrower stating that (i) the last building in the Project has been placed in service for purposes of Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”) and (ii) at least 50% of the aggregate basis in the land and buildings of the Project have been financed or will be financed with the proceeds of the Bonds.

**Mandatory Redemption of Bonds.** The Bonds shall be redeemed in whole at a redemption price of 100% of the principal amount of such Bonds, plus accrued interest to the redemption date, if any, on any Mandatory Tender Date upon the occurrence of any of the following events: (i) the Borrower has not elected to request the remarketing of the Bonds, (ii) the conditions to remarketing set forth in the Indenture have not been met by the dates and times set forth therein, or (iii) the proceeds of a remarketing on deposit in the Bond Fund at 11:00 a.m. Eastern time on the Mandatory Tender Date are insufficient to pay the purchase price of the Outstanding Bonds on such Mandatory Tender Date. Bonds subject to redemption in accordance with this paragraph shall be redeemed from (i) amounts on deposit in the Collateral Fund, (ii) amounts on deposit in the Negative Arbitrage Account of the Bond Fund, (iii) amounts on deposit in the Project Fund, and (iv) any other Eligible Funds available or made available for such purpose at the direction of the Borrower.

**Purchase in Lieu of Redemption.** At the election of the Borrower upon a redemption in whole of the Bonds, by written notice to the Trustee, the Issuer and the Remarketing Agent given not less than five (5) Business Days in advance of such redemption date, the Bonds will be deemed tendered for purchase in lieu of the redemption on such date and the call for redemption shall be cancelled. The purchase price of Bonds so purchased in lieu of redemption shall be the principal amount thereof together with all accrued and unpaid interest to the date of redemption and any prepayment fee, if due, and shall be payable on the date of redemption thereof. Bonds so purchased in lieu of redemption shall remain Outstanding and shall be registered upon the direction of the Borrower; *provided*, however, that notwithstanding anything in the Indenture or elsewhere to the contrary, neither the Borrower nor a Related Party (as defined in Treasury Regulation Section 1.150-1(b)) shall be permitted to purchase the Bonds, which are being issued as Program Investments (as defined in Treasury Regulation Section 1.148-1(b)).

**Partial Redemption.** In the case of a partial redemption of Bonds when Bonds of denominations greater than \$5,000 are then Outstanding, each \$5,000 unit of face value of principal thereof shall be treated as though it were a separate Bond of the denomination of \$5,000. If it is determined that one or more, but not all of the \$5,000 units of face value represented by a Bond are to be called for redemption, then upon notice of redemption of a \$5,000 unit or units, the Holder of that Bond shall surrender the Bond to the Trustee (a) for payment of the redemption price of the \$5,000 unit or units of face value called for redemption (including without limitation, the interest accrued to the date fixed for redemption and any premium), and (b) for issuance, without charge to the Holder thereof, of a new Bond or Bonds of the same series, of any Authorized Denomination or Denominations in an aggregate principal amount equal to the unmatured and unredeemed portion of, and bearing interest at the same rate and maturing on the same date as, the Bond surrendered.

If less than all of an Outstanding Bond of one maturity in a Book Entry System is to be called for redemption, the Trustee shall give notice to the Depository or the nominee of the Depository that is the Holder of such Bond, and the selection of the Beneficial Ownership Interests in that Bond to be redeemed shall be at the sole discretion of the Depository and its participants.

## **Notice of Redemption**

Unless waived by any Holder of Bonds to be redeemed, official notice of redemption shall be given by the Trustee on behalf of the Issuer by mailing a copy of an official redemption notice by first class mail, postage prepaid, to the Holder of each Bond to be redeemed, at the address of such Holder shown on the Register at the opening of business on the fifth day prior to such mailing, not less than thirty (30) days nor more than sixty (60) days prior to the date fixed for redemption (with a copy to the Investor Limited Partner). A second notice of redemption shall be given, as soon as practicable, by first class mail to the Holder of each Bond which has been so called for redemption (in whole or in part) but has not been presented and surrendered to the Trustee within sixty (60) days following the date fixed for redemption of that Bond.

## **Mandatory Tender**

**Mandatory Tender for Purchase.** All Outstanding Bonds shall be subject to mandatory tender by the Holders for purchase in whole and not in part on each Mandatory Tender Date. The purchase price for each such Bond shall be payable in lawful money of the United States of America by check or draft, shall equal 100% of the principal amount to be purchased and accrued interest, if any, to the Mandatory Tender Date, and shall be paid in full on the applicable Mandatory Tender Date.

**Mandatory Tender Dates.** The Mandatory Tender Dates shall consist of (i) the Initial Mandatory Tender Date and (ii) any subsequent dates for mandatory tender of the Bonds established by the Borrower with the consent of the Remarketing Agent in connection with a remarketing of the Bonds pursuant to the Indenture.

**Holding of Tendered Bonds.** While tendered Bonds are in the custody of the Trustee pending purchase pursuant to the Indenture, the tendering Holders thereof shall be deemed the owners thereof for all purposes, and interest accruing on tendered Bonds through the day preceding the applicable Mandatory Tender Date is to be paid as if such Bonds had not been tendered for purchase.

**Effect of Prior Redemption.** Notwithstanding anything in the Indenture to the contrary, any Bond tendered under the Indenture will not be purchased if such Bond matures or is redeemed on or prior to the applicable Mandatory Tender Date.

**Purchase of Tendered Bonds.** The Trustee shall utilize the following sources of payments to pay the tender price of the Bonds not later than 2:30 p.m. Local Time on the Mandatory Tender Date in the following priority; (i) amounts representing proceeds of remarketed Bonds deposited in the Remarketing Proceeds Account, to pay the principal amount, plus accrued interest, of Bonds tendered for purchase, (ii) amounts on deposit in the Collateral Fund, to pay the principal amount of Bonds tendered for purchase, (iii) amounts on deposit in the Negative Arbitrage Account of the Bond Fund to pay the accrued interest; if any, on Bonds tendered for purchase, (iv) amounts on deposit in the Project Fund to pay the accrued interest, if any, on the Bonds tendered for purchase and (v) any other Eligible Funds available or made available for such purpose at the direction of the Borrower.

**Undelivered Bonds.** Bonds shall be deemed to have been tendered for purposes of the Indenture whether or not the Holders shall have delivered such Undelivered Bonds to the Trustee, and subject to the right of the Holders of such Undelivered Bonds to receive the purchase price of such Bonds and interest accrued thereon to the Mandatory Tender Date, such Undelivered Bonds shall be null and void. If such Undelivered Bonds are to be remarketed, the Trustee shall authenticate and deliver new Bonds in replacement thereof pursuant to the remarketing of such Undelivered Bonds.

## **Notice of Mandatory Tender**

**Notice to Holders.** Not less than thirty (30) days preceding a Mandatory Tender Date, the Trustee shall give written notice of mandatory tender to the Holders of the Bonds then Outstanding (with a copy to the Borrower, the

Investor Limited Partner and the Remarketing Agent) by first class mail, postage prepaid, at their respective addresses appearing on the Register stating:

(i) the Mandatory Tender Date and that (a) all Outstanding Bonds are subject to mandatory tender for purchase on the Mandatory Tender Date, (b) all Outstanding Bonds must be tendered for purchase no later than 12:00 noon Local Time on the Mandatory Tender Date and (c) Holders will not have the right to elect to retain their Bonds;

(ii) the address of the Designated Office of the Trustee at which Holders should deliver their Bonds for purchase and the date of the required delivery;

(iii) that all Outstanding Bonds will be purchased on the Mandatory Tender Date at a price equal to the principal amount of the Outstanding Bonds plus interest accrued to the Mandatory Tender Date; and

(iv) any Bonds not tendered will nevertheless be deemed to have been tendered and will cease to bear interest from and after the Mandatory Tender Date.

**Second Notice.** In the event that any Bond required to be delivered to the Trustee for payment of the purchase price of such Bond shall not have been delivered to the Trustee on or before the 30th day following a Mandatory Tender Date, the Trustee shall mail a second notice to the Holder of the Bond at its address as shown on the Register setting forth the requirements set forth in the Indenture for delivery of the Bond to the Trustee and stating that delivery of the Bond to the Trustee (or compliance with the provisions of the Indenture concerning payment of lost, stolen or destroyed Bonds) must be accomplished as a condition to payment of the purchase price or redemption price applicable to the Bond.

**Failure to Give Notice.** Neither failure to give or receive any notice described in the Indenture, nor the lack of timeliness of such notice or any defect in any notice (or in its content) shall affect the validity or sufficiency of any action required or provided for in the Indenture.

### **Book-Entry Only System**

*The following information on the Book-Entry System applicable to all Bonds has been supplied by DTC and neither the Issuer, the Borrower nor the Underwriter make any representation, warranties or guarantees with respect to its accuracy or completeness.*

The Depository Trust Company (“DTC”), New York, NY, will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for each issue of the Bonds, each in the aggregate principal amount of such issue, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users

of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from Issuer or Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, Agent, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

A Beneficial Owner shall give notice to elect to have its Bonds purchased or tendered, through its Participant, to the Trustee, and shall effect delivery of such Bonds by causing the Direct Participant to transfer the Participant's interest in the Bonds, on DTC's records, to the Trustee. The requirement for physical delivery of Bonds in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Bonds are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered Bonds to the Trustee DTC account.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the Issuer or Agent. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered.

The Issuer may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Bond certificates will be printed and delivered to DTC.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that Issuer believes to be reliable, but the Issuer takes no responsibility for the accuracy thereof.

## **SECURITY AND SOURCES OF PAYMENT FOR THE BONDS**

### **General**

The Bonds will be secured by all right, title and interest of the Issuer in the Trust Estate, including, but not limited to (i) the Revenues, including, without limitation, all Loan Payments, Eligible Funds and other amounts receivable by or on behalf of the Issuer under the Loan Agreement in respect of repayment of the Loan, (ii) the Special Funds, including all accounts in those Funds and all money deposited therein and the investment earnings on such money, (iii) subject to the provisions of the Bond Resolution, all right, title and interest of the Issuer in the proceeds derived from the sale of the Bonds, and any securities in which money in the Special Funds are invested, and (except for money required to be rebated to the United States of America under the Code) the proceeds derived therefrom, and any and all other real or personal property of every name and nature from time to time hereafter by delivery or by writing of any kind pledged, assigned or transferred, as and for additional security under the Indenture by the Issuer or by anyone in its behalf, or with its written consent, to the Trustee, which is authorized by the Indenture to receive any and all such property at any and all times and to hold and apply the same subject to the terms of the Indenture, (iv) the Note, except for the Reserved Rights and (v) the Loan Agreement, except for the Reserved Rights (the foregoing collectively referred to as the "Trust Estate"); provided, however, the Trust Estate does not include the Rebate Fund, the Expense Fund, the Permanent Loan Fund or the Costs of Issuance Fund (nor, in each case, any moneys deposited therein nor the investment earnings on such moneys).

The Bonds, and the premium, if any, and interest thereon, are special limited obligations of the Issuer, the principal of, premium, if any, and interest on which are payable solely from the Trust Estate. NEITHER THE DIRECTORS OR OFFICERS OF THE ISSUER NOR ANY PERSON EXECUTING THE BONDS SHALL BE LIABLE PERSONALLY ON THE BONDS BY REASON OF THE ISSUANCE THEREOF. THE BONDS AND THE INTEREST THEREON SHALL NOT BE A DEBT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE ISSUER) AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE ISSUER) SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL SUCH BONDS BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE ISSUER PLEDGED THEREFOR PURSUANT TO THE INDENTURE. THE BONDS SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. THE ISSUER HAS NO TAXING POWER.

### **Repayment of Loan**

The Loan Agreement and the Note obligate the Borrower to cause to be paid to the Trustee amounts which shall be sufficient to pay Bond Service Charges coming due on each Bond Payment Date, however, it is expected that Eligible Funds required to be deposited into the Collateral Fund and amounts on deposit in the Bond Fund and the Project Fund, along with interest earnings thereon (without the need for reinvestment), will be sufficient to pay such

Bond Service Charges and such amounts will be a credit against the Borrower's payment obligations under the Loan Agreement and the Note.

### **Investment of Special Funds; Eligible Investments**

On the Closing Date, all amounts on deposit in the Special Funds will be invested in Eligible Investments. It is anticipated that Bond Service Charges will be paid from amounts on deposit in the Special Funds and any investment earnings thereon.

### **Additional Bonds**

No additional Bonds on parity with the Bonds may be issued pursuant to the Indenture.

## **PRIVATE PARTICIPANTS**

*The following information concerning the private participants has been provided by representatives of the private participants and has not been independently confirmed or verified by either the Underwriter or the Issuer. No representation is made herein as to the accuracy or adequacy of such information or as to the absence of material adverse changes in such information subsequent to the date hereof.*

### **The Borrower**

The Borrower is EPD2 FMA, LP, a West Virginia limited partnership (the "Borrower"), a single-asset entity formed for the specific purpose of acquiring, owning and operating the Project. The general partner of the Borrower is Franklin Manor GP, LLC, a Maine limited liability company (the "General Partner"), which will have a 0.01% ownership interest in the Borrower. Stratford Franklin Manor Investors Limited Partnership, a Massachusetts limited partnership (the "Investor Limited Partner"), will own a 99.98% interest in the Borrower. Stratford SLP, Inc., a Delaware corporation (the "Special Limited Partner"), will own a 0.01% interest in the Borrower.

### **The Developer**

Eagle Point Development – Series 2, LLC, a Maine limited liability company (the "Developer"), will act as the developer for the Project. The Developer is actively engaged in the development and preservation of affordable housing and since its inception, Eagle Point subsidiaries have developed and managed an affordable housing portfolio including more than 5,000 units located in 10 states. The firm's principals have more than 75 years of affordable housing experience and work with several of the industry's most respected consultants and partners.

### **The Investor Limited Partner**

Simultaneously with the issuance of the Bonds, the Borrower expects the General Partner, the Investor Limited Partner and the Special Limited Partner to enter into an amended and restated partnership agreement of the Borrower pursuant to which the Investor Limited Partner will acquire a 99.98% ownership interest in the Borrower. Pursuant to the offer, the equity funding arrangements for the funding of the tax credit equity are expected to be in the total amount set forth under "THE PROJECT — Plan of Financing" herein paid in stages during and after rehabilitation of the Project. These funding levels and the timing of the funding are subject to numerous adjustments and conditions which could result in the amounts funded and/or the timing or even occurrence of the funding varying significantly from the estimates set forth herein and neither the Issuer nor the Underwriter makes any representation as to the availability of such funds.

### **Limited Assets and Obligation of Borrower, General Partner and Investor Limited Partner**

The Borrower and the General Partner have no substantial assets other than the Project and do not intend to acquire any other substantial assets or to engage in any substantial business activities other than those related to the ownership of the Project. However, the General Partner, the Investor Limited Partner and their affiliates are engaged in and will continue to engage in the acquisition, development, ownership and management of similar types of housing

projects. They may be financially interested in, as officers, members or otherwise, and devote substantial times to, business and activities that may be inconsistent or competitive with the interests of the Project.

The obligations and liabilities of the Borrower under the Loan Agreement and the Note are of a non-recourse nature and are limited to the Project and moneys derived from the operation of the Project. Neither the Borrower nor its partners have any personal liability for payments on the Note to be applied to pay the principal of and interest on the Bonds. Furthermore, no representation is made that the Borrower has substantial funds available for the Project. Accordingly, neither the Borrower's financial statements nor those of its partners are included in this Official Statement.

### **The Property Manager**

The Project will be managed by Eagle Point Management, LLC or its affiliates (collectively, the "Property Manager"). The Property Manager is an affiliate of the Developer. The Property Manager has been involved in the management of apartment complexes since 2006. The Property Manager currently manages more than 23 apartment complexes comprising a total of approximately 2,700 units throughout the United States. The Property Manager was formed in 2006 and currently has a staff of 15 corporate personnel and 78 site employees.

### **The Architect**

The architect for the Project is Hooker DeJong, Inc. (the "Architect"). The Architect is not an affiliate of the Developer. The Architect has been a licensed architect for 86 years and has been the principal architect for approximately 202 multifamily developments with an excess of 21,000 units throughout 34 states.

### **The General Contractor**

The general contractor for the Project will be Caldwell, Heckles and Egan, Inc. (the "General Contractor"). The General Contractor is not an affiliate of the Developer. The General Contractor and its affiliated construction companies have been constructing and rehabilitating multifamily rental housing developments for over 42 years and have constructed over 68 projects, with nearly 5,000 units.

### **The WVHDF RD 538 Lender**

West Virginia Housing Development Fund, a public body corporate and governmental instrumentality of the State, will, upon satisfaction of certain conditions precedent, make the WVHDF RD 538 Mortgage Loan to the Borrower.

## **THE PROJECT**

*The following information concerning the Project has been provided by representatives of the Borrower and has not been independently confirmed or verified by any other person. Although the information shown below has been obtained from sources believed to be reliable, no representation is made herein by the Issuer or the Underwriter or any of their officers or employees as to the accuracy or adequacy of such information or as to the absence of material adverse changes in such information subsequent to the date hereof.*

The Project, known as Franklin Manor Apartments, is located in Martinsburg, West Virginia, on an approximately 2.98-acre site. The Project consists of renovating 48 apartment units located in six buildings and community space. Construction of the Project is anticipated to commence in September 2024 and be completed approximately 11 months later.

Common area improvements will include a leasing office and resident meeting room. Site amenities include: a children's playground, tot lot, laundry facility, on-site management and on-site maintenance. There are 43 parking spaces for resident use only.

The unit mix and approximate square footage for the units of the Project will be as follows:

<b><u>Composition</u></b>	<b><u>Number of Units</u></b>	<b><u>Approximate Sq. Footage</u></b>
1 Bedroom, 1 Bath	12	670
2 Bedroom, 1 Bath	28	805
3 Bedroom, 1 Bath	4	1,249
4 Bedroom, 2 Bath	<u>4</u>	1,400
<b>Total</b>	<b>48</b>	

## **Plan of Financing**

The estimated sources and uses of funds for the Project are projected to be approximately as follows:

### **Sources of Funds\***

Bond Proceeds	\$5,100,000
WVHDF RD 538 Mortgage Loan	4,520,000
ERA2 Loan	1,558,000
Federal LIHTC Proceeds	3,548,111
Interest Earned on Loan Investments	233,369
Deferred Developer Fee	<u>230,993</u>
<b>Total</b>	<b><u>\$15,910,473</u></b>

### **Uses of Funds\***

Acquisition Costs	\$2,700,000
Construction Costs	4,914,712
Architect/Engineer/Third Party	645,180
Reserves	280,482
Costs of Issuance	473,706
Developer Fee	11,035,892
Mortgage Interest	174,500
Payment of Bond Principal	<u>5,100,000</u>
<b>Total</b>	<b><u>\$25,324,472</u></b>

All costs of issuance of the Bonds, including the underwriter's fee, will be paid by the Borrower.

*The WVHDF RD 538 Mortgage Loan.* At closing, the Project will utilize the WVHDF RD 538 Mortgage Loan guaranteed under the USDA Rural Development Section 538 program, as amended, and applicable regulations promulgated thereunder. The WVHDF RD 538 Mortgage Loan is expected to be in the original principal amount of \$4,520,000\* and is to bear interest at the rate of \_\_\_\_%\* per annum. The WVHDF RD 538 Mortgage Loan proceeds will be disbursed by the WVHDF RD 538 Lender to the Borrower based upon approved advances. Such advances will be evidenced by a mortgage note (the "WVHDF RD 538 Note") and secured by a mortgage (the "WVHDF RD 538 Mortgage") on the Project. The WVHDF RD Note will have a total term of 40 years. It is anticipated that amounts from the WVHDF RD 538 Mortgage Loan will be deposited into the Permanent Loan Fund, and transferred in installments to the Collateral Fund in accordance with the Indenture and the Loan Agreement, thereby permitting the Trustee to disburse a like amount from the Project Fund to or at the direction of the Borrower for the payment of Project Costs (with the remainder of the WVHDF RD 538 Mortgage Loan proceeds anticipated to be delivered from the Permanent Loan Fund to the Borrower for the payment of Project Costs upon approval by the WVHDF RD 538 Lender).

*The ERA2 Loan.* The Project will also utilize a loan in the principal amount of \$1,558,000\* (the "ERA2 Loan"). The ERA2 Loan is expected to be in the original principal amount of \$1,558,000\* and is to bear interest at the rate of \_\_\_\_%\* per annum. The ERA2 Loan proceeds will be disbursed by the ERA2 Lender to the Borrower

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\* Preliminary; subject to change.

based upon approved advances. Such advances will be evidenced by a mortgage note (the “ERA2 Note”) and secured by a mortgage (the “ERA2 Mortgage”) on the Project [, which ERA2 Mortgage shall be subordinate to the WVHDF RD 538 Mortgage]. The ERA2 Note will have a total term of \_\_ years. It is anticipated that amounts from the ERA2 Loan will be deposited into the Collateral Fund from time to time in accordance with the Indenture and the Loan Agreement, thereby permitting the Trustee to disburse a like amount from the Project Fund to or at the direction of the Borrower for the payment of Project Costs (with the remainder of the ERA2 Loan proceeds anticipated to be delivered from the ERA2 Lender to the Borrower for the payment of Project Costs upon approval by the ERA2 Lender).

*The Low Income Housing Tax Credit Proceeds.* Simultaneously with the issuance of the Bonds, the Borrower sold to the Investor Limited Partner a 99.98% ownership interest in the Borrower. Pursuant to the sale, the funding of the Federal Low Income Housing Tax Credit equity will total approximately \$3,548,111\*, with an initial capital contribution of \$359,311\*. The funding levels and the timing of the funding are subject to numerous adjustments and conditions which could result in the amounts funded and/or the timing or even occurrence of the funding varying significantly from the projections set forth above and neither the Issuer nor the Underwriter makes any representation as to the availability of such funds.

*Deferred Developer Fee.* The Project will also utilize a deferred developer fee in the amount of \$230,993\* as a source of funding. The deferred developer fee will be repaid through surplus cash flow received from the operation of the Project.

