

STATE OF ALABAMA)
COUNTY OF MONTGOMERY)

**AMENDED AND RESTATED WRITTEN AGREEMENT
FOR LOW-INCOME HOUSING TAX CREDIT EXCHANGE PROGRAM
(ALABAMA HOUSING FINANCE AUTHORITY)**

THIS AMENDED AND RESTATED WRITTEN AGREEMENT FOR LOW-INCOME HOUSING TAX CREDIT EXCHANGE PROGRAM (“this Agreement”) effective September 14, 2009, is entered into by and between Alabama Housing Finance Authority, acting solely in its capacity as a “state housing credit agency” with respect to funds allocated to the State of Alabama by the United States Department of the Treasury (“Treasury”) under its Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009, established under Section 1602 of the American Recovery and Reinvestment Act of 2009 (the “Exchange Program”), and «Owner_Name_1», a «Ownership_Entity_» (hereinafter referred to as the “Owner”).

WITNESSETH:

WHEREAS AHFA is the “state housing credit agency” with respect to Exchange Program funds allocated by Treasury to the State of Alabama; and

WHEREAS, Owner desires to participate in the Exchange Program as a «profit_Status» housing developer of «Project_Name», to be constructed on the property which is described on Addendum A attached hereto and made a part hereof and which is located in «Apartment_City», «Apartment_County» County, Alabama (the “Project”); and

WHEREAS, the parties desire to enter into this Agreement to ensure compliance with the requirements of participation in the Exchange Program.

NOW THEREFORE, the parties agree as follows:

1. **Required Project Information.** Owner hereby verifies and confirms to AHFA each item of information listed below with respect to the Project, and acknowledges Owner’s obligation to provide updated information to AHFA with respect to this information and the other information required by Sections 9, 10 and 12 below:

- a) Owner name and contact information: _____

- b) Name of Project: _____
- c) Brief Description of Project: _____
- d) Project Street Address (including zip code): _____

- e) Total number of housing units newly constructed: _____
- f) Total number of housing units rehabilitated: _____
- g) Number of LIHTC units newly constructed: _____
- h) Number of LIHTC units rehabilitated: _____

2. **Award of Exchange Program Funds:** Owner acknowledges that AHFA has awarded funds to Owner under the Exchange Program in the amount of $[\textit{Amount of Cash Assistance}]$ (the “Cash Assistance”), subject to the terms and conditions of a written reservation between Owner and AHFA.

3. **Exchange Program Requirements.** Owner acknowledges that the Cash Assistance is subject to and shall be governed by all terms and conditions of the provisions of the American Recovery and Reinvestment Act of 2009 (the “ARRA”) applicable to the Exchange Program, all subsequent amendments or modifications of the ARRA that affect the Exchange Program, all rules and regulations (interim and permanent) implemented and/or promulgated that affect the Exchange Program, all other laws, rules, regulations or policies heretofore or hereafter implemented and/or promulgated by Treasury, AHFA or any other governmental authority with respect to the Exchange Program, the State of Alabama Tax Credit Exchange Program, 2009 Allocation Plan and all amendments thereto and revisions thereof (collectively, the “Program Requirements”).

4. **Terms and Conditions of Cash Assistance.** The specific terms of the Cash Assistance will be set forth in detail in a commitment letter (the “Cash Assistance Commitment”), a note, a mortgage and other agreements evidencing or securing Owner’s obligations with respect to the Cash Assistance (all of the foregoing, collectively, the “Cash Assistance Documents”). The general terms and conditions of the Cash Assistance are as follows:

- a) **Disbursement of Cash Assistance:** During construction of the Project, commencing not earlier than the date on which all Cash Assistance Documents have been executed (the “Closing Date”), Cash Assistance will be disbursed for payment of Project costs only upon receipt of a requisition satisfactory in form and substance to AHFA and satisfaction of all requirements for each disbursement under the Cash Assistance Documents (the “Construction Funding Period”). Each disbursement of Cash Assistance will be subject, in addition to standard conditions for draws under commercial construction loans, to (i) agreed level of fund disbursement by any other construction lender to the Project, and (ii) Owner’s receipt of all tax credit equity payments or funds from other sources that are due on or before the date of the requested disbursement of Cash Assistance. In addition to any other right or remedy, AHFA shall be entitled to suspend disbursement of Cash Assistance proceeds during the existence of a default under the Cash Assistance Documents, any other construction financing, or any tax credit equity commitment with respect to the Project. The Construction Funding Period will end on the date on which the Owner has satisfied all “conversion conditions” described in the Cash Assistance Commitment and AHFA has issued Form 8609s for all eligible buildings in the Project (the “Conversion Date”). On the Conversion Date, the aggregate principal amount of the Cash Assistance for the Project will be finalized, and thereafter no additional advances of Cash Assistance or other Exchange Program funds will be available to Owner.
- b) **Compliance Period:** The “Compliance Period” for the Cash Assistance shall be the 15-year compliance period for the Project under Section 42 of the Internal Revenue Code, as amended (“Section 42”).
- c) **Extended Use Period:** The “Extended Use Period” for the Cash Assistance shall include the Compliance Period plus the applicable “Extended Use Period,” as defined in Section 42, plus any elective extensions by Owner in its application for Cash Assistance.
- d) **[OPTION 1 – Use for Projects without syndicated Housing Credits] Owner’s Recapture Obligations Upon Default:** Owner will be obligated under the Exchange Program to repay all or a portion of the Cash Assistance received (the “Recapture Amount”) if a “Recapture Event” occurs. From the Closing Date until (but not including) the first day of the Compliance Period, the Recapture Amount will be an amount equal to 100% of the Cash Assistance received, and any default under the Cash Assistance

Documents will constitute a Recapture Event. During the Compliance Period, the Recapture Amount will be an amount equal to 100% of the