The sources and uses of funds to be applied under the Indenture are projected to be approximately as follows:

<b>Sources of Funds*</b>	
Bond Proceeds	\$5,100,000
Eligible Funds	
<b>Total</b>	<b>\$</b>
<b>Uses of Funds*</b>	
Project Fund	\$5,100,000
Negative Arbitrage Account	
<b>Total</b>	<b><u>\$</u></b>

## Project Regulation

The Borrower intends to rehabilitate and operate the Project as a “qualified residential rental project” in accordance with the provisions of Section 142(d) of the Code. Concurrently with the issuance of the Bonds, the Borrower, the Issuer and the Trustee will enter into the Bond Regulatory Agreement. Under the Bond Regulatory Agreement, the Borrower will agree that, at all times during the Qualified Project Period, the Borrower will rent at least 40% of the units in the Project to persons whose adjusted family income (determined in accordance with the provisions of the Code) is less than 60% of the median area income (adjusted for family size). The Qualified Project Period commences on the later of the Closing Date or the first day on which at least 10% of the units are occupied and continues until the latest of (a) the date which is fifteen (15) years after the later of the Closing Date or the date on which at least ten percent (10%) of the units in the Project are first occupied, (b) the first date on which no tax-exempt private activity bonds with respect to the Project are outstanding, or (c) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended (the “National Housing Act”) terminates. The failure of the Borrower to comply with the Bond Regulatory Agreement could cause interest on the Bonds to be included in gross income for federal income tax purposes. See APPENDIX D — SUMMARY OF CERTAIN PROVISIONS OF THE BOND REGULATORY AGREEMENT.

The Project will also be encumbered by an Extended Use Agreement required by Section 42 of the Code relating to tax credits, which will (a) restrict the income levels of 100% of the units in the Project to amounts not greater than 60% of the area median income adjusted for family size, and (b) restrict the rents which may be charged to the tenants for occupancy of units in the Project to not more than 30% of 60% of area median income, adjusted for family size.

Additional restrictions are imposed on the Project pursuant to a regulatory agreement and a declaration of restrictive covenants, each entered into by the Borrower in connection with the W VHDF RD 538 Mortgage Loan. In addition, the Borrower will enter into a separate declaration of restrictive covenants with respect to the ERA2 Loan.

### **The HAP Contract**

The Borrower will receive the benefit of three Section 8 Housing Assistance Payment Contracts (together, the “HAP Contract”) covering all 48 units at the Project.

Funding under the HAP Contract is subject to annual Congressional appropriations, as more particularly described below. The Section 8 project-based housing assistance payment program (the “Section 8 Program”) is authorized by Section 8 of the National Housing Act, and in the case of Section 8 contracts is administered by contract administrators selected by HUD. The Section 8 Program authorizes housing assistance payments to owners of qualified housing for the benefit of low-income families (defined generally as families whose incomes do not exceed 80% of the area median income (the “AMI”) for the area as determined by HUD), and very low-income families (defined generally as families whose income do not exceed 50% of the AMI as determined by HUD). Section 8 housing assistance payments generally represent the difference between the “contract rent” for the unit approved by HUD and the eligible tenant’s contribution, which is generally 30% of income, as adjusted for family size and certain expenses, subject to a minimum rent contribution. The rents approved by HUD for the Project, as they may be adjusted from time to time with procedures set forth in the HAP Contract, are the “contract rents” for the Project. The HAP Contract will require the Borrower to maintain the Project in decent, safe and sanitary condition and to comply with other statutory and regulatory requirements governing the operation of the Project, use of project funds, and other matters. If the Borrower fails to comply with the terms of the HAP Contract, HUD or the contract administrator could seek to abate or terminate the payments under the HAP Contract, or take other sanctions. Funding for HAP contracts is appropriated by Congress on an annual basis, and there is no assurance that adequate funding will be appropriated each year during the term of the HAP Contract. Since payments received under the HAP Contract constitute a primary source of revenues for the Project, the expiration of the HAP Contract, or the failure of Congress to appropriate funds sufficient to fund the HAP Contract during each year of its term, would have a material adverse effect on the ability of the Project to generate revenues sufficient to pay the principal of and interest of the Loan.

### **CERTAIN BONDHOLDERS’ RISKS**

*The purchase of the Bonds will involve a number of risks. The following is a summary, which does not purport to be comprehensive or definitive, of some of such risk factors.*

The following is a summary of certain risks associated with a purchase of the Bonds. There are other possible risks not discussed below. The Bonds are payable from the payments to be made by the Borrower under the Loan Agreement and the Note, and from amounts on deposit in the Special Funds and the interest earnings thereon (without the need for reinvestment). The Borrower’s obligation to make payments pursuant to the Loan Agreement and the Note are nonrecourse obligations with respect to which the Borrower and its members have no personal liability (except as otherwise provided in the Note) and as to which the Borrower and its members have not pledged any of their respective assets.

### **General**

Payment of the Bond Service Charges, and the Borrower’s obligations with respect to the Bond Service Charges, will be primarily secured by and payable from Bond proceeds held in the Project Fund and moneys deposited into the Collateral Fund and the Bond Fund, including the Negative Arbitrage Account held in the Bond Fund. Although the Borrower will execute the Note to evidence its obligation to repay the Loan, it is not expected that any revenues from the Project or other amounts, except moneys in the Special Funds, will be available to satisfy that obligation. The Indenture requires the Trustee to verify, before any disbursement of funds from the Project Fund, that the sum of the funds on deposit in the Project Fund and the Collateral Fund will be at least equal to the then outstanding principal amount of the Bonds after such disbursement. It is expected that funds on deposit in the Collateral Fund and Negative Arbitrage Account of the Bond Fund, and the interest earnings thereon (without the need for reinvestment) will be sufficient to pay the debt service on the Bonds.

## **Limited Security for Bonds**

The Bonds are not secured by the WVHDF RD 538 Mortgage Loan. Investors should look exclusively to amounts on deposit in the Special Funds under the Indenture and investment earnings on each as the source of payment of debt service on the Bonds.

## **Future Determination of Taxability of the Bonds**

Failure of the Borrower to have complied with and to continue to comply with certain covenants contained in the Tax Certificate and Agreement, the Loan Agreement and the Bond Regulatory Agreement could result in interest on the Bonds being taxable retroactive to the date of original issuance of the Bonds. The Bonds are not subject to redemption upon a determination of taxability and are not subject to payment of additional interest in such an event, and neither the Issuer nor the Borrower will be liable under the Bonds, the Indenture or the Loan Agreement for any such payment of additional interest on the Bonds.

## **Issuer Limited Liability**

The Bonds will not be insured or guaranteed by any governmental entity or by the Issuer or any member or program participant of the foregoing. Holders of the Bonds will have no recourse to the Issuer in the event of an Event of Default on the Bonds. The Trust Estate for the Bonds will be the only source of payment on the Bonds.

## **Enforceability of Remedies upon an Event of Default**

The remedies available to the Trustee and the owners of the Bonds upon an Event of Default under the Indenture, the Loan Agreement, the Bond Regulatory Agreement or any other document described herein are in many respects dependent upon regulatory and judicial actions which are often subject to discretion and delay. Under existing law and judicial decisions, the remedies provided for under such documents may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Bonds will be qualified to the extent that the enforceability of certain legal rights related to the Bonds is subject to limitations imposed by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally and by equitable remedies and proceedings generally.

## **Secondary Markets and Prices**

No representation is made concerning the existence of any secondary market for the Bonds. The Underwriter will not be obligated to repurchase any of the Bonds, nor can any assurance be given that any secondary market will develop following the completion of the offering of the Bonds. Further, there can be no assurance that the initial offering prices for the Bonds will continue for any period of time. Furthermore, the Bonds should be purchased for their projected returns only and not for any resale potential, which may or may not exist.

## **Potential Impact of Pandemics or Public Health Crises**

The spread of the strain of a virus and resulting disease could alter the behavior of businesses and people in a manner that could have negative effects on global, state and local economies. There can be no assurances that the spread of a pandemic would not materially impact both local and national economies and, accordingly, have a materially adverse impact on the Project's operating and financial viability. The effects of a pandemic could include, among other things, an increase in the time necessary to complete the construction and/or rehabilitation of the Project, suspension or delay of site inspections and other on-site meetings, interruption in the engagement of material participants in the Project, increase in the time necessary to conduct lease-up at the Project, and increased delinquencies and/or vacancies, all of which could impact the Borrower's ability to make payments on the loans and result in a default and acceleration thereof.

## **Summary**

The foregoing is intended only as a summary of certain risk factors attendant to an investment in the Bonds. In order for potential investors to identify risk factors and make an informed investment decision, potential investors should be thoroughly familiar with this entire Official Statement and the Appendices hereto.

## **TAX MATTERS**

### **Opinion of Bond Counsel**

In the opinion of Hawkins Delafield & Wood LLP, Bond Counsel to the Issuer, under existing statutes and court decisions and assuming continuing compliance with certain tax covenants described herein, (i) interest on the Bonds is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Code, except that no opinion is expressed as to such exclusion of interest on any Bond for any period during which the Bond is held by a person who, within the meaning of Section 147(a) of the Code, is a “substantial user” of the facilities financed with the proceeds of the Bonds or a “related person,” and (ii) interest on the Bonds is not treated as a preference item in calculating the alternative minimum tax under the Code; however, interest on the Bonds is included in the “adjusted financial statement income” of certain corporations that are subject to the alternative minimum tax under Section 55 of the Code. In rendering its opinion, Bond Counsel has relied on certain representations, certifications of fact, and statements of reasonable expectations made by the Issuer, the Borrower and others in connection with the Bonds, and Bond Counsel has assumed compliance by the Issuer and the Borrower with certain ongoing covenants to comply with applicable requirements of the Code to assure the exclusion of interest on the Bonds from gross income under Section 103 of the Code.

Bond Counsel expresses no opinion as to any other federal, state or local tax consequences arising with respect to the Bonds, or the ownership or disposition thereof, except as stated in the paragraph above. Bond Counsel renders its opinion under existing statutes and court decisions as of the issue date, and assumes no obligation to update, revise or supplement its opinion to reflect any action thereafter taken or not taken, any fact or circumstance that may thereafter come to its attention, any change in law or interpretation thereof that may thereafter occur, or for any other reason. Bond Counsel expresses no opinion as to the consequence of any of the events described in the preceding sentence or the likelihood of their occurrence. In addition, Bond Counsel expresses no opinion on the effect of any action taken or not taken in reliance upon an opinion of other counsel regarding federal, state or local tax matters, including, without limitation, exclusion from gross income for federal income tax purposes of interest on the Bonds.

### **Certain Ongoing Federal Tax Requirements and Covenants**

The Code establishes certain ongoing requirements that must be met subsequent to the issuance and delivery of the Bonds in order that interest on the Bonds be and remain excluded from gross income under Section 103 of the Code. These requirements include, but are not limited to, requirements relating to use and expenditure of gross proceeds of the Bonds, yield and other restrictions on investments of gross proceeds, and the arbitrage rebate requirement that certain excess earnings on gross proceeds be rebated to the federal government. Noncompliance with such requirements may cause interest on the Bonds to become included in gross income for federal income tax purposes retroactive to their issue date, irrespective of the date on which such noncompliance occurs or is discovered. The Issuer and the Borrower have covenanted to comply with certain applicable requirements of the Code to assure the exclusion of interest on the Bonds from gross income under Section 103 of the Code.

### **Low Income Set Aside Requirements under the Code**

The Bonds are subject to the low income set aside and other requirements for qualified residential rental projects under the Code which are described briefly in this subsection. The Code requires that at least 95% of the net proceeds of exempt facility bonds under Section 142(a)(7) (after reduction for amounts applied to fund a reasonably required reserve fund) be used to provide “qualified residential rental projects.” The Code defines a residential rental project as a project containing units with separate and complete facilities for living, sleeping, eating, cooking, and sanitation that are available to the general public and are to be used on other than a transient basis. Section 142(d) of the Code requires that either (i) at least 20% of the completed units in a project to be financed with the proceeds of

the Bonds be continuously occupied during the “qualified project period” by individuals and families whose annual adjusted income does not exceed 50% of the area median income (with adjustments for family size), or (ii) at least 40% of the completed units in a project to be financed with the proceeds of the Bonds be continuously occupied during the qualified project period by individuals and families whose annual adjusted income does not exceed 60% of the area median income (with adjustments for family size). The Issuer and the Borrower will make an election as to the applicable low income set aside requirement with respect to the Project prior to the issuance of the Bonds. In addition, all of the units in the Project must be rented or available for rental on a continuous basis throughout the qualified project period. The Code defines the “qualified project period” as the period beginning on the first day upon which 10% of the units in a project are occupied and ending on the latest of (i) the date that is 15 years after the date upon which 50% of the residential units in such project are occupied, (ii) the first day on which no tax-exempt private activity bond issued with respect to the project is outstanding, or (iii) the date upon which any assistance provided with respect to the project under Section 8 of the National Housing Act terminates. Generally, upon an increase of a tenant’s income over 140% of the applicable income limitation, the next available unit of comparable or smaller size in the Project must be rented to a tenant whose income does not exceed the applicable income limitation. The Code requires annual certifications to be made to the Secretary of the Treasury regarding compliance with the applicable income limitations.

### **Certain Collateral Federal Tax Consequences**

The following is a brief discussion of certain collateral federal income tax matters with respect to the Bonds. It does not purport to address all aspects of federal taxation that may be relevant to a particular owner of a Bond. Prospective investors, particularly those who may be subject to special rules, are advised to consult their own tax advisors regarding the federal tax consequences of owning and disposing of the Bonds.

Prospective owners of the Bonds should be aware that the ownership of such obligations may result in collateral federal income tax consequences to various categories of persons, such as corporations (including S corporations and foreign corporations), financial institutions, property and casualty and life insurance companies, individual recipients of Social Security and railroad retirement benefits, individuals otherwise eligible for the earned income tax credit, and taxpayers deemed to have incurred or continued indebtedness to purchase or carry obligations the interest on which is excluded from gross income for federal income tax purposes. Interest on the Bonds may be taken into account in determining the tax liability of foreign corporations subject to the branch profits tax imposed by Section 884 of the Code.

### **Information Reporting and Backup Withholding**

Information reporting requirements apply to interest paid on tax-exempt obligations, including the Bonds. In general, such requirements are satisfied if the interest recipient completes, and provides the payor with, a Form W-9, “Request for Taxpayer Identification Number and Certification,” or if the recipient is one of a limited class of exempt recipients. A recipient not otherwise exempt from information reporting who fails to satisfy the information reporting requirements will be subject to “backup withholding,” which means that the payor is required to deduct and withhold a tax from the interest payment, calculated in the manner set forth in the Code. For the foregoing purpose, a “payor” generally refers to the person or entity from whom a recipient receives its payments of interest or who collects such payments on behalf of the recipient.

If an owner purchasing a Bond through a brokerage account has executed a Form W-9 in connection with the establishment of such account, as generally can be expected, no backup withholding should occur. In any event, backup withholding does not affect the excludability of the interest on the Bonds from gross income for federal income tax purposes. Any amounts withheld pursuant to backup withholding would be allowed as a refund or a credit against the owner’s federal income tax once the required information is furnished to the Internal Revenue Service.

### **West Virginia Taxes**

In the opinion of Jackson Kelly PLLC, General Counsel to the Issuer, under the Act, the Bonds and the income therefrom shall at all times be exempt from taxation by the State, or any county, municipality or other governmental subdivision of the State, except for death and gift taxes, taxes on transfers, sales taxes, real property taxes and business and occupation taxes and as otherwise set forth herein. The State also imposes a corporation net

income tax on corporations and a personal income tax on the resident partners of partnerships, the resident shareholders of S corporations and the resident members of limited liability companies doing business in the State. The corporation net income and personal income tax statutes contain formulary adjustments decreasing the amount of income subject to these taxes for certain corporations, partnerships, S corporations or limited liability companies owning bonds such as the Bonds.

### **Miscellaneous**

Tax legislation, administrative actions taken by tax authorities, or court decisions, whether at the federal or state level, may adversely affect the tax-exempt status of interest on the Bonds under federal or state law or otherwise prevent beneficial owners of the Bonds from realizing the full current benefit of the tax status of such interest. In addition, such legislation or actions (whether currently proposed, proposed in the future, or enacted) and such decisions could affect the market price or marketability of the Bonds.

Prospective purchasers of the Bonds should consult their own tax advisors regarding the foregoing matters.

### **UNDERWRITING**

Stifel, Nicolaus & Company, Incorporated (the “Underwriter”) has entered into a Bond Purchase Agreement to purchase all of the Bonds, if any of the Bonds are to be purchased, at the price set forth on the cover page hereof. The Bond Purchase Agreement provides that the Underwriter will receive compensation for its services relating to the transaction from the Borrower in the amount of \$\_\_\_\_\_ plus \$\_\_\_\_\_ for certain fees and expenses (excluding the fees of its counsel). The obligations of the Underwriter to pay for the Bonds are subject to certain terms and conditions set forth in the Bond Purchase Agreement. The Borrower has agreed to indemnify the Underwriter and the Issuer as to certain matters in connection with the Bonds.

The Underwriter may offer and sell Bonds that it purchases to certain dealers including dealer banks and dealers depositing Bonds into investment trusts and others at prices lower than the public offering prices stated on the cover of this Official Statement. The initial public offering prices may be changed from time to time by the Underwriter.

In addition to serving as Underwriter, Stifel, Nicolaus & Company, Incorporated has been designated to serve as Remarketing Agent and will receive a fee for its remarketing services in connection with any remarketing of the Bonds on the Initial Mandatory Tender Date.

### **RATING**

Moody’s Investors Service, Inc. (“Moody’s”) has assigned the Bonds the rating set forth on the cover page hereof. An explanation of the significance of such rating may be obtained from Moody’s. The rating of the Bonds reflects only the views of Moody’s at the time such rating was given, and none of the Issuer, the Borrower or the Underwriter makes any representation as to the appropriateness of the rating. There is no assurance that such rating will continue for any given period of time or that it will not be revised downward or withdrawn entirely by Moody’s, if in its judgment, circumstances so warrant. Any such downward revision or withdrawal of the rating may have an adverse effect on the market price of the Bonds.

### **UNDERTAKING TO PROVIDE CONTINUING DISCLOSURE**

Prior to the issuance of the Bonds, the Borrower will execute and deliver a Continuing Disclosure Agreement pursuant to which the Borrower will agree to provide ongoing disclosure pursuant to the requirements of Rule 15c2-12 of the Securities and Exchange Commission (the “Rule”). Financial statements will be provided at least annually to the Municipal Securities Rulemaking Board (the “MSRB”) and notices of certain events will be issued pursuant to the Rule. Information will be filed with the MSRB through its Electronic Municipal Market Access (EMMA) system, unless otherwise directed by the MSRB. A form of the Continuing Disclosure Agreement is attached hereto as APPENDIX E.

A failure by the Borrower to comply with the Continuing Disclosure Agreement will not constitute an Event of Default under the Indenture (although Holders will have any available remedy at law or in equity for obtaining necessary disclosures). Nevertheless, such a failure must be reported in accordance with the Rule and must be considered by a broker or dealer before recommending the purchase or sale of the Bonds in the secondary market. Consequently, such a failure may adversely affect the transferability and liquidity of the Bonds and their market price and the ability of the Issuer to issue and sell bonds in the future. The Borrower has not previously been subject to the continuing disclosure requirements of the Rule. The Issuer has no obligations under the Continuing Disclosure Agreement.

### **CERTAIN LEGAL MATTERS**

Certain legal matters relating to the authorization and validity of the Bonds will be subject to an approving opinion of Hawkins Delafield & Wood LLP, New York, New York, Bond Counsel to the Issuer. Certain legal matters will be passed upon for the Borrower by its counsels, Kutak Rock LLP, Denver, Colorado and \_\_\_\_\_, for the Issuer by its counsel, Jackson Kelly PLLC, Charleston, West Virginia, and for the Underwriter by its counsel, Tiber Hudson LLC, Washington, D.C. Payment of the fees of certain counsel to the transaction is contingent upon the issuance and delivery of the Bonds as described herein.

### **ABSENCE OF LITIGATION**

#### **The Issuer**

On the date of issuance of the Bonds, the Issuer will certify that, to the best of its knowledge, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, or before or by any court, public board or body pending or threatened in any court in any way seeking to restrain or to enjoin the issuance, sale or delivery of the Bonds, or the collection of revenues pledged or to be pledged thereto, or in any way contesting or affecting the validity or enforceability of the Bonds, the Indenture, the Bond Resolution, the Loan Agreement, the Bond Regulatory Agreement, or the Bond Purchase Agreement, or contesting the powers of the Issuer, with respect to the Bonds, the Indenture, the Bond Resolution, the Loan Agreement, the Bond Regulatory Agreement, the Bond Purchase Agreement or any action on the part of the Issuer contemplated by any of said documents.

#### **The Borrower**

On the date of issuance of the Bonds, the Borrower will certify that, to the best of its knowledge, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, or before or by any court, public board or body pending or threatened in any court in any way seeking to restrain or to enjoin the issuance, sale or delivery of the Bonds, or the collection of revenues pledged or to be pledged thereto, or in any way contesting or affecting the validity or enforceability of the Loan Agreement, the Note, the Bond Regulatory Agreement, the Extended Use Agreement, the Continuing Disclosure Agreement or the Bond Purchase Agreement, or contesting the powers of the Borrower with respect to the Loan Agreement, the Note, the Bond Regulatory Agreement, the Extended Use Agreement, the Continuing Disclosure Agreement or the Bond Purchase Agreement or any action on the part of the Borrower contemplated by any of said documents.

### **ADDITIONAL INFORMATION**

The summaries and explanation of, or references to, the Act, the Indenture, the Loan Agreement, the Bond Regulatory Agreement, and the Bonds included in this Official Statement do not purport to be comprehensive or definitive. Such summaries, references and descriptions are qualified in their entirety by reference to each such document, copies of which are on file with the Trustee.

The information contained in this Official Statement is subject to change without notice and no implication shall be derived therefrom or from the sale of the Bonds that there has been no change in the affairs of the Issuer from the date hereof.

This Official Statement is submitted in connection with the offering of the Bonds and may not be reproduced or used, as a whole or in part, for any other purpose. Any statements in this Official Statement involving matters of opinion or estimate, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the Issuer and the owners of any of the Bonds.

[Signature pages to follow]

This Official Statement has been approved by the Issuer and the Borrower for distribution by the Underwriter to current Holders of the Bonds and potential purchasers of the Bonds.

**WEST VIRGINIA HOUSING DEVELOPMENT FUND**

By:

\_\_\_\_\_  
Erica L. Boggess  
Executive Director

[Signatures continue on next page]

[Borrower Signature Page to Official Statement]

**EPD2 FMA, LP,**  
a West Virginia limited partnership

By: Franklin Manor GP, LLC,  
a Maine limited liability company,  
its General Partner

By: Eagle Point Development – Series 2, LLC,  
a Maine limited liability company,  
its Managing Member

By: \_\_\_\_\_  
Richard Nelson, Jr.  
Manager

## APPENDIX A

### DEFINITIONS OF CERTAIN TERMS

Certain capitalized terms used in this Official Statement are defined below. The following is subject to all the terms and provisions of the Indenture, to which reference is hereby made and copies of which are available from the Issuer or the Trustee.

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

**“Act of Bankruptcy”** means written notice to the Trustee that the Borrower has become insolvent or has failed to pay its debts generally as such debts become due or has admitted in writing its inability to pay any of its indebtedness or has consented to or has petitioned or applied to any court or other legal authority for the appointment of a receiver, liquidator, trustee or similar official for itself or for all or any substantial part of its properties or assets or that any such trustee, receiver, liquidator or similar official has been appointed or that a petition in bankruptcy, insolvency, reorganization or liquidation proceedings (or similar proceedings) have been instituted by or against the Borrower; provided that, if in the case of an involuntary proceeding, such proceeding is not dismissed within 90 days after commencement thereof.

**“Additional Payments”** means the amounts required to be paid by the Borrower pursuant to the Loan Agreement.

**“Administrative Expenses”** means the Ordinary Trustee Fees and Expenses, the Dissemination Agent Fee and the Ordinary Issuer Fees.

**“Affiliate”** of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” when used with respect to any specified Person means the power to direct the policies of such Person, directly or indirectly, whether through the power to appoint and remove its directors, the ownership of voting securities, by contract, or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

**“Authorized Borrower Representative”** means any person who, at such applicable time, is designated as the Borrower’s authorized representative by written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person and signed on behalf of the Borrower by or on behalf of any authorized general partner of the Borrower if the Borrower is a general or limited partnership, by any authorized managing member of the Borrower if the Borrower is a limited liability company, or by any authorized officer of the Borrower if the Borrower is a corporation, which certificate may designate an alternate or alternates. The Trustee may conclusively presume that a person designated in a written certificate filed with it as an Authorized Borrower Representative is an Authorized Borrower Representative until such time as the Borrower files with it (with a copy to the Issuer) a written certificate revoking such person’s authority to act in such capacity.

**“Authorized Denomination”** means \$5,000, or any integral multiple of \$1,000 in excess thereof.

**“Authorized Officer”** means the Chair, Executive Director and each Deputy Director of the Issuer and any other officer or employee of the Issuer designated by certificate of any of the foregoing as authorized by the Issuer to perform a specified act, sign a specified document or otherwise take action with respect to the Bonds. The Trustee may conclusively presume that a person designated in a written certificate filed with it as an Authorized Officer is an Authorized Officer until such time as such provider files with it a written certificate identifying a different person or persons to act in such capacity.

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

**“Beneficial Owner”** means with respect to the Bonds, the Person owning the Beneficial Ownership Interest therein, as evidenced to the satisfaction of the Trustee.

**“Beneficial Ownership Interest”** means the right to receive payments and notices with respect to the Bonds held in a Book-Entry System.

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

**“Bond Fund”** means the Bond Fund created in the Indenture.

**“Bond Payment Date”** means each Interest Payment Date and any other date Bond Service Charges on the Bonds are due, whether at maturity, upon redemption, Mandatory Tender or acceleration or otherwise.

**“Bond Purchase Agreement”** means the Bond Purchase Agreement, dated September \_\_, 2024, among the Underwriter, the Issuer and the Borrower.

**“Bond Regulatory Agreement”** means the Regulatory Agreement relating to the Project, dated as of the Closing Date, among the Issuer, the Trustee and the Borrower, as hereafter amended, modified, supplemented or restated from time to time to the extent permitted in the Indenture and which by its terms shall be filed in the official land records of the State on the Closing Date with respect to which the covenants contained therein shall run with the land.

**“Bond Resolution”** means the resolution relating to the issuance and sale of the Bonds, adopted by the Issuer on August 28, 2024.

**“Bond Service Charges”** means, for any period or payable at any time, the principal of and interest on the Bonds for that period or payable at that time whether due at maturity or upon redemption, Mandatory Tender or acceleration.

**“Bonds”** means the Multifamily Housing Revenue Bonds, Series 2024 (Franklin Manor) of the Issuer authorized in the Bond Resolution and the Indenture in the aggregate principal amount of \$5,100,000\*.

**“Book-Entry Form”** or **“Book-Entry System”** means, with respect to the Bonds, a form or system, as applicable, under which (a) physical Bond certificates in fully registered form are issued only to a Depository or its nominee, with the physical Bond certificates “immobilized” in the custody of the Depository and (b) the ownership of book-entry interests in Bonds and Bond Service Charges thereon may be transferred only through a book-entry made by others than the Issuer or the Trustee. The records maintained by others than the Issuer or the Trustee constitute the written record that identifies the owners, and records the transfer, of book-entry interests in those Bonds and Bond Service Charges thereon.

**“Borrower”** means EPD2 FMA, LP, a West Virginia limited partnership.

**“Borrower Documents”** means the Financing Documents, the WVHDF RD 538 Mortgage Loan Documents and the Permanent Loan Documents to which the Borrower is a party.

**“Business Day”** means a day(a) that is not a Saturday or a Sunday or a day on which (i) banking institutions in the City of New York or in the city in which the principal office of the Trustee, Tender Agent or Remarketing Agent is located or authorized or obligated by law or executive order to be closed or (ii) The New York Stock Exchange is closed and (b) on which the United States Government makes payments of principal and interest on its Treasury obligations.

**“Cash Flow Projection”** means a cash flow projection prepared by an independent firm of certified public accountants, a financial advisory firm, a law firm or other independent third party qualified and experienced in the preparation of cash flow projections for structured finance transactions similar to the Bonds, designated by the

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\* Preliminary; subject to change.

Borrower and acceptable to the Rating Agency, establishing, to the satisfaction of the Rating Agency, the sufficiency of (a) the amount on deposit in the Special Funds, (b) projected investment income to accrue on amounts on deposit in the Special Funds during the applicable period plus (c) any additional Eligible Funds delivered to the Trustee by or on behalf of the Borrower to pay Bond Service Charges and the Administrative Expenses, in each instance, when due and payable, including, but not limited to, any cash flow projection prepared in connection with (i) the initial issuance and delivery of the Bonds, (ii) a proposed remarketing of the Bonds as provided in the Indenture, (iii) the purchase, sale or exchange of Eligible Investments as provided in the Indenture, (iv) a release of Eligible Funds from the Negative Arbitrage Account of the Bond Fund, and (v) the optional redemption of the Bonds as provided in the Indenture, including in the event that the Trustee intends to sell or otherwise dispose of Eligible Investments prior to maturity at a price below par.

**“Chair”** means the person serving as Chair of the Issuer.

**“Closing Date”** means September \_\_, 2024.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Collateral Fund”** means the Collateral Fund created in the Indenture.

**“Completion Certificate”** means the certificate attached as an exhibit to the Loan Agreement.

**“Continuing Disclosure Agreement”** means the Continuing Disclosure Agreement dated as of September 1, 2024, between the Borrower and the Dissemination Agent, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

**“Costs of Issuance”** means the “issuance costs” with respect to the Bonds within the meaning of Section 147(g) of the Code.

**“Depository”** means, with respect to the Bonds, DTC, until a successor Depository shall have become such pursuant to the applicable provisions of the Indenture, and thereafter, Depository shall mean the successor Depository. Any Depository shall be a securities depository that is a clearing agency under a federal law operating and maintaining, with its participants or otherwise, a Book-Entry System to record ownership of book-entry interests in Bonds or Bond Service Charges thereon, and to effect transfers of book-entry interests in Bonds.

**“Designated Office”** of the Trustee or the Remarketing Agent means, respectively, the office of the Trustee or the Remarketing Agent at the respective Notice Address set forth in the Indenture or at such other address as may be specified in writing by the Trustee or the Remarketing Agent, as applicable, as provided in the Indenture.

**“Determination of Taxability”** means the receipt by the Trustee of (1) a copy of written notice from the Commissioner or any District Director of the Internal Revenue Service or a determination by any court of competent jurisdiction, or (2) an Opinion of Bond Counsel, in either case to the effect that interest on the Bonds is not excludable for regular federal income tax purpose under Section 103(a) of the Code from gross income of any Holders of the Bonds (other than a Holder who is a substantial user of the Project or a related person as defined in the Code).

**“Dissemination Agent”** means UMB Bank, N.A., or any successor, as Dissemination Agent under the Continuing Disclosure Agreement.

**“Dissemination Agent Fee”** means the fee payable to the Dissemination Agent as compensation for its services and expenses in performing its obligations under the Continuing Disclosure Agreement; provided, however, the amount of the Dissemination Agent Fee payable under the Indenture is limited to money withdrawn from the Expense Fund and the Borrower will be responsible to pay the remaining amount of the Dissemination Agent Fee pursuant to the Loan Agreement.

**“DTC”** means The Depository Trust Company (a limited purpose trust company), New York, New York, and its successors or assigns.

**“Eligible Funds”** means, as of any date of determination, any of:

- (a) the proceeds of the Bonds (including any additional amount paid by the Underwriter to the Trustee as the purchase price of the Bonds);
- (b) moneys drawn on a letter of credit;
- (c) moneys received by the Trustee solely for deposit in the Collateral Fund, which moneys shall become Eligible Funds only upon such deposit, representing Permanent Loan proceeds from the Permanent Loan Fund (for the avoidance of doubt, moneys in the Permanent Loan Fund shall not constitute Eligible Funds while such moneys remain in the Permanent Loan Fund);
- (d) remarketing proceeds of the Bonds (including any additional amount paid by the Remarketing Agent to the Trustee as the remarketing price of the Bonds) received from the Remarketing Agent or any purchaser of Bonds (other than funds provided by the Borrower, the Issuer, or any Affiliate of either the Borrower or the Issuer);
- (e) any other amounts, including the proceeds of refunding bonds, for which the Trustee has received an Opinion of Counsel (which opinion may assume that no Holder or Beneficial Owner of Bonds is an “insider” within the meaning of the Bankruptcy Code) to the effect that (A) the use of such amounts to make payments on the Bonds would not violate Section 362(a) of the Bankruptcy Code or that relief from the automatic stay provisions of such Section 362(a) would be available from the bankruptcy court and (B) payments of such amounts to Holders would not be avoidable as preferential payments under Section 547 or 550 of the Bankruptcy Code should the Issuer or the Borrower become a debtor in proceedings commenced under the Bankruptcy Code;
- (f) any payments made by the Borrower and held by the Trustee for a continuous period of 123 days, provided that no Act of Bankruptcy has occurred during such period; and
- (g) investment income derived from the investment of the moneys described in (a) through (f) above.

**“Eligible Investments”** means, subject to the provisions of the Indenture, any of the following obligations which mature (or are redeemable at the option of the Trustee without penalty) at such time or times as to enable timely disbursements to be made from the fund in which such investment is held or allocated in accordance with the applicable terms of the Indenture; *provided, however*, that notwithstanding anything to the contrary in the Indenture 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:

- (a) Government Obligations; and
- (b) Shares or units in any money market mutual fund rated “Aaa-mf” by Moody’s (or the equivalent Highest Rating Category given by the Rating Agency for that general category of security) including mutual funds of the Trustee or its affiliates or for which the Trustee or an affiliate thereof serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefor registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of direct obligations of the government of the United States of America.

**“ERA2 Lender”** means the Issuer in its capacity as maker of the ERA2 Loan.

**“ERA2 Loan”** means a loan from the ERA2 Lender to the Borrower in the principal amount of \$1,558,000\*.

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\* Preliminary; subject to change.

**“ERA2 Loan Documents”** means the ERA2 Mortgage, the ERA2 Note and all other documents required by the ERA2 Lender in connection with the ERA2 Loan.

**“ERA2 Mortgage”** means the Credit Line Deed of Trust, Security Agreement and Fixture Filing made in connection with the ERA2 Loan by the Borrower for the benefit of the ERA2 Lender, effective as of the Closing Date.

**“ERA2 Note”** means the promissory note effective as of the Closing Date made by the Borrower in favor of the ERA2 Lender in connection with the ERA2 Loan.

**“Event of Default”** means any of the events described as an Event of Default in the Indenture or the Loan Agreement.

**“Expense Fund”** means the Expense Fund created in the Indenture.

**“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 set forth in the Indenture, between the Issuer and the Borrower.

**“Extension Payment”** means the amount due, if any, in connection with the change or extension of the Mandatory Tender Date pursuant to the Indenture, and (a) which shall be determined by a Cash Flow Projection approved in writing by the Rating Agency and (b) must consist of Eligible Funds.

**“Extraordinary Issuer Fees and Expenses”** means the expenses and disbursements payable to the Issuer under the Indenture or the other Financing Documents for Extraordinary Services and Extraordinary Expenses, including extraordinary fees, costs and expenses incurred by Bond Counsel and counsel to the Issuer which are to be paid by the Borrower pursuant to the Loan Agreement.

**“Extraordinary Services”** and **“Extraordinary Expenses”** mean all services rendered and all reasonable expenses properly incurred by the Trustee or the Issuer under the Indenture or the other Financing Documents, other than Ordinary Services and Ordinary Expenses. Extraordinary Services and Extraordinary Expenses shall specifically include but are not limited to services rendered or expenses incurred by the Trustee or the Issuer in connection with, or in contemplation of, an Event of Default. Notwithstanding the foregoing, the Trustee shall be entitled to charge for Extraordinary Services and Extraordinary Expenses only upon the occurrence of certain Events of Default as set forth in the Indenture or in the event the Trustee initiates action to cause certain Events of Default as set forth in the Indenture.

**“Federal Tax Status”** means, as to the Bonds, the status of the interest on the Bonds as excludible from gross income for federal income tax purposes of the Holders of the Bonds (except on Bonds while held by a substantial user or related person, each as defined in the Code).

**“Financing Documents”** means the Indenture, the Bonds, the Loan Agreement, the Note, the Tax Certificate and Agreement, the Bond Regulatory Agreement, the Extended Use Agreement, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Remarketing Agreement and any other instrument or document executed in connection with the Bonds, together with all modifications, extensions, renewals and replacements thereof, but excluding the Permanent Loan Documents.

**“Force Majeure”** means any of the causes, circumstances or events described as constituting Force Majeure in the Loan Agreement.

**“General Partner”** means Franklin Manor GP, LLC, a Maine limited liability company.

**“Government”** shall mean the government of the United States of America, the government of any other nation, any political subdivision of the United States of America or any other nation (including, without limitation, any state, territory, federal district, municipality or possession) and any department, agency or instrumentality thereof; and **“Governmental”** shall mean of, by, or pertaining to any Government.

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

**“Highest Rating Category”** means, with respect to an Eligible Investment, that the Eligible Investment is rated by a Rating Agency in the highest rating given by that Rating Agency for that Rating Category provided that such rating shall include but not be below “Aaa” or “Aaa/VMIG-1” if rated by Moody’s or “AA+” or “A-1+” if rated by S&P.

**“Holder”** or **“Holder of a Bond”** means the Person in whose name a Bond is registered on the Register.

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

**“Indenture”** means the Trust Indenture, dated as of September 1, 2024, between the Issuer and the Trustee, as amended or supplemented from time to time.

**“Independent”** when used with respect to a specified Person means such Person has no specific financial interest direct or indirect in any Borrower or any Affiliate of any Borrower and in the case of an individual is not a director, trustee, officer, partner or employee of any Borrower or any Affiliate of any Borrower and in the case of an entity, does not have a partner, director, trustee, officer, partner or employee who is a director, trustee, officer or employee of any partner of any Borrower or any Affiliate of any Borrower.

**“Initial Borrower Deposit”** means the deposit of Eligible Funds on the Closing Date by the Borrower to the Negative Arbitrage Account of the Bond Fund in the amount specified in the Indenture.

**“Initial Interest Rate”** means \_\_\_\_%.

**“Initial Mandatory Tender Date”** means October 1, 2026\*.

**“Initial Remarketing Date”** means the Initial Mandatory Tender Date, but only if the conditions for remarketing the Bonds on such date as provided in the Indenture are satisfied.

**“Interest Payment Date”** means (a) April 1 and October 1 of each year beginning April 1, 2025\*, (b) each Redemption Date, (c) each Mandatory Tender Date, (d) the Maturity Date and (e) the date of acceleration of the Bonds. In the case of payment of defaulted interest, “Interest Payment Date” also means the date of such payment established pursuant to the Indenture.

**“Interest Rate”** means the Initial Interest Rate to but not including the Initial Mandatory Tender Date, and thereafter the applicable Remarketing Rate.

**“Interest Rate for Advances”** means the rate per annum which is two percent plus that interest rate announced by the Trustee in its lending capacity as a bank as its “Prime Rate” or its “Base Rate.”

**“Investor Limited Partner”** means Stratford Franklin Manor Investors Limited Partnership, a Massachusetts limited partnership, and its permitted successors and assigns.

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\* Preliminary; subject to change.

**“Issuer”** means the West Virginia Housing Development Fund, a public body corporate and governmental instrumentality of the State, and its successors and assigns.

**“Issuer Fees and Expenses”** means, collectively, the Ordinary Issuer Fees and the Extraordinary Issuer Fees and Expenses.

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

**“Loan Agreement”** means the Loan Agreement dated as of even date with the Indenture, between the Issuer and the Borrower and assigned by the Issuer, except for Reserved Rights, to the Trustee, as amended or supplemented from time to time.

**“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 the Loan Agreement.

**“Local Time”** means Eastern time (daylight or standard, as applicable).

**“Mandatory Tender”** means a tender of Bonds as required by the Indenture.

**“Mandatory Tender Date”** means the latest of (a) the Initial Mandatory Tender Date and (b) if the Bonds Outstanding on such date or on any subsequent Mandatory Tender Date are remarketed pursuant to the Indenture for a Remarketing Period that does not extend to the final maturity of the Bonds, the day after the last day of the Remarketing Period.

**“Maturity Date”** means October 1, 2027\*.

**“Moody’s”** means Moody’s Investors Service, Inc., a Delaware corporation, and its successors and assigns, or if it shall for any reason no longer perform the functions of a securities rating agency, then any other nationally recognized rating agency designated by the Borrower and acceptable to the Remarketing Agent.

**“Negative Arbitrage Account”** means the Negative Arbitrage Account of the Bond Fund created in the Indenture.

**“Note”** means the promissory note of the Borrower, dated as of even date with the Bonds initially issued, in the form attached to the Loan Agreement as an exhibit and in the principal amount of \$5,100,000\* evidencing the obligation of the Borrower to make Loan Payments.

**“Opinion of Bond Counsel”** means an opinion of Bond Counsel.

**“Opinion of Counsel”** means an opinion from an attorney or firm of attorneys, acceptable to the Trustee and the Issuer, with experience in the matters to be covered in the opinion.

**“Ordinary Issuer Fees”** means the origination fee of the Issuer in the amount equal to \$\_\_\_\_\_ payable on the Closing Date by the Borrower to the Issuer from the Costs of Issuance Fund, if funded, or from equity funds of the Borrower, but not from the Project Fund or the Bond Fund; provided, however, that such fee does not include amounts due, if any, for Extraordinary Issuer Fees and Expenses; and provided further, however, the amount of Ordinary Issuer Fees payable under the Indenture is limited to moneys withdrawn from the Expense Fund and the Borrower will be responsible to pay the remaining amount of the Ordinary Issuer Fees pursuant to the Loan Agreement.

**“Ordinary Services”** and **“Ordinary Expenses”** mean those services normally rendered, and those expenses normally incurred, by a trustee under instruments similar to the Indenture.

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\* Preliminary; subject to change.

**“Ordinary Trustee Fees and Expenses”** means amounts due to the Trustee for the Ordinary Services and the Ordinary Expenses of the Trustee incurred in connection with its duties under the Indenture, payable annually in advance at closing and on each \_\_\_\_\_ 1 thereafter, commencing \_\_\_\_\_ 1, 2024, in an amount equal to \$3,500 per year; a Remarketing Fee of \$1,500 per remarketing, a Dissemination Agent Fee of \$1,000 per year; and a one-time Acceptance and Set-Up Fee of \$4,000; provided, however, the amount of Ordinary Trustee Fees and Expenses payable under the Indenture is limited to moneys withdrawn from the Expense Fund and the Borrower will be responsible to pay the remaining amount of the Ordinary Trustee Fees and Expenses pursuant to the Loan Agreement. In addition, all amounts due to the Trustee for Extraordinary Services and all Extraordinary Expenses of the Trustee will be paid as provided in the Indenture or directly by the Borrower pursuant to the Loan Agreement.

**“Organizational Documents”** means the Amended and Restated Limited Partnership Agreement, as the same may be amended from time to time.

**“Outstanding Bonds,” “Bonds outstanding” or “outstanding”** as applied to Bonds mean, as of the applicable date, all Bonds which have been authenticated and delivered, or which are being delivered by the Trustee under the Indenture, except:

- (a) Bonds cancelled upon surrender, exchange or transfer, or cancelled because of payment on or prior to that date;
- (b) Bonds, or the portion thereof, for the payment or purchase for cancellation of which sufficient moneys has been deposited and credited with the Trustee on or prior to that date for that purpose (whether upon or prior to the maturity of those Bonds);
- (c) Bonds, or the portion thereof, which are deemed to have been paid and discharged or caused to have been paid and discharged pursuant to the provisions of the Indenture; and
- (d) Bonds in lieu of which others have been authenticated under the Indenture.

**“Permanent Lender”** means the Issuer, in its capacity as the WVHDF RD 538 Lender and/or the ERA2 Lender, as applicable.

**“Permanent Loan”** means, as applicable, the WVHDF RD 538 Mortgage Loan and/or the ERA2 Loan.

**“Permanent Loan Documents”** means, as applicable, the WVHDF RD 538 Mortgage Loan Documents and/or the ERA2 Loan Documents.

**“Permanent Loan Fund”** means the Permanent Loan Fund created in the Indenture.

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

**“Plans and Specifications”** means the plans and specifications describing the Project as now prepared and as they may be changed as provided in the Loan Agreement.

**“Predecessor Bond”** of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by the particular Bond. For the purposes of this definition, any Bond authenticated and delivered under the Indenture in lieu of a lost, stolen or destroyed Bond shall, except as otherwise provided in the Indenture, be deemed to evidence the same debt as the lost, stolen or destroyed Bond.

**“Project”** means the acquisition, rehabilitation and equipping of a multifamily residential rental housing development to be known as Franklin Manor Apartments, consisting of approximately 48 units located at 700 West Burke Street, Martinsburg, West Virginia; the development will be occupied by persons of low or moderate income in compliance with Section 142(d) of the Code.

**“Project Costs”** means the costs of the Project specified in the Loan Agreement.

**“Project Fund”** means the Project Fund created in the Indenture.

**“Rating Agency”** means Moody’s, S&P or any other nationally recognized securities rating agency rating the Bonds, or such rating agency’s successors or assigns, and initially means Moody’s so long as Moody’s is rating the Bonds.

**“Rating Category”** means one of the rating categories of the Rating Agency for the specific type and duration of the applicable Eligible Investment.

**“RD 538 Commitment”** means the Commitment for Guarantee, dated \_\_\_\_\_, 2024, issued by USDA with respect to the RD 538 Guarantee of the WVHDF RD 538 Mortgage Loan, as the same may be amended.

**“RD 538 Guarantee”** means the guarantee of the WVHDF RD 538 Mortgage Loan by the USDA Rural Development 538 program, as amended, and the regulations promulgated thereunder.

**“Rebate Amount”** means the amount required to be rebated to the United States pursuant to Section 148 of the Code.

**“Rebate Analyst”** means Hawkins Delafield & Wood LLP.

**“Rebate Analyst Fee”** means a fee paid or payable to the Rebate Analyst for each rebate calculation pursuant to the Tax Certificate and Agreement.

**“Rebate Fund”** means the Rebate Fund created in the Indenture.

**“Redemption Date”** means any date upon which Bonds are to be redeemed, including (a) the Maturity Date, (b) the date of acceleration of the Bonds and (c) pursuant to the Indenture.

**“Register”** means the books kept and maintained by the Trustee for registration and transfer of Bonds pursuant to the Indenture.

**“Regular Record Date”** means, with respect to any Bond, the fifth Business Day preceding each Interest Payment Date.

**“Remarketing Agent”** means Stifel, Nicolaus & Company, Incorporated or any successor as Remarketing Agent designated in accordance with the Indenture.

**“Remarketing Agent Fee”** means the fee of the Remarketing Agent for its remarketing services.

**“Remarketing Agreement”** means the Remarketing Agreement, dated as of September 1, 2024, by and between the Borrower and the Remarketing Agent, as amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

**“Remarketing Date”** means the Initial Remarketing Date and, if the Bonds Outstanding on such date or on any subsequent Remarketing Date are remarketed pursuant to the Indenture for a Remarketing Period that does not extend to the final maturity of the Bonds, the day after the last day of the Remarketing Period.

**“Remarketing Expenses”** means the costs and expenses incurred by the Trustee and its counsel, the Remarketing Agent and its counsel, the Issuer and its counsel, and Bond Counsel in connection with the remarketing of the Bonds, including bond printing and registration costs, costs of funds advanced by the Remarketing Agent, registration and filing fees, rating agency fees and other costs and expenses incurred in connection with or properly attributable to the remarketing of Bonds as certified to the Trustee by the Remarketing Agent in writing.

***“Remarketing Period”*** means the period beginning on a Remarketing Date and ending on the last day of the term for which Bonds are remarketed pursuant to the Indenture or the final Maturity Date of the Bonds, as applicable.

***“Remarketing Proceeds Account”*** means the Remarketing Proceeds Account of the Bond Fund created in the Indenture.

***“Remarketing Rate”*** means the interest rate or rates established pursuant to the Indenture and borne by the Bonds then Outstanding from and including each Remarketing Date to, but not including, the next succeeding Remarketing Date or the final Maturity Date of the Bonds, as applicable.

***“Reserved Rights”*** of the Issuer means (a) the right of the Issuer to amounts payable to it pursuant to the Indenture and the Loan Agreement, (b) all rights that the Issuer or its officers, directors, agents or employees may have under the Indenture and the Financing Documents to indemnification by the Borrower and by any other persons and to payments for expenses incurred by the Issuer itself, or its officers, directors, agents or employees; (c) the right of the Issuer to receive notices, reports or other information, make determinations and grant approvals under the Indenture and under the other Financing Documents; (d) all rights of the Issuer to enforce the representations, warranties, covenants and agreements of the Borrower pertaining in any manner or way, directly or indirectly, to the requirements of the Act or of the Issuer, and set forth in any of the Financing Documents or in any other certificate or agreement executed by the Borrower; (e) all rights of the Issuer to give or withhold consent to amendments, changes, modifications and alterations to the Indenture, the other Financing Documents and such other matters where, under the Indenture or any Financing Document, the Issuer’s consent or approval is required; and (f) all enforcement remedies with respect to the foregoing. The foregoing rights are retained and are not assigned to the Trustee pursuant to the Indenture.

***“Revenues”*** means (a) the Loan Payments, (b) Eligible Funds received by the Trustee, (c) all other moneys received or to be received by the Trustee in respect of repayment of the Loan, including without limitation, all moneys and investments in the Bond Fund, (d) any moneys and investments in the Project Fund and the Collateral Fund, and (e) all income and profit from the investment of the foregoing moneys. The term “Revenues” does not include any moneys or investments in the Rebate Fund, the Expense Fund, the Permanent Loan Fund or the Costs of Issuance Fund.

***“S&P”*** means S&P Global Ratings, and its successors and assigns, or if it shall for any reason no longer perform the functions of a securities rating agency, then any other nationally recognized rating agency designated by the Borrower and acceptable to the Issuer and the Remarketing Agent.

***“Special Funds”*** means, collectively, the Bond Fund, the Project Fund and the Collateral Fund, and any accounts therein, all as created in the Indenture.

***“Special Limited Partner”*** means Stratford SLP, Inc., and its successors and assigns.

***“Special Record Date”*** means, with respect to any Bond, the date established by the Trustee in connection with the payment of overdue interest or principal on that Bond.

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

***“Supplemental Indenture”*** means any indenture supplemental to the Indenture entered into between the Issuer and the Trustee in accordance with the Indenture.

***“Tax Certificate and Agreement”*** means the Tax Certificate and Agreement, made and executed by the Issuer and the Borrower in connection with the Bonds, dated as of the Closing Date, including IRS Form 8038, an Issue Price Certificate of the Underwriter and other exhibits and attachments.

***“Tendered Bond”*** means any Bond which has been tendered for purchase pursuant to a Mandatory Tender.

**“Trust Estate”** means the property rights, money, securities and other amounts pledged and assigned to the Trustee under the Indenture pursuant to the Granting Clauses of the Indenture.

**“Trustee”** means UMB Bank, N.A., a national banking association, until a successor Trustee shall have become such pursuant to the applicable provisions of the Indenture, and thereafter, “Trustee” shall mean the successor Trustee.

**“Undelivered Bond”** means any Bond that is required under the Indenture to be delivered to the Remarketing Agent or the Trustee for purchase on a Mandatory Tender Date but that has not been received on the date such Bond is required to be so delivered.

**“Underwriter”** means Stifel, Nicolaus & Company, Incorporated.

**“USDA”** means the United States Department of Agriculture.

**“WVHDF”** means the Issuer.

**“WVHDF RD 538 Lender”** means the Issuer, in its capacity as maker of the WVHDF RD 538 Mortgage Loan.

**“WVHDF RD 538 Mortgage”** means the Credit Line Deed of Trust, Security Agreement and Fixture Filing made in connection with the WVHDF RD 538 Mortgage Loan by the Borrower for the benefit of the WVHDF RD 538 Lender, effective as of the Closing Date.

**“WVHDF RD 538 Mortgage Loan”** means the mortgage loan to be made from the WVHDF RD 538 Lender to the Borrower in the principal amount of \$4,520,000\* as described and provided for in the RD 538 Commitment.

**“WVHDF RD 538 Mortgage Loan Documents”** means the WVHDF RD 538 Mortgage, the WVHDF RD 538 Note and all other documents required by the WVHDF RD 538 Lender and/or WVHDF in connection with the WVHDF RD 538 Mortgage Loan.

**“WVHDF RD 538 Note”** means the promissory note, effective as of the Closing Date, made by the Borrower in favor of the WVHDF RD 538 Lender in connection with the WVHDF RD 538 Mortgage Loan.

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\* Preliminary; subject to change.

## **APPENDIX B**

### **SUMMARY OF CERTAIN PROVISIONS OF THE TRUST INDENTURE**

*The following is a brief summary of certain provisions of the Indenture. The following summary does not purport to be complete or definitive and is subject to all the terms and provisions of the Indenture, to which reference is hereby made and copies of which are available from the Issuer or the Trustee.*

#### **Creation of Funds**

The following funds and accounts will be established and maintained by the Trustee under the Indenture:

- (a) the Bond Fund, and therein the Negative Arbitrage Account and the Remarketing Proceeds Account (but only at such times as money is to be deposited or held in such Accounts as provided in the Indenture);
- (b) the Project Fund;
- (c) the Costs of Issuance Fund;
- (d) the Collateral Fund;
- (e) the Rebate Fund;
- (f) the Expense Fund; and
- (g) the Permanent Loan Fund.

Each fund and account therein shall be maintained by the Trustee as a separate and distinct trust fund or account to be held, managed, invested, disbursed and administered as provided in the Indenture; provided the Rebate Fund, the Expense Fund, the Permanent Loan Fund and the Costs of Issuance Fund shall not be part of the Trust Estate and shall not be subject to the lien and pledge of the Indenture. All money deposited in the funds and accounts created under the Indenture shall be used solely for the purposes set forth in the Indenture. The Trustee shall keep and maintain adequate records pertaining to each fund and account, and all disbursements therefrom, in accordance with its general practices and procedures in effect from time to time. The Trustee may also terminate funds and accounts that are no longer needed; provided, the Trustee shall not terminate the Permanent Loan Fund without the express written direction from the Permanent Lender.

The Trustee shall, at the written direction of an Authorized Borrower Representative, and may, in its discretion, establish such additional accounts within any fund, and subaccounts within any of the accounts, as the Issuer or the Trustee may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that fund and its accounts, or for the purpose of complying with the requirements of the Code, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of the Indenture with respect to a deposit or use of money in the Special Funds, the Permanent Loan Fund or the Rebate Fund, or result in commingling of funds not permitted under the Indenture.

#### **Bond Fund**

On the Closing Date, there shall be deposited in the Negative Arbitrage Account of the Bond Fund the initial deposit amount provided in the Indenture. Any Extension Payment received by the Trustee in connection with an extension of the Mandatory Tender Date will also be deposited in the Negative Arbitrage Account.

So long as there are any Outstanding Bonds, to the extent the Borrower has not received a credit against Loan Payments, all Loan Payments under the Loan Agreement shall be paid on or before each Interest Payment Date directly

to the Trustee, and deposited in the Bond Fund, in at least the amount necessary to pay the interest and the principal due on the Bonds on such Bond Payment Date.

The Bond Fund (and accounts therein for which provision is made in the Indenture) and the money therein shall be used solely and exclusively for the payment of Bond Service Charges as they become due.

Bond Service Charges shall be payable, as they become due, (a) in the first instance from the money on deposit in the Bond Fund (other than the Negative Arbitrage Account within the Bond Fund), (b) next from money on deposit in the Negative Arbitrage Account within the Bond Fund, (c) next from money on deposit in the Collateral Fund and transferred as necessary to the Bond Fund and (d) thereafter, from money on deposit in the Project Fund and transferred as necessary to the Bond Fund.

Upon receipt by the Trustee of a Cash Flow Projection provided on behalf of the Borrower with a copy to the Issuer, the Trustee is hereby authorized to release from the Negative Arbitrage Account the amount set forth in the Cash Flow Projection to or at the written direction of the Borrower.

#### Project Fund

Upon the deposit of Eligible Funds in the Collateral Fund as provided in the Indenture, the Trustee shall unconditionally and immediately upon receipt of the Eligible Funds disburse the Bond proceeds on deposit in the Project Fund with the prior written approval of the Permanent Lender for use by the Borrower to pay Project Costs in accordance with the Loan Agreement and upon satisfaction of the conditions specified therein. The Trustee shall disburse funds from the Project Fund in accordance with the Loan Agreement on the same Business Day that it receives the Eligible Funds in the event (i) the Trustee receives the fully-signed and completed disbursement request prior to such Business Day and (ii) the Trustee receives the Eligible Funds with respect to such disbursement request prior to 2:30 PM Local Time on such Business Day. If the Trustee receives the Eligible Funds after 2:30 PM Local Time, the disbursement shall be made on the next succeeding Business Day. Notwithstanding any provisions to the contrary, upon satisfaction of the conditions set forth in the Loan Agreement, the Trustee shall be unconditionally and irrevocably obligated to disburse funds from the Project Fund with the prior written approval of the Permanent Lender. The Trustee shall not disburse money from the Project Fund, other than to pay Bond Service Charges on the Bonds, unless and until Eligible Funds in an amount equal to or greater than the requested disbursement amount have been deposited in the Collateral Fund and all of the conditions set forth in the Loan Agreement are met. In accordance with the Loan Agreement, and prior to making any disbursement, the Trustee shall determine that the aggregate account balance in (a) the Collateral Fund and (b) the Project Fund (less the requested disbursement amount) is at least equal to the then-Outstanding principal amount of the Bonds; provided, however, to the extent money on deposit in the Project Fund is invested in Eligible Investments, the Trustee is hereby authorized to make the following allocations and exchanges, which allocations and exchanges shall occur prior to the disbursement of amounts on deposit in the Project Fund to pay Project Costs: (i) allocate all or a portion of the Eligible Investments in the Project Fund, in the amount specified in the request for disbursement, to the Collateral Fund and (ii) transfer a like amount of Eligible Funds on deposit in the Collateral Fund to the Project Fund, in exchange for an allocation of a like amount of Eligible Investments held therein.

Money in the Project Fund shall be disbursed in accordance with the provisions of the Loan Agreement and the Indenture. To the extent money is not otherwise available to the Trustee, including money on deposit in the Bond Fund and the Collateral Fund, the Trustee shall transfer from the Project Fund to the Bond Fund sufficient money to make the necessary interest and principal payments, if any, on each Interest Payment Date without further written direction.

On any Redemption Date, the Trustee will transfer any amounts then on deposit in the Project Fund into the Bond Fund to pay Bond Service Charges on the Bonds.

Upon the occurrence and continuance of an Event of Default under the Indenture as a result of which the principal amount of the Bonds has been declared to be due and immediately payable pursuant to the Indenture, any money remaining in the Project Fund shall be promptly transferred by the Trustee to the Bond Fund.

### Collateral Fund

The Trustee shall deposit in the Collateral Fund all Eligible Funds received pursuant to the Loan Agreement and any other Eligible Funds received by the Trustee at the written direction of the Borrower. Pursuant to the Indenture and the Loan Agreement, the Borrower shall cause the Permanent Lender to deliver a requisition to the Trustee to transfer certain Permanent Loan proceeds from the Permanent Loan Fund to the Collateral Fund in a principal amount equal to, and as a prerequisite to the disbursement of, the amount of Bond proceeds on deposit in the Project Fund to be disbursed by the Trustee to pay Project Costs.

Each deposit into the Collateral Fund shall constitute an irrevocable deposit solely for the benefit of the Holders, subject to the provisions of the Indenture; provided, however, if for any reason the Trustee is not able to disburse a corresponding amount of Bond proceeds from the Project Fund immediately following receipt of Permanent Loan proceeds from the Permanent Loan Fund for deposit into the Collateral Fund, the Trustee shall promptly transfer such Permanent Loan proceeds back to the Permanent Loan Fund and not deposit the same into the Collateral Fund, and shall notify the Borrower and the Permanent Lender.

The Trustee shall transfer money in the Collateral Fund as follows: (i) on the Mandatory Tender Date, to the Bond Fund, the amount necessary to pay the purchase price of the Bonds, to the extent amounts on deposit in the Remarketing Proceeds Account and the Negative Arbitrage Account of the Bond Fund are insufficient therefor; and (ii) on any Redemption Date or the Maturity Date of the Bonds, to the Bond Fund the amount, together with amounts on deposit in the Bond Fund, necessary to pay the principal and interest due on the Bonds on such date.

On any Redemption Date, the Trustee will transfer funds held in the Collateral Fund into the Bond Fund to pay Bond Service Charges on the Bonds.

Amounts, if any, on deposit in the Collateral Fund in excess of the amount required to pay Bond Service Charges after payment in full of the Bonds may be transferred to the Project Fund and used to pay Project Costs as provided in the Loan Agreement.

The Bonds shall not be, and shall not be deemed to be, paid or prepaid by reason of any deposit into the Collateral Fund unless and until the amount on deposit in the Collateral Fund is transferred to the Bond Fund and applied to the payment of the principal of any of the Bonds, the principal component of the redemption price of any of the Bonds or the principal component of the tender price of any of the Bonds, all as provided in the Indenture.

### Expense Fund

The Trustee shall apply money on deposit in the Expense Fund solely for the following purposes, upon receipt of written instructions from the Borrower, in the following order of priority:

- (a) to transfer money to the Rebate Fund to the extent necessary to pay the Rebate Amount (if any) when due pursuant to the Indenture;
- (b) to pay the Ordinary Trustee Fees and Expenses when due;
- (c) to pay the Dissemination Agent Fee when due;
- (d) to pay the Ordinary Issuer Fees when due;
- (e) to pay the Issuer Fees and Expenses not previously paid; and
- (f) to pay the Remarketing Expenses when due.

To the extent moneys in the Expense Fund are not sufficient to pay the foregoing fees and expenses, such deficiency shall be paid by the Borrower pursuant to the Loan Agreement promptly upon written demand.

Notwithstanding anything to the contrary stated in the Indenture, the Expense Fund and the moneys deposited therein shall not be part of the Trust Estate and shall not be subject to the lien and pledge of the Indenture.

#### Permanent Loan Fund

From time to time on or after the Closing Date, Permanent Loan proceeds shall be deposited in the Permanent Loan Fund by or on behalf of the Permanent Lender and such amounts shall be held, transferred or transmitted per the written instructions of the Permanent Lender utilizing the requisition form attached to the Indenture as an exhibit. To the extent set forth in such requisition form, funds on deposit in the Permanent Loan Fund may be transferred to the Collateral Fund in the amounts and at such times as may be necessary to allow the Trustee to disburse funds from the Project Fund upon the Trustee's receipt of a request for disbursement from the Borrower. To the extent set forth in such requisition form, funds on deposit in the Permanent Loan Fund representing Permanent Loan proceeds in excess of the amount of Bond proceeds deposited into the Project Fund on the Closing Date may be disbursed to the Borrower for the payment of Project Costs not payable from proceeds of the Bonds. To the extent set forth in such requisition form, the Trustee shall wire to the Permanent Lender any amounts in the Permanent Loan Fund requested by the Permanent Lender. The Trustee shall, at the written direction of the Permanent Lender, establish within the Permanent Loan Fund a WVHDF 538 Loan Account and an ERA2 Loan Account; should such Accounts be so established, payments into and disbursements from the Permanent Loan Fund shall specify the Account into which such payment will be made, or from which such disbursement will be made, as applicable. Notwithstanding anything to the contrary stated in the Indenture, the Permanent Loan Fund and the moneys deposited therein shall not be a part of the Trust Estate and shall not be subject to the lien and pledge of the Indenture.

#### Investment of Special Funds, Rebate Fund and Permanent Loan Fund

Except as otherwise set forth in the Indenture, moneys in the Special Funds and the Rebate Fund shall be invested and reinvested by the Trustee in Eligible Investments at the written direction of the Authorized Borrower Representative.

In the absence of instructions from the Authorized Borrower Representative regarding investment of moneys in the Special Funds and the Rebate Fund, the Trustee shall invest solely in Eligible Investments.

Moneys in the Permanent Loan Fund shall be invested and reinvested by the Trustee in Eligible Investments at the written direction of the Permanent Lender. In the absence of instructions from the Permanent Lender regarding investments of moneys in the Permanent Loan Fund, the Trustee shall invest solely in Eligible Investments.

Except as provided in the following paragraph, investments of money in the Special Funds shall be invested and reinvested (i) at the written direction of the Authorized Borrower Representative in Government Obligations that mature or are redeemable at the option of the Trustee at par no later than 30 days from the date of investment or (ii) in the absence of instructions from the Authorized Borrower Representative, the Trustee shall invest solely in Eligible Investments.

At no time shall the Authorized Borrower Representative direct that any funds constituting gross proceeds of the Bonds be used in any manner as would constitute failure of compliance with Section 148 of the Code. Investments of moneys in the Bond Fund shall mature or be redeemable at the times and in the amounts necessary to provide moneys to pay Bond Service Charges on the Bonds. Each investment of moneys in a Project Fund shall mature or be redeemable without penalty at such time as may be necessary to make payments from the Project Fund, including on each Interest Payment Date. Any of those investments may be purchased from or sold to the Trustee, the Registrar, an authenticating agent or a paying agent, or any bank, trust company or savings and loan association affiliated with any of the foregoing. The Trustee shall sell or redeem investments credited to the Special Funds to produce sufficient moneys applicable hereunder to and at the times required for the purposes of paying Bond Service Charges when due as aforesaid, and shall do so without necessity for any order on behalf of the Issuer and without restriction by reason of any order. If the Trustee is required to sell or otherwise dispose of any Eligible Investments prior to maturity, the Borrower shall, at the Borrower's expense, deliver to the Trustee (i) a Cash Flow Projection and (ii) Eligible Funds in the amount set forth in such Cash Flow Projection, if any. An investment made from moneys credited to the Special Funds shall constitute part of that respective Fund. All investment earnings from amounts on deposit in the Project Fund shall be credited to the Negative Arbitrage Account of the Bond Fund. All investment earnings from amounts

on deposit in the Collateral Fund shall be credited to the Negative Arbitrage Account of the Bond Fund. All gains resulting from the sale of, or income from, any investment made from moneys credited to the Special Funds shall be credited to and become part of the Bond Fund. Except as may be otherwise expressly provided under the Indenture, with respect to any investment made from moneys credited to any fund or account under the Indenture (i) all gains or losses resulting from the sale thereof shall be credited to or charged against such fund or account and (ii) any income or earnings thereon shall be retained in and constitute part of such fund or account.

The Trustee shall not be liable for losses on investments made in compliance with the provisions of the Indenture.

Ratings of Eligible Investments shall be determined at the time of purchase of such Eligible Investments and without regard to ratings subcategories. The Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including cash sweep account fees. Although each of the Issuer and the Borrower recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, each of the Issuer and the Borrower hereby agrees that confirmations of Eligible Investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month. The Trustee may conclusively rely upon the Authorized Borrower Representative's written instructions as to both the suitability and legality of the directed investments. Following the Closing Date, at the written direction of the Borrower with written notice from the Borrower to the Issuer, the Trustee is permitted to purchase, sell or exchange Eligible Investments with a Cash Flow Projection delivered to the Trustee and the Issuer.

Notwithstanding the foregoing, except as set forth above with respect to the Permanent Loan Fund, any moneys held under the Indenture without the written direction of the Authorized Borrower Representative shall be invested in Eligible Investments; provided, however, that (i) earnings received by the Trustee with respect to Eligible Investments purchased for the purpose of paying Bond Service Charges shall be held uninvested and (ii) Bond proceeds and the Initial Borrower Deposit shall be held uninvested until the Trustee has purchased, sold or exchanged Eligible Investments.

#### Money to be Held in Trust

Except where money has been deposited with or paid to the Trustee pursuant to an instrument restricting their application to particular Bonds, all money required or permitted to be deposited with or paid to the Trustee under any provision of the Indenture or the Note, and any investments thereof, shall be held by the Trustee in trust (for the avoidance of doubt, money in the Permanent Loan Fund shall be held in trust for the W VHDF RD 538 Lender as long as such money remains in the Permanent Loan Fund). Except for money held by the Trustee in the Costs of Issuance Fund, the Expense Fund, the Permanent Loan Fund and the Rebate Fund under the Indenture, all money described in the preceding sentence held by the Trustee shall be subject to the lien and pledge of the Indenture while so held.

The money in any fund or account established under the Indenture shall be subject to the unclaimed property laws of the State.

The Trustee shall cause to be kept and maintained adequate records pertaining to the Special Funds and all deposits and disbursements therefrom. The Trustee shall satisfy this obligation by providing monthly statements for all periods in which there are funds in the Special Funds to the Borrower and the Investor Limited Partner.

#### Defaults; Events of Default

The occurrence of any of the following events is defined as and declared to be and to constitute an Event of Default under the Indenture:

- (a) Payment of any interest on any Bond shall not be made when and as that interest shall become due and payable;

(b) Payment of the principal of any Bond shall not be made when and as that principal shall become due and payable, whether at stated maturity, upon acceleration or otherwise;

(c) Failure by the Issuer to observe or perform any other covenant, agreement or obligation on its part to be observed or performed contained in the Indenture or in the Bonds, which failure shall have continued for a period of 30 days after written notice, by registered or certified mail, to the Issuer, the Borrower and the Investor Limited Partner specifying the failure and requiring that it be remedied, which notice may be given by the Trustee in its discretion and shall be given by the Trustee at the written request of the Holders of not less than 25% in aggregate principal amount of Bonds then Outstanding; and

(d) The occurrence and continuance of an Event of Default as defined in the Loan Agreement.

The term “default” or “failure” as used in the Indenture means (i) a default or failure by the Issuer in the observance or performance of any of the covenants, agreements or obligations on its part to be observed or performed contained in the Indenture or in the Bonds, or (ii) a default or failure by the Borrower under the Loan Agreement, exclusive of any period of grace or notice required to constitute a default or failure an Event of Default, as provided above or in the Loan Agreement.

#### Notice of Default

If an Event of Default shall occur, the Trustee shall give written notice of the Event of Default, by registered or certified mail, to the Issuer, the Borrower, the Investor Limited Partner, the Special Limited Partner, the Subordinate Lender, the Rating Agency and the Remarketing Agent, within five (5) days after the Trustee has notice of the Event of Default pursuant to the Indenture. If an Event of Default occurs of which the Trustee has notice pursuant to the Indenture, the Trustee shall give written notice thereof, within thirty (30) days after the Trustee’s receipt of notice of its occurrence, to the Holders of all Bonds then Outstanding as shown by the Register at the close of business fifteen (15) days prior to the mailing of that notice; provided, that except in the case of a default in the payment of the principal of or interest on any Bond, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors or responsible officers of the Trustee in good faith determine that the withholding of notice to the Holders is in the interests of the Holders.

#### Acceleration

Upon the occurrence of an Event of Default described in (a) or (b) under the heading “Defaults; Events of Default” above, the Trustee may declare, and upon the written request of the Holders of not less than a majority in aggregate principal amount of Bonds then Outstanding the Trustee shall declare, by a notice in writing delivered to the Borrower and the Investor Limited Partner, the principal of all Bonds then Outstanding (if not then due and payable), and the interest accrued thereon, to be due and payable immediately. Upon the occurrence of any Event of Default other than those described in (a) or (b) under the heading “Defaults; Events of Default” above, the Trustee shall, with the written consent of all Holders of Bonds then Outstanding, declare by a notice in writing delivered to the Borrower and the Investor Limited Partner, the principal of all Bonds then Outstanding (if not then due and payable), and the interest thereon, to be due and payable immediately. Following such declaration, interest on any unpaid principal of Bonds Outstanding shall continue to accrue from such date through but not including the tender of payment to the Holders of those Bonds.

The provisions of the preceding paragraph are subject, however, to the condition that if, at any time after declaration of acceleration and prior to the entry of a judgment in a court for enforcement under the Indenture (after an opportunity for hearing by the Issuer and the Borrower):

(a) all sums payable under the Indenture (except the principal of and interest on Bonds which have not reached their stated maturity dates but which are due and payable solely by reason of that declaration of acceleration), plus interest to the extent permitted by law on any overdue installments of interest at the rate borne by the Bonds in respect of which the default shall have occurred, shall have been duly paid or provision shall have been duly made therefor by deposit with the Trustee, and

(b) all existing Events of Default shall have been cured, then and in every case, the Trustee shall waive the Event of Default and its consequences and shall rescind and annul that declaration. No waiver or rescission and annulment shall extend to or affect any subsequent Event of Default or shall impair any rights consequent thereon.

The Investor Limited Partner shall be entitled to cure any Event of Default under the Indenture within the timeframe provided to the Borrower under the Indenture. The Issuer and the Trustee agree that cure of any default or Event of Default made or tendered by the Investor Limited Partner shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

#### Other Remedies; Rights of Holders

With or without taking action under the heading “Acceleration” above, upon the occurrence and continuance of an Event of Default, the Trustee may pursue any available remedy, including without limitation actions at law or equity to enforce the payment of Bond Service Charges or the observance and performance of any other covenant, agreement or obligation under the Indenture, the Loan Agreement, the Bond Regulatory Agreement or the Note or any other instrument providing security, directly or indirectly, for the Bonds.

If, upon the occurrence and continuance of an Event of Default, the Trustee is requested so to do by the Holders of at least 25% in aggregate principal amount of Bonds Outstanding, the Trustee (subject to the provisions of the Indenture) shall exercise any rights and powers conferred by the Indenture as described above.

No remedy conferred upon or reserved to the Trustee (or to the Holders) by the Indenture is intended to be exclusive of any other remedy. Subject to the provisions of the Indenture, each remedy shall be cumulative and shall be in addition to every other remedy given under the Indenture or otherwise to the Trustee or to the Holders now or hereafter existing.

No delay in exercising or omission to exercise any remedy, right or power accruing upon any default or Event of Default shall impair that remedy, right or power or shall be construed to be a waiver of any default or Event of Default or acquiescence therein. Every remedy, right and power may be exercised from time to time and as often as may be deemed to be expedient.

No waiver of any default or Event of Default under the Indenture, whether by the Trustee or by the Holders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any remedy, right or power consequent thereon.

As the assignee of all right, title and interest of the Issuer in and to the Loan Agreement (except for the Reserved Rights), the Trustee is empowered to enforce each remedy, right and power granted to the Issuer under the Loan Agreement. In exercising any remedy, right or power under the Indenture or the Loan Agreement, the Trustee shall take any action which would best serve the interests of the Holders in the judgment of the Trustee, applying the standards described in the Indenture, subject to the provisions of this heading.

#### Right of Holders to Direct Proceedings

Anything to the contrary in the Indenture notwithstanding, the Holders of a majority in aggregate principal amount of Bonds then Outstanding shall have the right at any time to direct, by an instrument or document in writing executed and delivered to the Trustee, the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of the Indenture or any other proceedings under the Indenture; provided, that (a) any direction shall not be other than in accordance with the provisions of law and of the Indenture, (b) the Trustee shall be indemnified as provided in the Indenture, and (c) the Trustee may take any other action which it deems to be proper and which is not inconsistent with the direction.

### Application of Money

After payment of any costs, expenses, liabilities and advances paid, incurred or made by the Trustee in the collection of money and to all Ordinary Trustee Fees and Expenses and fees of the Trustee for Extraordinary Services and Extraordinary Expenses (including without limitation, reasonable attorneys' fees and expenses, except as limited by law or judicial order or decision entered in any action taken under this heading), all money received by the Trustee (except for such moneys then on deposit in the Permanent Loan Fund, which are not part of the Trust Estate and which are free and clear of any lien under the Indenture), shall be applied as follows, subject to the Indenture:

(a) Unless the principal of all of the Bonds shall have become, or shall have been declared to be, due and payable, all of such money shall be deposited in the Bond Fund and shall be applied:

First – To the payment to the Holders entitled thereto of all installments of interest then due on the Bonds, in the order of the dates of maturity of the installments of that interest, beginning with the earliest date of maturity and, if the amount available is not sufficient to pay in full any particular installment, then to the payment thereof ratably, according to the amounts due on that installment, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds; and

Second – To the payment to the Holders entitled thereto of the unpaid principal of any of the Bonds which shall have become due, in the order of their due dates, beginning with the earliest due date, with interest on those Bonds from the respective dates upon which they became due at the rates specified in those Bonds, and if the amount available is not sufficient to pay in full all Bonds due on any particular date, together with that interest, then to the payment thereof ratably, according to the amounts of principal due on that date, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds.

(b) If the principal of all of the Bonds shall have become due or shall have been declared to be due and payable pursuant to the Indenture, all of such money shall be deposited into the Bond Fund and shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest, of interest over principal, of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds.

(c) If the principal of all of the Bonds shall have been declared to be due and payable pursuant to the Indenture, and if that declaration thereafter shall have been rescinded and annulled, subject to the provisions of the preceding paragraph, in the event that the principal of all of the Bonds shall become due and payable later, the money shall be deposited in the Bond Fund and shall be applied as directed in the Indenture.

(d) Whenever money is to be applied pursuant to the provisions of this heading, such money shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of money available for application and the likelihood of additional money becoming available for application in the future. Whenever the Trustee shall direct the application of such money, it shall fix the date upon which the application is to be made, and upon that date, interest shall cease to accrue on the amounts of principal, if any, to be paid on that date, provided the money is available therefor. The Trustee shall give notice of the deposit with it of any money and of the fixing of that date, all consistent with the requirements of the Indenture for the establishment of, and for giving notice with respect to, a Special Record Date for the payment of overdue interest. The Trustee shall not be required to make payment of principal of a Bond to the Holder thereof, until the Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if it is paid fully.

### Remedies Vested in Trustee

All rights of action (including without limitation, the right to file proof of claims) under the Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto. Any suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining any Holders as plaintiffs or defendants. Any recovery of judgment shall be for the benefit of the Holders of the Outstanding Bonds, subject to the provisions of the Indenture.

### Rights and Remedies of Holders

A Holder shall not have any right to institute any suit, action or proceeding for the enforcement of the Indenture, for the execution of any trust of the Indenture, or for the exercise of any other remedy under the Indenture, unless:

- (a) there has occurred and is continuing an Event of Default of which the Trustee has been notified, as provided in the Indenture, or of which it is deemed to have notice under that paragraph,
- (b) the Holders of at least 25% in aggregate principal amount of Bonds then Outstanding shall have made written request to the Trustee and shall have afforded the Trustee reasonable opportunity to proceed to exercise the remedies, rights and powers granted in the Indenture or to institute the suit, action or proceeding in its own name, and shall have offered indemnity to the Trustee, and
- (c) the Trustee thereafter shall have failed or refused to exercise the remedies, rights and powers granted in the Indenture or to institute the suit, action or proceeding in its own name.

At the option of the Trustee, that notification (or notice), request, opportunity and offer of indemnity are conditions precedent in every case, to the institution of any suit, action or proceeding described above.

No one or more Holders of the Bonds shall have any right to affect, disturb or prejudice in any manner whatsoever the security or benefit of the Indenture by its or their action, or to enforce, except in the manner provided in the Indenture, any remedy, right or power under the Indenture. Any suit, action or proceedings shall be instituted, had and maintained in the manner provided in the Indenture for the benefit of the Holders of all Bonds then Outstanding. Nothing in the Indenture shall affect or impair, however, the right of any Holder to enforce the payment of the Bond Service Charges on any Bond owned by that Holder at and after the maturity thereof, at the place, from the sources and in the manner expressed in that Bond.

### Termination of Proceedings

In case the Trustee shall have proceeded to enforce any remedy, right or power under the Indenture in any suit, action or proceedings, and the suit, action or proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, the Issuer, the Trustee and the Holders shall be restored to their former positions and rights under the Indenture, respectively, and all rights, remedies and powers of the Trustee shall continue as if no suit, action or proceedings had been taken.

### Waivers of Events of Default

Except as provided in the Indenture, at any time, in its discretion, the Trustee may waive any Event of Default under the Indenture and its consequences and may rescind and annul any declaration of maturity of principal or interest on, the Bonds. The Trustee shall do so upon the written request of the Holders of:

- (a) at least a majority in aggregate principal amount of all Bonds then Outstanding in respect of which an Event of Default in the payment of Bond Service Charges exists, or
- (b) at least 25% in aggregate principal amount of all Bonds then Outstanding, in the case of any other Event of Default.

There shall not be so waived, however, any Event of Default described in paragraph (a) or (b) under the heading “Defaults; Events of Default” above, or any declaration of acceleration in connection therewith rescinded or annulled, unless at the time of that waiver or rescission and annulment, payments of the amounts provided in in the Indenture for waiver and rescission and annulment in connection with acceleration of maturity have been made or provision has been made therefor. In the case of the waiver or rescission and annulment, or in case any suit, action or proceedings taken by the Trustee on account of any Event of Default shall have been discontinued, abandoned or determined adversely to it, the Issuer, the Trustee and the Holders shall be restored to their former positions and rights under the Indenture, respectively. No waiver or rescission shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

#### Supplemental Indentures Not Requiring Consent of Holders

Without the consent of, or notice to, any of the Holders, the Issuer and the Trustee may enter into indentures supplemental to the Indenture which shall not, in the opinion of the Issuer and the Trustee, be inconsistent with the terms and provisions of the Indenture for any one or more of the following purposes:

- (a) To cure any ambiguity, inconsistency or formal defect or omission in the Indenture;
- (b) To grant to or confer upon the Trustee for the benefit of the Holders any additional rights, remedies, powers or authority that lawfully may be granted to or conferred upon the Holders or the Trustee;
- (c) To assign additional revenues under the Indenture;
- (d) To accept additional security and instruments and documents of further assurance with respect to the Project;
- (e) To add to the covenants, agreements and obligations of the Issuer under the Indenture, other covenants, agreements and obligations to be observed for the protection of the Holders, or to surrender or limit any right, power or authority reserved to or conferred upon the Issuer in the Indenture;
- (f) To evidence any succession to the Issuer and the assumption by its successor of the covenants, agreements and obligations of the Issuer under the Indenture, the Loan Agreement and the Bonds;
- (g) To facilitate (i) the transfer of Bonds issued by the Issuer under the Indenture and held in Book Entry Form from one Depository to another and the succession of Depositories, or (ii) the withdrawal of Bonds issued by the Issuer under the Indenture and delivered to a Depository for use in a Book Entry System and the issuance of replacement Bonds in fully registered form and in the form of physical certificates to others than a Depository;
- (h) To permit the Trustee to comply with any obligations imposed upon it by law;
- (i) To specify further the duties and responsibilities of the Trustee;
- (j) To achieve compliance of the Indenture with any applicable federal securities or tax law;
- (k) To make amendments to the provisions hereof relating to arbitrage matters under Section 148 of the Code, if, in the Opinion of Bond Counsel, those amendments would not adversely affect the Federal Tax Status of the Bonds which amendments may, among other things, change the responsibility for making the relevant calculations, provided that in no event shall such amendment delegate to the Trustee, without its consent, in its sole discretion the obligation to make or perform the calculations required under Section 148 of the Code; and
- (l) To permit any other amendment that, in the judgment of the Trustee, is not to the prejudice of the Issuer, the Trustee or the Holders.

The provisions of Subsections (h) and (j) above shall not be deemed to constitute a waiver by the Trustee, the Issuer or any Holder of any right which it may have in the absence of those provisions to contest the application of any change in law to the Indenture or the Bonds.

#### Supplemental Indentures Requiring Consent of Holders

Exclusive of Supplemental Indentures to which reference is made under the heading “Supplemental Indentures Not Requiring Consent of Holders” above and subject to the terms, provisions and limitations contained in this heading, and not otherwise, with the consent of the Holders of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding, evidenced as provided in the Indenture, and with the consent of the Borrower if required, the Issuer and the Trustee may execute and deliver Supplemental Indentures adding any provisions to, changing in any manner or eliminating any of the provisions of the Indenture or any Supplemental Indenture or restricting in any manner the rights of the Holders. Nothing in this heading shall permit, however, or be construed as permitting:

(a) without the consent of the Holder of each Bond so affected, (i) an extension of the maturity of the principal of or the interest on any Bond or (ii) a reduction in the principal amount of any Bond or the rate of interest thereon, or

(b) without the consent of the Holders of all Bonds then Outstanding, (i) the creation of a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (ii) a reduction in the aggregate principal amount of the Bonds required for consent to a Supplemental Indenture.

If the Issuer shall request that the Trustee execute and deliver any Supplemental Indenture for any of the purposes of this heading, upon (i) being satisfactorily indemnified with respect to its expenses in connection therewith, and (ii) if required by the Indenture, receipt of the Borrower’s consent to the proposed execution and delivery of the Supplemental Indenture, the Trustee shall cause notice of the proposed execution and delivery of the Supplemental Indenture to be mailed by first-class mail, postage prepaid, to all Holders of Bonds then Outstanding at their addresses as they appear on the Register at the close of business on the fifteenth day preceding that mailing.

The Trustee shall not be subject to any liability to any Holder by reason of the Trustee’s failure to mail, or the failure of any Holder to receive, the notice required by this heading. Any failure of that nature shall not affect the validity of the Supplemental Indenture when there has been consent thereto as provided in this heading. The notice shall set forth briefly the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the Designated Office of the Trustee for inspection by all Holders.

If the Trustee shall receive, within a period prescribed by the Borrower, of not less than 60 days, but not exceeding one year, following the mailing of the notice, an instrument or document or instruments or documents, in form to which the Trustee does not reasonably object, purporting to be executed by the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding (which instrument or document or instruments or documents shall refer to the proposed Supplemental Indenture in the form described in the notice and specifically shall consent to the Supplemental Indenture in substantially that form), the Trustee shall, but shall not otherwise, execute and deliver the Supplemental Indenture in substantially the form to which reference is made in the notice as being on file with the Trustee, without liability or responsibility to any Holder, regardless of whether that Holder shall have consented thereto.

Any consent shall be binding upon the Holder of the Bond giving the consent and, anything in the Indenture to the contrary notwithstanding, upon any subsequent Holder of that Bond and of any Bond issued in exchange therefor (regardless of whether the subsequent Holder has notice of the consent to the Supplemental Indenture). A consent may be revoked in writing, however, by the Holder who gave the consent or by a subsequent Holder of the Bond by a revocation of such consent received by the Trustee prior to the execution and delivery by the Trustee of the Supplemental Indenture. At any time after the Holders of the required percentage of Bonds shall have filed their consents to the Supplemental Indenture, the Trustee shall make and file with the Issuer a written statement that the Holders of the required percentage of Bonds have filed those consents. That written statement shall be conclusive evidence that the consents have been so filed.

If the Holders of the required percentage in aggregate principal amount of Bonds Outstanding shall have consented to the Supplemental Indenture, as provided in this section, no Holder shall have any right (a) to object to (i) the execution or delivery of the Supplemental Indenture, (ii) any of the terms and provisions contained therein, or (iii) the operation thereof, (b) to question the propriety of the execution and delivery thereof, or (c) to enjoin or restrain the Trustee or the Issuer from that execution or delivery or from taking any action pursuant to the provisions thereof.

#### Consent of Borrower

Anything contained in the Indenture to the contrary notwithstanding, a Supplemental Indenture executed and delivered in accordance with the Indenture which affects in any material respect any rights or obligations of the Borrower shall not become effective unless and until the Borrower and the Investor Limited Partner shall have consented in writing to the execution and delivery of that Supplemental Indenture. The Trustee shall cause notice of the proposed execution and delivery of any Supplemental Indenture and a copy of the proposed Supplemental Indenture to be mailed to the Borrower and the Investor Limited Partner, as provided in the Indenture, (a) at least 30 days (unless waived by the Borrower and the Investor Limited Partner) before the date of the proposed execution and delivery in the case of a Supplemental Indenture to which reference is made in the Indenture, and (b) at least 30 days (unless waived by the Borrower and the Investor Limited Partner) before the giving of the notice of the proposed execution and delivery in the case of a Supplemental Indenture for which provision is made in the Indenture.

#### Opinion of Counsel

Before the Trustee shall enter into any Supplemental Indenture, there shall have been delivered to the Trustee and the Issuer an Opinion of Counsel to the effect that (a) any proposed Supplemental Indenture is authorized or permitted by the provisions of the Indenture and is not inconsistent with the Indenture, and (b) it is proper for the Trustee to join in the execution of that Supplemental Indenture under the provisions of the Indenture.

Before the Issuer and the Trustee shall enter into any Supplemental Indenture, there shall have been delivered to the Trustee and the Issuer an Opinion of Bond Counsel to the effect that such Supplemental Indenture will not, in and of itself, adversely affect the Federal Tax Status of the Bonds.

The Trustee may conclusively rely upon an Opinion of Counsel that an amendment to the Indenture effected pursuant to the Indenture is not to the prejudice of the Trustee or the Holders.

#### Modification by Unanimous Consent

Notwithstanding anything contained elsewhere in the Indenture, the rights and obligations of the Issuer and of the Holders, and the terms and provisions of the Bonds and the Indenture or any Supplemental Indenture, may be modified or altered in any respect with the consent of (a) the Issuer, (b) the Holders of all of the Bonds then Outstanding, (c) the Borrower and the Investor Limited Partner and (d) if such modification or alteration contains provisions adverse to the Trustee, the Trustee.

#### Release of Indenture

If (a) the Issuer shall pay all of the Outstanding Bonds, or shall cause them to be paid and discharged, or if there otherwise shall be paid to the Holders of the Outstanding Bonds, all Bond Service Charges due or to become due thereon, and (b) provision also shall be made for the payment of all other sums payable under the Indenture or under the Loan Agreement, the Bond Regulatory Agreement and the Note, then the Indenture shall cease, terminate and become null and void (except for those provisions surviving as described below in the event the Bonds are deemed paid and discharged as described below), and the covenants, agreements and obligations of the Issuer under the Indenture shall be released, discharged and satisfied.

Thereupon, and subject to the provisions of the Indenture described below, if applicable:

- (a) the Trustee shall release the Indenture (except for those provisions surviving as described under the heading "Survival of Certain Provisions" below in the event the Bonds are deemed paid and

discharged pursuant to the Indenture), and shall execute and deliver to the Issuer any instruments or documents in writing as shall be requisite to evidence that release and discharge or as reasonably may be requested by the Issuer;

(b) the Trustee shall release and satisfy the Note and deliver such release and satisfaction to the Borrower; and

(c) the Trustee shall assign and deliver to the Issuer any property subject at the time to the lien of the Indenture which then may be in its possession, except amounts in the Bond Fund required (i) to be paid to the Borrower, or (ii) to be held by the Trustee for the payment of Bond Service Charges, as more specifically set forth in the Indenture.

#### Payment and Discharge of Bonds

All or any part of the Bonds shall be deemed to have been paid and discharged within the meaning of the Indenture, including without limitation the heading "Release of Indenture" above, if:

(a) the Trustee as paying agent shall have received, in trust for and irrevocably committed thereto, sufficient money, or

(b) the Trustee shall have received in trust for and irrevocably committed thereto, noncallable Government Obligations; and the Trustee and the Issuer shall have received (i) certification by an Independent public accounting firm of national reputation to the effect that the Government Obligations have such maturities or redemption dates and interest payment dates, and bear such interest, as will be sufficient together with any money to which reference is made in subparagraph (a) above, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom (which earnings are to be held likewise in trust and so committed, except as provided herein), for the payment of all Bond Service Charges on those Bonds at their maturity; and (ii) an Opinion of Bond Counsel to the effect that the conditions of this heading have been satisfied.

Any money held by the Trustee in accordance with the provisions of this heading may be invested by the Trustee only in noncallable Government Obligations having maturity dates, or having redemption dates which, at the option of the Holder of those obligations, shall be not later than the date or dates at which money will be required for the purposes described above. To the extent that any income or interest earned by, or increment to, the investments held under this heading is determined from time to time by the Trustee to be in excess of the amount required to be held by the Trustee for the purposes of this heading, that income, interest or increment shall be transferred at the time of that determination in the manner provided in the Indenture for transfers of amounts remaining in the Bond Fund.

If any Bonds shall be deemed paid and discharged pursuant to this section, then within 15 days after such Bonds are so deemed paid and discharged the Trustee shall cause a written notice to be given to each Holder as shown on the Register on the date on which such Bonds are deemed paid and discharged. Such notice shall state the numbers of the Bonds deemed paid and discharged or state that all Bonds are deemed paid and discharged, set forth a description of the obligations held pursuant to subparagraph (b) of the first paragraph of this heading.

#### Survival of Certain Provisions

Notwithstanding the foregoing, any provisions of the Bond Resolution and the Indenture which relate to the maturity of Bonds, interest payments and dates thereof, exchange, transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, nonpresentment of Bonds, the holding of money in trust, and repayments to the Borrower from the Bond Fund, the rebate of money to the United States in accordance with the Indenture, and the rights and duties of the Trustee in connection with all of the foregoing, shall remain in effect and be binding upon the Trustee and the Holders notwithstanding the release and discharge of the Indenture. The provisions of this section shall survive the release, discharge and satisfaction of the Indenture. The obligations of the Borrower to pay the Trustee its fees and expenses Indenture shall survive the release, discharge and satisfaction of the Indenture.

### Covenants and Agreements of the Issuer

In addition to any other covenants and agreements of the Issuer contained in the Indenture or the Bond Resolution, the Issuer further covenants and agrees with the Holders and the Trustee as follows:

(a) **Payment of Bond Service Charges.** The Issuer will cause all Bond Service Charges to be paid solely from the sources provided in the Indenture, on the dates, at the places and in the manner provided in the Indenture.

(b) **Revenues and Assignment of Revenues.** The Issuer will not assign the Revenues or create or authorize to be created any debt, lien or charge thereon, other than the assignment thereof under the Indenture.

(c) **Recordings and Filings.** To the extent possible under applicable law, as in effect in the jurisdiction in which the Trust Estate is located, the Issuer shall cooperate with the Trustee to maintain the priority of the security interest in the Indenture created in the Trust Estate as a first lien thereon, and warrant, protect, preserve and defend its interest in the Trust Estate and the security interest of the Trustee therein and all rights of the Trustee under the Indenture against all actions, proceedings, claims and demands of all Persons, all paid for solely from the Trust Estate.

(d) **Inspection of Project Books.** All books, instruments and documents in the Issuer's possession relating to the Project and the Revenues shall be open to inspection and copying at all times during the Issuer's regular business hours by any accountants or other agents of the Trustee which the Trustee may designate from time to time.

(e) **Register.** At reasonable times and under reasonable regulations established by the Trustee, the Register may be inspected and copied (at the expense of the person making such copies) by the Borrower, the Trustee, by Holders of 25% or more in principal amount of the Bonds then Outstanding, or a designated representative thereof.

(f) **Rights and Enforcement of the Loan Agreement.** The Trustee may enforce, in its name or in the name of the Issuer, all rights of the Issuer for and on behalf of the Holders, except for Reserved Rights, and may enforce all covenants, agreements and obligations of the Borrower under and pursuant to the Loan Agreement, regardless of whether the Issuer is in default in the pursuit or enforcement of those rights, covenants, agreements or obligations. The Issuer, however, will do all things and take all actions on its part necessary to comply with covenants, agreements, obligations, duties and responsibilities on its part to be observed or performed under the Loan Agreement, and will take all actions within its authority to keep the Loan Agreement in effect in accordance with the terms thereof.

(g) **Issuer Not to Adversely Affect Federal Tax Status of Bonds.** The Issuer covenants that it (i) will take, or require to be taken, all actions that may be reasonably required of the Issuer to maintain the Federal Tax Status of the Bonds, and (ii) will not take or authorize to be taken any actions that would adversely affect the Federal Tax Status of the Bonds under the provisions of the Code.

### Observance and Performance of Covenants, Agreements, Authority and Actions

The Issuer will observe and perform faithfully at all times all covenants, agreements, authority, actions, undertakings, stipulations and provisions to be observed or performed on its part under the Bond Resolution, the Issuer Documents and the Bonds which are executed, authenticated and delivered under the Indenture.

The Issuer represents:

(a) It is duly authorized by the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Bonds, to execute and deliver the Issuer Documents and to provide

the security for payment of the Bond Service Charges in the manner and to the extent set forth in the Indenture.

(b) All actions required on its part to be performed for the issuance, sale and delivery of the Bonds and for the execution and delivery of the Issuer Documents have been taken duly and effectively.

(c) The Bonds will be valid and enforceable limited obligations of the Issuer according to their terms.

#### Enforcement of Issuer's Obligations

Each obligation of the Issuer required to be undertaken pursuant to the Bond Resolution, the Issuer Documents and the Bonds is binding upon the Issuer, subject to the Indenture.

#### Amendments Not Requiring Consent of Holders

Without the consent of or notice to the Holders, the Issuer, the Borrower, the Investor Limited Partner, and the Trustee may consent to any amendment, change or modification of the Loan Agreement or the Note, as may be required (a) by the provisions of the Note or the Loan Agreement, (b) for the purpose of curing any ambiguity, inconsistency or formal defect or omission in the Loan Agreement or the Note, (c) in connection with an amendment or to effect any purpose for which there could be an amendment of the Indenture pursuant to the Indenture, or (d) in connection with any other change in the Indenture which is not to the prejudice of the Issuer, the Trustee or the Holders of the Bonds, in the judgment of the Trustee.

#### Amendments Requiring Consent of Holders

Except for the amendments, changes or modifications contemplated in the Indenture, neither the Issuer nor the Trustee shall consent to:

(a) any amendment, change or modification of the Loan Agreement or the Note which would change the amount or time as of which Loan Payments and Eligible Funds are required to be paid, without the giving of notice as provided in the Indenture of the proposed amendment, change or modification and receipt of the written consent thereto of the Holders of all of the then Outstanding Bonds affected by such amendment, change or modification, or

(b) any other amendment, change or modification of the Loan Agreement or the Note, without the giving of notice as provided in the Indenture of the proposed amendment, change or modification and receipt of the written consent thereto of the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding affected by such amendment, change or modification.

The consent of the Holders shall be obtained as provided in the Indenture with respect to Supplemental Indentures.

If the Issuer or the Borrower shall request at any time the consent of the Trustee to any proposed amendment, change or modification of the Loan Agreement or the Note contemplated in the Indenture, upon being indemnified satisfactorily with respect to expenses, the Trustee shall cause notice of the proposed amendment, change or modification to be provided in the manner which is required by the Indenture with respect to notice of Supplemental Indentures. The notice shall set forth briefly the nature of the proposed amendment, change or modification and shall state that copies of the instrument or document embodying it are on file at the Designated Office of the Trustee for inspection by all Holders.

#### Opinion of Bond Counsel

Before the Issuer and the Trustee shall consent to any amendment, change or modification of any of the documents described in the Indenture there shall be delivered to the Trustee and the Issuer an Opinion of Bond Counsel

to the effect that such amendment, change or modification will not, in and of itself, adversely affect the Federal Tax Status of the Bonds.

#### Responsibilities of the Trustee

Notwithstanding anything else contained in the Indenture, the Trustee shall not be required to enter into any amendment, change, or modification of any of the documents described in the Indenture which affects the Trustee's own rights, duties or immunities under the Indenture or any other Financing Document.

#### Opinion of Counsel

Before the Trustee shall consent to any amendment, change or modification of any of the documents described in the Indenture there shall be delivered to the Trustee and the Issuer an Opinion of Counsel that (a) any proposed amendment, change, or modification of any of the documents described in the Indenture complies with the provisions of the Indenture, and (b) it is proper for the Trustee to join in the execution of that amendment, change, or modification under the provisions of the Indenture.

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## **APPENDIX C**

### **SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT**

*The following is a summary of certain provisions of the Loan Agreement. The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the Loan Agreement, a copy of which is on file with the Trustee.*

#### **The Loan**

The Issuer agrees, upon the terms and conditions of the Loan Agreement, to make the Loan to the Borrower with the proceeds received by the Issuer from the sale of the Bonds by causing such proceeds to be deposited with the Trustee for disposition as provided in the Indenture. The obligation of the Issuer to fund the Loan shall be deemed fully discharged, and the principal amount of the Bonds shall be deemed fully advanced to the Borrower under the Note, upon the deposit of the proceeds of the Bonds with the Trustee. The Loan shall be evidenced by the Note payable to the Trustee.

#### **Permanent Loan**

(a) To provide and secure funds for the repayment of the Loan, and to provide for the delivery of certain Eligible Funds, the Borrower shall simultaneously with the execution and delivery of the Loan Agreement, proceed with obtaining the WVHDF RD 538 Mortgage Loan from the WVHDF RD 538 Lender. In particular, the Borrower will promptly take all necessary actions on its part to close the WVHDF RD 538 Mortgage Loan and to satisfy all other terms and conditions of the RD 538 Commitment and the requirements of the WVHDF RD 538 Lender.

The Borrower represents that the WVHDF RD 538 Mortgage Loan is to be guaranteed by the USDA Rural Development Section 538 program, as amended, and the regulations promulgated thereunder, and that the WVHDF RD 538 Mortgage Loan will be in an original principal amount set forth in the Loan Agreement. The WVHDF RD 538 Mortgage Loan will be secured on a non-recourse basis pursuant to the WVHDF RD 538 Mortgage Loan Documents.

In connection with the WVHDF RD 538 Mortgage Loan, the Borrower shall execute and deliver such documents as may be customarily utilized for mortgage loans guaranteed under the USDA Rural Development Section 538 program, as amended, and the regulations promulgated thereunder, with such omissions, insertions and variations as may be permitted by such regulations and as may be consistent with the terms and provisions of the Loan Agreement.

The WVHDF RD 538 Lender shall deliver to the Trustee from time to time on or after the Closing Date the WVHDF RD 538 Mortgage Loan proceeds in an aggregate principal amount set forth in the Loan Agreement for deposit to the Permanent Loan Fund. Such proceeds shall be transferred from the Permanent Loan Fund to the Collateral Fund in installments as set forth in the Indenture and in the Loan Agreement to enable the Trustee to disburse Bond proceeds from the Project Fund as approved by the WVHDF RD 538 Lender in connection with completed and fully-executed disbursement requests in the form attached to the Loan Agreement as an exhibit.

(b) To provide and secure funds for the repayment of the Loan, and to provide for the delivery of certain Eligible Funds, the Borrower shall simultaneously with the execution and delivery hereof, proceed with obtaining the ERA2 Loan from the ERA2 Lender. In particular, the Borrower will promptly take all necessary actions on its part to close the ERA2 Loan and to satisfy the requirements of the ERA2 Lender.

The Borrower represents that the ERA2 Loan will be in an original principal amount set forth in the Loan Agreement. The ERA2 Loan will be secured on a non-recourse basis pursuant to the ERA2 Loan Documents.

The ERA2 Lender shall deliver to the Trustee from time to time, on or after the Closing Date ERA2 Loan proceeds in an aggregate principal amount set forth in the Loan Agreement to the Collateral Fund in installments as

set forth in the Indenture and the Loan Agreement to enable the Trustee to disburse Bond proceeds from the Project Fund as approved by the ERA2 Lender in connection with completed and fully-executed disbursement requests in the form attached to the Loan Agreement as an exhibit.

#### Disbursements from the Project Fund

Subject to the provisions below, disbursements from the Project Fund shall be made only to pay any of the following Project Costs:

- (a) Costs incurred directly or indirectly for or in connection with the acquisition, rehabilitation, improvement and equipping of the Project, including costs incurred in respect of the Project for preliminary planning and studies; architectural, legal, engineering, accounting, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work.
- (b) Premiums attributable to any surety bonds and insurance required to be taken out and maintained during the rehabilitation period with respect to the Project.
- (c) Taxes, assessments and other governmental charges in respect of the Project that may become due and payable during the rehabilitation period.
- (d) Costs incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract relating to the Project.
- (e) Subject to the limitations set forth in the Tax Certificate and Agreement, Costs of Issuance of the Bonds, including, financial, legal, accounting, printing and engraving fees, charges and expenses, and all other such fees, charges and expenses incurred in connection with the authorization, sale, issuance and delivery of the Bonds, including, without limitation, the fees and expenses of the Trustee properly incurred under the Indenture that may become due and payable during the construction period.
- (f) Any other costs, expenses, fees and charges properly chargeable to the cost of acquisition, rehabilitation, improvement and equipping of the Project.
- (g) Payment of interest on the Bonds.
- (h) Payments to the Rebate Fund.

Any disbursement from the Project Fund for the payment of Project Costs shall be made by the Trustee only upon the satisfaction of all of the following conditions:

- (i) The receipt by the Trustee of notice and instruction of a completed disbursement request (a "Disbursement Request") in the form attached to the Loan Agreement as an exhibit, signed by an Authorized Borrower Representative and approved by the Permanent Lender, providing the amount of the disbursement request (a "Disbursement Amount") and the expected date of disbursement (a "Disbursement Date").
- (ii) Promptly upon receipt of a completed and fully-executed Disbursement Request, the Trustee will confirm in writing to the Permanent Lender (A) the Disbursement Amount, (B) that the account balance of the Permanent Loan Fund is at least equal to the Disbursement Amount, (C) that the account balance of the Collateral Fund plus the account balance of the Project Fund will be at least equal to the then-outstanding principal amount of the Bonds after such disbursement and after effecting the related transfer from the Permanent Loan Fund to the Collateral Fund in accordance with the Indenture and (D) whether the Trustee has actual knowledge that an Event of Default (as determined in accordance with the Indenture) or a Determination of Taxability has occurred. If an Event of Default or a Determination of Taxability has occurred to the knowledge of the Trustee, the Trustee shall make no further disbursements from the Project

Fund so long as such Event of Default or Determination of Taxability continues to exist except in accordance with the Indenture.

(iii) Upon the receipt of confirmation from the Trustee of the matters described in clause (ii) above, the Permanent Lender will deliver to the Trustee the requisition form in the form attached to the Indenture as an exhibit, for the transfer by the Trustee of certain moneys in the Permanent Loan Fund to the Collateral Fund in the amount of the Disbursement Amount as indicated in the related Disbursement Request, in order to enable the Trustee to disburse funds from the Project Fund on the expected Disbursement Date.

(iv) Upon the receipt by the Trustee of such requisition form from the Permanent Lender, the Trustee shall in accordance with such requisition form transfer funds from the Permanent Loan Fund to the Collateral Fund in an amount equal to the Disbursement Amount as indicated in the related Disbursement Request as provided in the Loan Agreement. In the event that the amount of Eligible Funds received by the Trustee (in the aggregate or individually if indicated to be funded from more than one source in the Disbursement Request) does not equal the total amount of the Disbursement Request, the Trustee shall promptly return the amounts representing Permanent Loan proceeds to the Permanent Loan Fund and any such other Eligible Funds to the fund(s) or account(s) from which they came, and inform the Borrower and the WVHDF RD 538 Lender of such inadequacy of funds so that the Borrower can resubmit or correct the applicable Disbursement Request(s).

(v) Upon satisfaction of the conditions set forth in clauses (i) through (iv) above, the Trustee shall be unconditionally and irrevocably obligated to disburse funds from the Project Fund in accordance with the Disbursement Request. If any conditions are not met, Permanent Loan proceeds must be transferred back to the Permanent Loan Fund. The Trustee shall disburse funds from the Project Fund in accordance with the instructions contained in the Disbursement Request (A) on the same Business Day that it receives Eligible Funds in the Collateral Fund provided the Trustee receives Eligible Funds in the Collateral Fund with respect to such Disbursement Request prior to 2:30 PM Local Time on such Business Day or (B) on the next succeeding Business Day if the Trustee receives Eligible Funds in the Collateral Fund after 2:30 PM Local Time. If for any reason the Trustee is not able to disburse a corresponding amount of Bond proceeds from the Project Fund immediately following receipt in the Collateral Fund of Permanent Loan proceeds transferred from the Permanent Loan Fund, the Trustee shall promptly transfer such Permanent Loan proceeds back to the Permanent Loan Fund.

(vi) The Borrower acknowledges and agrees that it shall submit disbursement requests to the Trustee no more frequently than once each calendar month. Each such disbursement request shall be consecutively numbered. Proceeds of the Bonds disbursed pursuant to the provisions of the Loan Agreement may only be used to pay those Project Costs identified in the Sources and Uses of Funds attached as an exhibit to the Loan Agreement, as it may be amended pursuant to the agreement of the Permanent Lender and the Borrower.

The Borrower's right to request disbursements from the Project Fund is limited to the principal amount of the Loan.

The Borrower agrees that it will not request disbursement for any item not described in, or the cost for which item is other than as described in, the notice of public hearing pertaining to the Bonds unless the Borrower provides to the Permanent Lender with a copy to the Trustee and the Issuer, an Opinion of Bond Counsel to the effect that such disbursement will not adversely affect the Federal Tax Status of the Bonds.

Any money in the Project Fund remaining after the Completion Date and payment, or provision for payment, in full of the Project Costs, at the direction of the Authorized Borrower Representative, shall promptly be paid into the Bond Fund for payment of Bond Service Charges.

Notwithstanding any provision of the Loan Agreement or any provision of the Indenture to the contrary, the Trustee shall not disburse funds from the Project Fund unless and until the Trustee confirms that the account balance of the Collateral Fund plus the account balance of the Project Fund, less the amount of the requested disbursement from the Project Fund, is at least equal to then-outstanding principal amount of the Bonds.

### Borrower Required to Pay Costs in Event Project Fund Insufficient

If money in the Project Fund is 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. The Borrower shall pay all Costs of Issuance of the Bonds in excess of the amount permitted by the Tax Certificate and Agreement. The Borrower shall not be entitled to any reimbursement for any such additional Project Costs or payment of Costs of Issuance from the Issuer, the Trustee or any Holder; nor shall it be entitled to any abatement, diminution or postponement of any Loan Payments or other amounts to be paid under the Loan Agreement.

### Completion Date

The Borrower shall notify the Issuer and the Trustee of the Completion Date by the delivery of a Completion Certificate signed by the Authorized Borrower Representative substantially in the form attached to the Loan Agreement as an exhibit. The Completion Certificate shall be delivered as promptly as practicable after the occurrence of the events and conditions referred to in paragraphs (a), (b) and (d) of the Completion Certificate and an accountant's determination has been made that certain representations contained in the Loan Agreement are true and correct.

### Loan Repayment; Delivery of Note

In consideration of and in repayment of the Loan, the Borrower shall deliver or cause to be delivered to the Trustee, on or before each Bond Payment Date, Loan Payments, equal to the amount necessary to pay interest due on and principal of the Bonds due on such Bond Payment Date. All such Loan Payments shall be paid to the Trustee in accordance with the terms of the Note for the account of the Issuer and shall be held and disbursed in accordance with the provisions of the Indenture and the Loan Agreement.

The Borrower shall be entitled to a credit against the Loan Payments required to be made with respect to the Bonds on any date equal to the available money in the Bond Fund or transferred thereto from the Collateral Fund or the Project Fund for the payment of Bond Service Charges due on that date.

To secure the Borrower's performance of its obligations under the Loan Agreement, the Borrower shall execute and deliver, concurrently with the issuance and delivery of the Bonds, the Note and the Bond Regulatory Agreement.

The Note shall secure equally and ratably all Outstanding Bonds, except that, so long as no Event of Default has occurred and is continuing under the Loan Agreement, payments by the Borrower on the Note shall be used by the Trustee to make a like payment of Bond Service Charges and shall constitute Loan Payments.

Upon payment in full, in accordance with the Indenture, of the Bond Service Charges on any or all Bonds, whether at maturity or otherwise, or upon provision for the payment thereof having been made in accordance with the provisions of the Indenture, (a) the Note shall be deemed fully paid, the obligations of the Borrower thereunder shall be terminated, and the Note shall be surrendered by the Trustee to the Borrower, and shall be canceled by the Borrower, or (b) an appropriate notation shall be endorsed thereon evidencing the date and amount of the principal payment (or prepayment) equal to the Bonds so paid, or with respect to which provision for payment has been made, and that Note shall be surrendered by the Trustee to the Borrower for cancellation if all Bonds shall have been paid (or provision made therefor) and canceled as aforesaid. Unless the Borrower is entitled to a credit under express terms of the Loan Agreement or the Note, all payments on the Note shall be in the full amount required thereunder.

### Eligible Funds to Trustee

In consideration of and as a condition to the disbursement of Bond proceeds from the Project Fund to pay Project Costs, and to secure the Borrower's obligation to make Loan Payments, \$ \_\_\_\_\_\* of such Permanent Loan proceeds shall be transferred from the Permanent Loan Fund to the Collateral Fund in installments as set forth in the

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\* Preliminary; subject to change.

Indenture to enable the Trustee to disburse the amount of the proposed disbursements from the Project Fund. All amounts in the Permanent Loan Fund and the Collateral Fund shall be transferred or disbursed, as applicable, in accordance with the provisions of the Indenture. Upon the receipt of Eligible Funds in the Collateral Fund and the satisfaction of the other conditions set forth in the Loan Agreement, the Trustee shall be unconditionally and irrevocably obligated to disburse an equal amount of funds from the Project Fund at the request of the Borrower and subject to the approval of the Permanent Lender as provided in the Loan Agreement. In no event may funds held in the Collateral Fund, or funds held in the Permanent Loan Fund representing \$5,100,000\* of Permanent Loan proceeds, be used to pay Project Costs; funds in the Permanent Loan Fund representing Permanent Loan proceeds in excess of \$5,100,000\* may be transferred to the Borrower in accordance with the Indenture for the payment by the Borrower of Project Costs not payable from proceeds of the Bonds

#### Bond Fund and Collateral Fund

The Borrower and the Issuer have acknowledged that any interest of either the Borrower or the Issuer in the Bond Fund or the Collateral Fund and any money deposited therein is subordinate to the interest of the Holders therein.

#### Additional Payments

The Borrower shall pay as Additional Payments under the Loan Agreement the following (*provided* that Additional Payments shall not be paid from the Special Funds):

(a) Whether out of the proceeds of the Permanent Loan (but subject to the applicable Permanent Loan Documents) or other funds, all Costs of Issuance of the Bonds and all expenses incurred in closing the Permanent Loan.

(b) All Extension Payments and other sums required under the Indenture in order to revise or extend the Mandatory Tender Date or remarket the Bonds, and the Borrower further agrees to execute any and all certificates required by the Issuer, the Trustee or the Remarketing Agent in order to effectuate such revision, extension or remarketing.

(c) To the Trustee, (i) the Ordinary Trustee Fees and Expenses and (ii) amounts due to the Trustee for Extraordinary Services and Extraordinary Expenses, in each case, to the extent that the funds available under the Indenture for the payment thereof are not sufficient and available therefor.

(d) To the Issuer (i) the Ordinary Issuer Fees and (ii) the Extraordinary Issuer Fees and Expenses, in each case to the extent that the funds available under the Indenture for the payment thereof are not sufficient and available therefor.

(e) All costs of printing any replacement Bonds required to be issued under the Indenture to the extent such costs are not paid by the Holders.

(f) To the extent not paid by the Trustee from the Expense Fund, all of the fees and expenses of the Rebate Analyst (including, but not limited to, the Rebate Analyst Fee) and any other necessary consultant employed by the Borrower, the Trustee or the Issuer in connection with any of the requirements imposed by the Indenture and the Tax Certificate and Agreement to the extent that the funds available under the Indenture for the payment thereof are not sufficient and available therefor. The Borrower shall provide or cause to be provided all information and money (including money necessary to make deposits to the Rebate Fund required by the Indenture and the Tax Certificate and Agreement and the fees and expenses of the Rebate Analyst to the extent available moneys in the Bond Fund under the Indenture are inadequate to pay such amounts) to the Trustee and the Rebate Analyst to enable the Trustee and the Rebate Analyst to comply with the Indenture and the Tax Certificate and Agreement.

(g) To the Dissemination Agent, the Dissemination Agent Fee to the extent the funds available in the Expense Fund are not sufficient and available therefor, as well as any other costs and expenses in order to provide for compliance with the terms of the Continuing Disclosure Agreement.

- (h) To the Remarketing Agent, the Remarketing Agent Fee and any Remarketing Expenses.

In the event the Borrower is in default under any provision of any of the Borrower Documents beyond all applicable notice and cure periods, if any, the Borrower shall be liable to, and upon demand shall pay to, the Issuer, the Trustee and the Permanent Lender all reasonable fees and disbursements of such persons and their agents (including reasonable attorneys' fees and expenses) which are reasonably connected therewith or incidental thereto except to the extent such fees and disbursements are paid from money available therefor under the Indenture.

To provide for certain of the anticipated Additional Payments, the Borrower agrees to cause Eligible Funds to be deposited into the Expense Fund and the Costs of Issuance Fund the amounts required under the Indenture, and authorizes the Trustee to pay, from money on deposit in the Costs of Issuance Fund and the Expense Fund, the amounts provided to be paid from the Costs of Issuance Fund or the Expense Fund in accordance with the Indenture. All such amounts shall be paid directly to the parties entitled thereto for their own account as and when such amounts become due and payable.

Upon the payment, prepayment, or incurrence of any such cost, expense, or liability described in this section by any such party, the Additional Payments in respect thereof shall be payable promptly upon written demand to the Borrower, which demand shall be accompanied by invoices or other appropriate documentation concerning the nature, amount and incurrence of such cost, expense or liability. If the Additional Payments payable under this section are not paid promptly upon such demand, such Additional Payments shall bear interest from the date of such payment or the incurrence thereof at the Interest Rate for Advances until the amount due shall have been fully paid.

The obligations of the Borrower under this section shall survive the termination of the Loan Agreement and the payment and performance of all of the other obligations of the Borrower under the Loan Agreement and the other Borrower Documents, including the Tax Certificate and Agreement.

#### Assignment of Agreement and Revenues; Trustee is Third Party Beneficiary

To secure the payment of Bond Service Charges, the Issuer shall assign to the Trustee, by the Indenture, its rights under and interest in the Loan Agreement (except for the Reserved Rights). The Borrower hereby agrees and consents to those assignments. The Issuer shall not attempt to further assign, transfer or convey its interest in the Revenues or this Agreement or create any pledge or lien of any form or nature with respect to the Revenues, Loan Payments or Eligible Funds hereunder.

The Trustee shall be a third party beneficiary to the Loan Agreement.

#### Borrower to Maintain its Existence; Sale of Project

The Borrower shall maintain its existence, not dissolve or sell, transfer or otherwise dispose of all or substantially all of its assets and not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; provided, that it may do so if the surviving, resulting or transferee entity is other than the Borrower, it assumes in writing all of the obligations of the Borrower under the Borrower Documents and it has a net worth equal to or greater than that of the Borrower immediately prior to such consolidation, merger, sale or transfer. The Borrower shall not permit one or more other entities to consolidate with or merge into it; or take any action or allow any action to be taken to terminate the existence of the Borrower except as provided in the Loan Agreement.

No sale, assignment or transfer of title to the Project, except as may be otherwise required by the Issuer or the Permanent Lender, shall be made unless (a) the Issuer and the Permanent Lender consent to such assignment or transfer, (b) the transferee or assignee, as the case may be, assumes all the duties of the Borrower under the Borrower Documents, provided that such assumption may contain an exculpation of the assignee from personal liability with respect to any obligation under the Loan Agreement, except the Borrower's obligation to indemnify the Issuer and the Trustee and reimburse the Issuer and the Trustee for the fees and expenses of the Issuer and the Trustee, respectively, and (c) no Event of Default as certified in writing to the Issuer and the Trustee by the Borrower shall have occurred and be continuing under the Indenture or the Loan Agreement. Each of the Issuer and the Trustee shall consent to any

such assignment or transfer if (i) the Permanent Lender notifies it in writing that the aforesaid condition (a) is satisfied, (ii) the Issuer and the Trustee receive an Opinion of Bond Counsel, at the expense of the Borrower, to the effect that such transfer or assignment would not adversely affect the Federal Tax Status of the Bonds, and (iii) the Issuer and the Trustee receive written confirmation from the Rating Agency that such transfer or assignment will not result in a withdrawal or reduction in any rating on the Outstanding Bonds by the Rating Agency (if the Bonds are then rated by the Rating Agency). Upon the assumption of the duties of the Borrower by an assignee as provided in the Loan Agreement, the outgoing Borrower shall be released from all executory obligations so assumed; provided, however, the Borrower shall not be released from its obligation to pay or reimburse the fees and expenses of the Issuer and the Trustee and to indemnify the Trustee and the Issuer without the express written consent of the Trustee and the Issuer, as applicable, which consent shall not be unreasonably withheld, conditioned or delayed. Nothing contained in the Loan Agreement shall be construed to supersede any provisions regarding assignment and transfer of the Project contained in the Permanent Loan Documents.

Notwithstanding anything to the contrary contained in the Loan Agreement or in any other Borrower Document, and subject to the consent of the Issuer as required by the Permanent Loan Documents, the following shall be permitted and shall not require the prior written approval of Issuer or Trustee, (a) the transfer by Investor Limited Partner of its interest in Borrower in accordance with the terms of Borrower's Organizational Documents, (b) the removal of the general partner of Borrower in accordance with the Organizational Documents and the replacement thereof with Investor Limited Partner or any of its affiliates or an entity under common control with Investor Limited Partner, (c) the transfer of ownership interests in Investor Limited Partner, (d) upon the expiration of the tax credit compliance period, the transfer of the interests of Investor Limited Partner in Borrower to Borrower's general partner or any of its affiliates, (e) any amendment to the Organizational Documents to memorialize the transfers or removal described above, (f) admission of PNC Bank, National Association as a member of the Borrower and (g) any transfers of indirect or direct ownership interests in the general partner of the Borrower, to the extent that the control of the Borrower does not change as a result thereof. The parties agree that the Loan Agreement shall control to the extent of any conflict in any Borrower Documents.

#### Optional Prepayment

Provided no Event of Default shall have occurred and be continuing, the Borrower may deliver money to the Trustee in addition to Loan Payments or Additional Payments required to be made as a prepayment, in whole or in part, of the Loan and direct the Trustee to use the money so delivered for the purpose of purchasing Bonds, in accordance with the Indenture. Pending application for those purposes, any money so delivered shall be held by the Trustee in a special account in the Bond Fund and delivery of such money shall not operate to abate or postpone Loan Payments or Additional Payments otherwise becoming due or to alter or suspend any other obligations of the Borrower under the Loan Agreement.

#### Borrower's Obligations Upon Tender of Bonds

If any Tendered Bond is not remarketed on any Mandatory Tender Date and a sufficient amount is not available in the Collateral Fund, the Negative Arbitrage Account of the Bond Fund and the Project Fund as provided in the Indenture for the purpose of paying the purchase price of such Bond, the Borrower will cause to be paid to the Trustee by the applicable times provided in the Indenture, an amount equal to the amount by which the principal amount of all Bonds tendered and not remarketed, together with interest accrued to the Mandatory Tender Date, exceeds the amount otherwise available pursuant to the Indenture.

#### Option to Terminate

The Borrower shall have the option to cancel or terminate the Loan Agreement at any time when (a) the Indenture shall have been released in accordance with its provisions, and (b) sufficient money or security acceptable to the Issuer and the Trustee are on deposit with the Trustee or the Issuer, or both, to meet all Loan Payments and Additional Payments due or to become due through the date on which the last of the Bonds is then scheduled to be retired or redeemed, or, with respect to Additional Payments to become due, provisions satisfactory to the Trustee and the Issuer are made for paying such amounts as they come due. Such option shall be exercised by the Authorized Borrower Representative, on behalf of the Borrower, giving the Issuer and the Trustee five days' notice in writing of such cancellation or termination and such cancellation or termination shall become effective at the end of such notice.

period. The provisions of this section shall not be deemed to permit a prepayment of the Note other than in accordance with its terms.

#### Events of Default

Each of the following shall be an Event of Default under the Loan Agreement:

(a) The Borrower shall fail to pay any Loan Payment on or prior to the date on which that Loan Payment is due and payable to the extent amounts on deposit in the Bond Fund, including amounts transferred from the Collateral Fund and the Project Fund are insufficient to pay the Bond Service Charges due on the next Bond Payment Date;

(b) The Borrower shall fail to observe and perform any other agreement, term or condition contained in the Loan Agreement or any other Financing Document and the continuation of such failure for a period of 30 days after written notice thereof shall have been given to the Borrower and the Investor Limited Partner by the Issuer or the Trustee, or for such longer period as the Issuer and the Trustee may agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the Borrower institutes curative action within the applicable period and diligently pursues that action to completion, which must be resolved within 180 days after the aforementioned notice;

(c) The Borrower shall: (i) admit in writing its inability to pay its debts generally as they become due; (ii) have an order for relief entered in any case commenced by or against it under the federal bankruptcy laws, as now or hereafter in effect, which is not dismissed within 90 days; (iii) commence a proceeding under any other federal or state bankruptcy, insolvency, reorganization or similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for ninety days; (iv) make an assignment for the benefit of creditors; or (v) have a receiver or trustee appointed for it or for the whole or any substantial part of its property which appointment is not vacated within a period of 90 days;

(d) Any representation or warranty made by the Borrower in the Loan Agreement or any statement in any report, certificate, financial statement or other instrument furnished in connection with the Loan Agreement or with the purchase of the Bonds shall at any time prove to have been false or misleading in any adverse material respect when made or given; and

(e) There shall occur an "Event of Default" (as defined in the Indenture) by the Borrower or an event of default beyond the applicable notice and cure periods under the Bond Regulatory Agreement.

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

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

(1) acts of God; strikes, lockouts or other industrial disturbances; acts of terrorism or 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; pandemics; 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

- (2) 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.

#### Remedies on Default

Whenever an Event of Default shall have happened and be subsisting, any one or more of the following remedial steps may be taken:

- (a) If acceleration of the principal amount of the Bonds has been declared pursuant to the Indenture, the Trustee shall declare all Loan Payments to be due and payable together until any other amounts payable by the Borrower under the Loan Agreement and the Note whereupon the same shall become immediately due and payable;
- (b) The Trustee may exercise any or all or any combination of the remedies specified in the Loan Agreement or any other Financing Document;
- (c) The Issuer or the Trustee may have access to, inspect, examine and make copies of the books, records, accounts and financial data of the Borrower pertaining to the Project; or
- (d) The Issuer or the Trustee 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 the Loan Agreement and the Bond Regulatory 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, neither the Issuer nor the Trustee shall 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 or the Trustee at no cost or expense to the Issuer or the Trustee. Any amounts collected as Loan Payments or applicable to Loan Payment and any other amounts which would be applicable to payment of Bond Service Charges collected pursuant to action taken under this section shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture or, if the Outstanding Bonds have been paid and discharged in accordance with the provisions of the Indenture, shall be paid as provided in the Indenture for transfers of remaining amounts in the Bond Fund.

The provisions of this section are subject to the further limitation that the rescission by the Trustee of its declaration that all 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.

#### No Remedy Exclusive

No remedy conferred upon or reserved to the Issuer or the Trustee by the Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Loan Agreement, the Bond Regulatory Agreement or the Note, or now or hereafter existing at law, in equity or by statute. 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 Trustee 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 in the Loan Agreement.

No Waiver

No failure by the Issuer or the Trustee to insist upon the strict performance by the Borrower of any provision of the Loan Agreement 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 of the Loan Agreement.

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## **APPENDIX D**

### **SUMMARY OF CERTAIN PROVISIONS OF THE BOND REGULATORY AGREEMENT**

*The following is a brief summary of certain provisions of the Bond Regulatory Agreement. All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Indenture and the Bond Regulatory Agreement. The following summary does not purport to be complete or definitive and is subject to all the terms and provisions of the Bond Regulatory Agreement, to which reference is hereby made and copies of which are available from the Trustee.*

[to be provided]

## **APPENDIX E**

### **FORM OF CONTINUING DISCLOSURE AGREEMENT**

**\$5,100,000\***

**West Virginia Housing Development Fund  
Multifamily Housing Revenue Bonds Series 2024  
(Franklin Manor)**

This Continuing Disclosure Agreement (this “Continuing Disclosure Agreement”) is made as of September 1, 2024, by and between EPD2 FMA, LP, a West Virginia limited partnership (the “Borrower”) and UMB Bank, N.A., as Dissemination Agent (the “Dissemination Agent”). This Continuing Disclosure Agreement is entered into in connection with the issuance and sale by the West Virginia Housing Development Fund (the “Issuer”) of the above-captioned bonds (the “Bonds”) pursuant to a Trust Indenture by and between UMB Bank, N.A., as trustee, and the Issuer dated as of September 1, 2024 (the “Indenture”).

**Section 1.** Purpose of this Continuing Disclosure Agreement. This Continuing Disclosure Agreement is being executed and delivered by the Borrower, which is deemed to be the “obligated person” as defined by the Rule (defined below), and the Dissemination Agent for the benefit of the holders of the Bonds and in order to assist the Participating Underwriter in complying with the Rule. The Borrower acknowledges and agrees that the Issuer is not an “obligated person” for purposes of the Rule and shall have no reporting or disclosure obligations hereunder. In addition to any other indemnification obligations of the Borrower to the Issuer and the Dissemination Agent now or hereafter existing, the Borrower hereby covenants and agrees to indemnify and hold harmless the Issuer and the Dissemination Agent, any person who “controls” the Issuer or the Dissemination Agent (within the meaning of Section 15 of the Securities Act of 1933, as amended), and any member, officer, director, official, agent, employee, and attorney of the Issuer, the State of West Virginia or the Dissemination Agent (collectively called the “Indemnified Parties”) against any and all losses, claims, damages or liabilities (including all costs, expenses and reasonable counsel fees incurred in investigating or defending such claim) suffered by any of the Indemnified Parties and caused by, relating to, arising out of, resulting from, or in any way connected with compliance with the Rule as it applies to the Bonds.

**Section 2.** Definitions. In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Continuing Disclosure Agreement unless otherwise defined in this Section 2, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report provided by the Borrower pursuant to, and as described in, Sections 3 and 4 of this Continuing Disclosure Agreement.

“Audited Financial Statements” means, in the case of the Borrower, the annual audited financial statements prepared in accordance with generally accepted accounting principles, if any.

“Beneficial Owner” shall mean any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

“Disclosure Representative” shall mean the administrator of the Project or his or her designee, or such other person as the Borrower shall designate in writing to the Dissemination Agent from time to time.

“Dissemination Agent” shall mean UMB Bank, N.A., acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Borrower and which has filed with the Trustee a written acceptance of such designation.

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\* Preliminary; subject to change.

“Listed Events” shall mean any of the events listed in Section 5(a) of this Continuing Disclosure Agreement.

“MSRB” means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934. All documents provided to the MSRB shall be in an electronic format and accompanied by identifying information, as prescribed by the MSRB. Initially, all document submissions to the MSRB pursuant to this Continuing Disclosure Agreement shall use the MSRB’s Electronic Municipal Market Access (EMMA) system at [www.emma.msrb.org](http://www.emma.msrb.org).

“Participating Underwriter” means Stifel, Nicolaus & Company, Incorporated, and its successors and assigns.

“Rule” means Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

**Section 3.**        Provision of Annual Reports.

(a)        The Borrower will, or will cause the Dissemination Agent to, not later than 180 days following the end of the Borrower’s fiscal year, commencing with the fiscal year ending on December 31, 2024, provide to the MSRB an Annual Report which is consistent with the requirements described below. No later than 15 Business Days prior to said date, the Borrower will provide the Annual Report to the Dissemination Agent and the Trustee (if the Trustee is not the Dissemination Agent). In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package and may cross reference other information, provided that the audited financial statements for the prior calendar year of the Borrower may be submitted separately from the balance of the Annual Report.

(b)        If by 15 Business Days prior to the date specified in subsection (a) for providing the Annual Report to the MSRB, the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent will contact the Disclosure Representative to determine if the Borrower is in compliance with subsection (a).

(c)        If the Dissemination Agent is unable to verify that an Annual Report has been provided to the MSRB by the date required in subsection (a), the Dissemination Agent will send in a timely manner a notice to the MSRB in substantially the form attached as Exhibit B to this Continuing Disclosure Agreement.

(d)        The Dissemination Agent will file a report with the Borrower and (if the Dissemination Agent is not the Trustee) the Trustee certifying that the Annual Report has been provided pursuant to this Continuing Disclosure Agreement, stating the date it was provided.

**Section 4.**        Content of Annual Reports. The Borrower’s Annual Report will contain or incorporate by reference the financial information with respect to the Project, provided at least annually, of the type included in Exhibit A hereto. If the Borrower’s Audited Financial Statements are not available by the time the Annual Report is required to be filed, the Annual Report will contain unaudited financial statements, and the Audited Financial Statements will be filed in the same manner as the Annual Report when and if they become available.

Any or all of the items described in Exhibit A may be incorporated by reference from other documents, including official statements of debt issues with respect to which the Borrower is an “Obligated Person” (as defined by the Rule), which have been filed with the MSRB. The Borrower will clearly identify each such other document so incorporated by reference.

Each annual report submitted hereunder shall be in readable portable document format (“PDF”) or other acceptable electronic form.

**Section 5.**        Reporting of Listed Events.

(a)        This Section 5 shall govern the giving of notices of the occurrence of any of the following events (each, a “Listed Event”):

- (i)        Principal and interest payment delinquencies;
- (ii)       Non-payment related defaults, if material;
- (iii)      Unscheduled draws on debt service reserves reflecting financial difficulty;
- (iv)       Unscheduled draws on credit enhancements reflecting financial difficulty;
- (v)        Substitution of credit or liquidity providers, or their failure to perform;
- (vi)       Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (vii)      Modifications to rights of holders of the Bonds, if material;
- (viii)     Bond calls, if material, and tender offers;
- (ix)       Defeasances;
- (x)        Release, substitution or sale of property securing repayment of the Bonds, if material;
- (xi)       Rating changes;
- (xii)      Bankruptcy, insolvency, receivership or similar event of the Borrower. For purposes of this clause (xii), any such event shall be considered to have occurred when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Borrower in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Borrower, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Borrower;
- (xiii)     The consummation of a merger, consolidation, or acquisition involving the Borrower or the sale of all or substantially all of the assets of the Borrower, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (xiv)      Appointment of a successor or additional trustee or paying agent or the change of the name of a trustee or paying agent, if material;
- (xv)       Incurrence of a financial obligation of the Borrower, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the Borrower, any of which affect security holders, if material;
- (xvi)      Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the Borrower, any of which reflect financial difficulties; and

(xvii) The Project's being placed in service for purposes of qualifying the property for low-income housing tax credits. Notice of the Project's being placed in service from the Borrower to the Dissemination Agent shall be in the form attached as Exhibit D hereto. Notice of the Project being placed in service from the Dissemination Agent to the Municipal Securities Rulemaking Board shall be in the form attached as Exhibit C hereto.

For purposes of clauses (xv) and (xvi) of this Section 5(a), "financial obligation" is as contemplated by Exchange Act Release No. 34-83885; File No. S7-01-17 (the "Adopting Release").

(b) The Dissemination Agent shall, within three (3) Business Days of obtaining actual knowledge of the occurrence of any potential Listed Event, pursuant to subsection (c) of this Section 5 or otherwise, provide the Disclosure Representative with notice by email). While the Dissemination Agent is also the Trustee, the Dissemination Agent shall be deemed to have actual knowledge of those items listed in clauses (i), (iii) (solely with respect to funds held by the Trustee), (iv), (v), (vii), (viii), (ix), (x) and (xiv) above without the Dissemination Agent's having received notice of such event. While the Dissemination Agent is not also the Trustee, the Dissemination Agent shall not be deemed to have actual knowledge of any items listed in clause— (i)— (xvii) above without the Dissemination Agent having received written notice of such event. For purposes of providing notice to the Disclosure Representative, the Dissemination Agent shall assume that the unscheduled draws described in clauses (iii) and (iv) reflect financial difficulty.

(c) Whenever the Borrower obtains knowledge of the occurrence of a potential Listed Event, the Borrower shall, within five (5) Business Days of obtaining such knowledge and in any event no more than eight (8) Business Days after the occurrence of such event, determine if such event is in fact a Listed Event that is required by the Rule to be disclosed and provide the Dissemination Agent with notice and instructions pursuant to subsection (d) below.

(d) If the Borrower has determined that a Listed Event is required to be disclosed, then the Borrower shall prepare a written notice describing the Listed Event and provide the same to the Dissemination Agent along with instructions to file the same pursuant to subsection (e) below.

(e) If the Dissemination Agent has been provided with a written notice describing a Listed Event pursuant to subsection (c) of this Section 5 or otherwise, and is instructed by the Borrower to report the occurrence of such Listed Event, the Dissemination Agent shall, within two (2) Business Days of its receipt of such written notice and in any event no more than ten (10) Business Days after the occurrence of the Listed Event, file the notice with the MSRB and send a copy to the Borrower.

**Section 6.** Amendment; Waiver. Notwithstanding any other provision of this Continuing Disclosure Agreement, the Borrower and the Dissemination Agent may amend this Continuing Disclosure Agreement (and the Dissemination Agent will agree to any amendment so requested by the Borrower unless such amendment adversely affects its rights, duties, protections, immunities, indemnities or standard of care, as determined by the Dissemination Agent) and any provision of this Continuing Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions described under paragraph (a) under "Provision of Annual Reports," "Contents of Annual Reports" or paragraph (a) under "Reporting of Listed Events," it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law or change in the identity, nature or status of an Obligated Person (as defined in the Rule) with respect to the Bonds or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Holders of the Bonds in the same manner as provided in the Indenture for amendments to the Indenture with the consent of Holders or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders or Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of this Continuing Disclosure Agreement, the Borrower will describe such amendment in the next Annual Report and will include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles, on the presentation) of financial information being presented by the Borrower. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change will be given in the same manner as for a Listed Event under Section 5(f) hereof and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

**Section 7.** Default. In the event of a failure of the Borrower or the Dissemination Agent to comply with any provision of this Continuing Disclosure Agreement and such failure to comply continues beyond a period of thirty (30) days following written notice to the Borrower, the Borrower or any Holder or Beneficial Owner of the Bonds may, take such actions as may be necessary and appropriate, including seeking, or specific performance by court order, to cause the Borrower or the Dissemination Agent, as the case may be, to comply with its obligations under this Continuing Disclosure Agreement. A default under this Continuing Disclosure Agreement will not be deemed an Event of Default under the Indenture or the Loan Agreement, and the sole remedy under this Continuing Disclosure Agreement in the event of any failure of the Borrower or the Dissemination Agent to comply with this Continuing Disclosure Agreement will be an action to compel performance.

**Section 8.** Beneficiaries. This Continuing Disclosure Agreement will inure solely to the benefit of the Borrower, the Dissemination Agent and the Holders from time to time of the Bonds, and the Issuer and each Holder of the Bonds is hereby declared to be a third party beneficiary of this Continuing Disclosure Agreement. The Issuer shall have the right to bring an action in order to enforce the obligations of the parties hereunder. Except as provided in the immediately preceding sentence, this Continuing Disclosure Agreement shall create no rights in any other person or entity.

**Section 9.** Provision of Quarterly Statements. The Dissemination Agent shall, at the request of the Holders of the Bonds, furnish to the Holders of the Bonds, quarterly statements of the activity and assets held in each of the funds and accounts maintained by the Dissemination Agent in its capacity as Trustee under the Indenture. The Dissemination Agent shall satisfy this obligation by providing such quarterly statements via EMMA and/or an online system accessible to the Borrower and the Holders of the Bonds on each March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup> and December 31<sup>st</sup>. The Dissemination Agent shall furnish such quarterly statements at the sole cost of the Borrower.

**Section 10.** Additional Information. Nothing in this Continuing Disclosure Agreement shall be deemed to prevent the Borrower from disseminating any other information, using the means of dissemination set forth in this Continuing Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Continuing Disclosure Agreement. If the Borrower chooses to include any information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Continuing Disclosure Agreement, the Borrower shall have no obligation under this Continuing Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

**Section 11.** Duties, Immunities and Liabilities of Dissemination Agent.

(a) The Dissemination Agent shall have only such duties as are specifically set forth in this Continuing Disclosure Agreement. The Dissemination Agent's obligation to deliver the information at the times and with the contents described herein shall be limited to the extent the Borrower has provided such information to the Dissemination Agent as required by this Continuing Disclosure Agreement. The Dissemination Agent shall have no duty with respect to the content of any disclosures or notice made pursuant to the terms hereof. The Dissemination Agent shall have no duty or obligation to review or verify any information, disclosures or notices provided to it by the

Borrower and shall not be deemed to be acting in any fiduciary capacity for the Issuer, the Holders of the Bonds or any other party. The Dissemination Agent shall have no responsibility for the Borrower's failure to report to the Dissemination Agent a Listed Event or a duty to determine the materiality thereof. The Dissemination Agent shall have no duty to determine, or liability for failing to determine, whether the Borrower has complied with this Continuing Disclosure Agreement. The Dissemination Agent may conclusively rely upon Certifications of the Borrower at all times.

The obligations of the Borrower under this Section 11 shall survive resignation or removal of the Dissemination Agent and defeasance, redemption or payment of the Bonds.

(b) The Dissemination Agent may, from time to time, consult with legal counsel (either in-house or external) of its own choosing in the event of any disagreement or controversy, or question or doubt as to the construction of any of the provisions hereof or its respective duties hereunder, and shall not incur any liability and shall be fully protected in acting in good faith upon the advice of such legal counsel. The reasonable fees and expenses of such counsel shall be payable by the Borrower.

(c) All documents, reports, notices, statements, information and other materials provided to the MSRB under this Continuing Disclosure Agreement shall be provided in an electronic format and accompanied by identifying information as prescribed by the MSRB.

**Section 12.** Notices. All notices, requests, demands or other communications to or upon the respective parties hereto shall be deemed to have been duly given or made when delivered personally or by mail (including electronic mail) to the party to which such notice, request, demand or other communication is required or permitted to be given or made under this Continuing Disclosure Agreement and addressed as set forth below or telecopied to the telecopier number of the recipient, with confirmation of transmission, indicated below:

If to the Borrower:

EPD2 FMA, LP  
125 John Roberts Road, Suite 12  
South Portland, ME 04106  
Attention: Neil Martelle  
Email: nmartelle@eaglepointco.com

If to the Dissemination Agent:

UMB Bank, N.A.  
928 Grand Boulevard, 12th Floor  
Kansas City, MO 64106  
Attention: Liz Angotti  
Email: Liz.Angotti@umb.com

**Section 13.** Governing Law. This Continuing Disclosure Agreement shall be governed by the laws of the State of West Virginia.

**Section 14.** Termination of this Continuing Disclosure Agreement. The Borrower or the Dissemination Agent may terminate this Continuing Disclosure Agreement by giving written notice to the other party at least 30 days prior to such termination. The Dissemination Agent shall be fully discharged at the time any such termination is effective. The Borrower's and the Dissemination Agent's obligations under this Continuing Disclosure Agreement shall terminate upon the legal defeasance, prior redemption, tender, conversion or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the Borrower shall give notice of such termination in a filing with the MSRB.

**Section 15.** Counterparts. This Continuing Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Continuing Disclosure Agreement by their proper and duly authorized officers the day and year first above written.

**EPD2 FMA, LP,**  
a West Virginia limited partnership

By: Franklin Manor GP, LLC,  
a Maine limited liability company,  
its General Partner

By: Eagle Point Development – Series 2, LLC,  
a Maine limited liability company,  
its Managing Member

By: \_\_\_\_\_  
Richard Nelson, Jr.  
Manager

[Signatures continued on next page]

[Dissemination Agent Signature Page to Continuing Disclosure Agreement]

**UMB BANK, N.A.,**  
as Dissemination Agent

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

## EXHIBIT A

### ANNUAL REPORT

**\$5,100,000\***

**West Virginia Housing Development Fund  
Multifamily Housing Revenue Bonds, Series 2024  
(Franklin Manor)**

**CUSIP: \_\_\_\_\_**

**Annual report for the period ending December 31, \_\_\_\_\_**

#### THE PROJECT

Name of the Project:	Franklin Manor Apartments
Address:	700 West Burke Street, Martinsburg, WV 25401
Number of Units:	48

#### INFORMATION ON THE BONDS

Original principal amount of Bonds:	
Outstanding principal amount of Bonds:	

#### OPERATING HISTORY OF THE PROJECT

The tables set forth below offer a summary of the operating results of the Project for fiscal year ended December 31, 20\_\_, as derived from the Borrower's audited financial statements [or unaudited financial statements].

<b>Financial Results for Fiscal Year Ending December 31, _____</b>	
Revenues	
Operating Expenses <sup>1</sup>	
Net Operating Income	
Debt Service on the Series 2024 Bonds	
Net Income (Loss)	
Debt Service Coverage Ratio	

<sup>1</sup> Excludes depreciation and other non-cash expenses.

<b>Occupancy Results for Fiscal Year Ending December 31, _____</b>	
Physical Occupancy	_____%
Economic Occupancy <sup>1</sup>	_____%

<sup>1</sup> The physical occupancy rate is the proportion of units that are occupied or leased by tenants. The economic occupancy rate is the proportion of the gross potential rent that is actually collected. As such, the economic occupancy takes into consideration items such as model units, employee units, discounted units, rent incentives, loss to lease and bad debt expense.

\* Preliminary; subject to change.

## AUDITED FINANCIAL STATEMENTS

\_\_\_\_\_ Attached

\_\_\_\_\_ Audited financial statements of the Borrower for the period ending December 31, 20\_\_ are not yet completed; therefore, no audited financial statements of the Borrower are being filed herewith. Unaudited financial statements for such period are attached in lieu of audited financial statements. Audited financial statements will be filed when available.

\_\_\_\_\_ No audited financial statements of the Borrower were prepared for the period ending December 31, 20\_\_; therefore, no audited financial statements of the Borrower are being filed herewith. Unaudited financial statements for such period are attached in lieu of audited financial statements.

**EXHIBIT B**

**NOTICE OF FAILURE TO  
FILE AN ANNUAL REPORT**

Name of Issuer: West Virginia Housing Development Fund

Name of Issue: Multifamily Housing Revenue Bonds, Series 2024 (Franklin Manor)

Name of Borrower: EPD2 FMA, LP

CUSIP: \_\_\_\_\_

Date of Issuance: September \_\_, 2024

NOTICE IS HEREBY GIVEN that the above-referenced borrower (the “Borrower”) has not provided an Annual Report with respect to the above-named Bonds as required by its Continuing Disclosure Agreement. The undersigned has been informed by the Borrower that it anticipates that Annual Report will be filed by \_\_\_\_\_.

Dated:

**UMB BANK, N.A.,**  
as Dissemination Agent

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

cc: Borrower

**EXHIBIT C**

**NOTICE TO MUNICIPAL SECURITIES RULEMAKING BOARD OF  
PROJECT PLACED IN SERVICE**

Name of Issuer: West Virginia Housing Development Fund  
Name of Bond Issue: Multifamily Housing Revenue Bonds, Series 2024 (Franklin Manor)  
Name of Borrower: EPD2 FMA, LP  
Name of Project: Franklin Manor Apartments  
Address of Project: 700 West Burke Street, Martinsburg, WV 25401  
Date of Issuance: September \_\_, 2024

NOTICE IS HEREBY GIVEN as per the requirements of the Continuing Disclosure Agreement, dated as of September 1, 2024, between the above-referenced borrower (the “Borrower”) and UMB Bank, N.A., as Dissemination Agent, that the Borrower has certified that the above-referenced project (the “Project”) is complete and placed in service by the Borrower as evidenced by a certificate from the Borrower confirming that the Project is placed in service for purposes of Section 42 of the Code.

Dated: \_\_\_\_\_

**UMB BANK, N.A.,**  
as Dissemination Agent

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

cc: Borrower

**EXHIBIT D**

**FORM OF NOTICE OF PLACED IN SERVICE**

**\$5,100,000\***

**West Virginia Housing Development Fund  
Multifamily Housing Revenue Bonds, Series 2024  
(Franklin Manor)**

The undersigned hereby provides notice to UMB Bank, N.A., a national banking association, as dissemination agent (the “Dissemination Agent”) that the multifamily rental housing facility known as Franklin Manor Apartments (the “Project”) has been placed in service in accordance with the Trust Indenture, dated as of September 1, 2024, between the West Virginia Housing Development Fund (the “Issuer”) and UMB Bank, N.A., a national banking association, as trustee (the “Trustee”), pursuant to which the above-captioned bonds were issued, as further evidenced by the attached Certificate of Occupancy.

**EPD2 FMA, LP,**  
a West Virginia limited partnership

By: Franklin Manor GP, LLC,  
a Maine limited liability company,  
its General Partner

By: Eagle Point Development – Series 2, LLC,  
a Maine limited liability company,  
its Managing Member

By: \_\_\_\_\_  
Richard Nelson, Jr.  
Manager

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\* Preliminary; subject to change.

**ATTACHMENT**

**Certificate of Occupancy**

## **APPENDIX F**

### **FORM OF BOND COUNSEL OPINION**

West Virginia Housing Development Fund  
5710 MacCorkle Ave., SE  
Charleston, WV 25304

At your request, we have examined the constitution and laws of the State of West Virginia (the “State”) and a record of proceedings related to the issuance of \$\_\_\_\_\_ aggregate principal amount of Multifamily Housing Revenue Bonds, Series 2024 (Franklin Manor) (the “Bonds”) of the West Virginia Housing Development Fund (the “Housing Development Fund”), a public body corporate of the State created by and pursuant to Article 18 of Chapter 31 of the Code of West Virginia, 1931, as amended (the “Act”), and organized and existing under the Act and the laws of the State.

The Bonds are authorized to be issued pursuant to the Act, the Bond Authorizing Resolution adopted by the Housing Development Fund on July \_\_, 2024 (the “Resolution”), the Trust Indenture, dated as of September 1, 2024 (the “Indenture”), between the Housing Development Fund and UMB Bank, N.A., as trustee (the “Trustee”), and a Certificate of Determinations of the Housing Development Fund, dated as of September \_\_, 2024 (the “Certificate”). The Bonds are authorized to be issued for the purpose of providing funds to make a loan to EPD2 FMA, LP (the “Borrower”) pursuant to the Loan Agreement, dated as of September 1, 2024 (the “Loan Agreement”), between the Housing Development Fund and the Borrower, to finance, refinance or reimburse a portion of the costs of the acquisition, rehabilitation and equipping of a certain low and moderate income multifamily rental housing facility known as Franklin Manor Apartments, located in Martinsburg, West Virginia, pursuant to the terms of the Indenture, the Loan Agreement and the Regulatory Agreement, dated as of September 1, 2024 (the “Bond Regulatory Agreement”), among the Housing Development Fund, the Borrower and the Trustee.

The Bonds are dated the date, mature on the date, are in the principal amount, bear interest at the rate and are subject to redemption and otherwise are as described and provided for in the Resolution, the Indenture and the Certificate.

We are of the opinion that:

1. Under the constitution and laws of the State, the Housing Development Fund has good, right and lawful authority, among other things, to issue the Bonds and to execute and perform its obligations under the terms and conditions of the Indenture and the Loan Agreement.
2. The Resolution has been duly adopted by the Housing Development Fund, is in full force and effect, and is valid and binding upon the Housing Development Fund and enforceable in accordance with its terms.
3. The Housing Development Fund has taken all action necessary to authorize the issuance and sale of the Bonds and the execution, delivery and performance of the Indenture and the Loan Agreement.
4. The Bonds have been duly authorized, sold and issued by the Housing Development Fund in accordance with the Resolution, the Indenture and the laws of the State, including the Act, and pursuant to the Act are issued by a public body corporate of the State for a public purpose.
5. The Bonds are special, limited obligations of the Housing Development Fund payable from the revenues, funds or moneys pledged for the payment thereof pursuant to the Resolution and the Indenture, and are enforceable in accordance with their terms and the terms of the Resolution and the Indenture.
6. The State is not liable on the Bonds and the Bonds are not a debt of the State or a general obligation of the Housing Development Fund. Neither the faith and credit of the State or the Housing Development Fund nor the taxing power of the State is pledged to the payment of the principal of and premium, if any, and interest on the Bonds.

7. The Indenture, the Loan Agreement and the Bond Regulatory Agreement have been duly authorized, executed and delivered by the Housing Development Fund, and assuming due authorization, execution and delivery by the other parties thereto, are valid and legally binding obligations of the Housing Development Fund enforceable in accordance with their respective terms.

8. Under existing statutes and court decisions and assuming continuing compliance with certain tax covenants described below, (i) interest on the Bonds is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), except that no opinion is expressed as to such exclusion of interest on any Bond for any period during which the Bond is held by a person who, within the meaning of Section 147(a) of the Code, is a "substantial user" of the facilities financed with the proceeds of the Bonds or a "related person," and (ii) interest on the Bonds is not treated as a preference item in calculating the alternative minimum tax under the Code; however interest on the Bonds is included in the "adjusted financial statement income" of certain corporations that are subject to the alternative minimum tax under Section 55 of the Code. In rendering our opinion, we have relied on certain representations, certifications of fact, and statements of reasonable expectations made by the Housing Development Fund, the Borrower and others in connection with the Bonds, and we have assumed compliance by the Housing Development Fund and the Borrower with certain ongoing covenants to comply with applicable requirements of the Code to assure the exclusion of interest on the Bonds from gross income under Section 103 of the Code.

We express no opinion as to any other federal, state or local tax consequences arising with respect to the Bonds, or the ownership or disposition thereof, except as stated in paragraph 8 above. We render our opinion under existing statutes and court decisions as of the date hereof, and assume no obligation to update, revise or supplement our opinion to reflect any action hereafter taken or not taken, any fact or circumstance that may hereafter come to our attention, any change in law or interpretation thereof that may hereafter occur, or for any other reason. We express no opinion as to the consequence of any of the events described in the preceding sentence or the likelihood of their occurrence. In addition, we express no opinion on the effect of any action taken or not taken in reliance upon an opinion of other counsel regarding federal, state or local tax matters, including, without limitation, exclusion from gross income for federal income tax purposes of interest on the Bonds. We undertake no responsibility for the accuracy, completeness, or fairness of any official statement or other offering materials relating to the Bonds and express herein no opinion relating thereto.

We have assumed, without undertaking to verify, the genuineness of all documents, certificates and opinions presented to us (whether as originals or as copies) and of the signatures thereon, the accuracy of the factual matters represented, warranted, or certified therein, and the due and legal execution thereof by, and the validity against, any parties other than the Housing Development Fund.

In rendering this opinion, we are advising you that the rights and obligations under the Bonds, the Indenture, the Loan Agreement and the Bond Regulatory Agreement and their enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, arrangement, fraudulent conveyance, or other laws affecting creditors' rights or remedies and are subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), to the exercise of judicial discretion in appropriate cases, and to limitations on legal remedies. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum, waiver, or severability provisions contained in the documents described herein.

We have examined a specimen of the Bonds and in our opinion the form thereof and its execution are regular and proper.

Very truly yours,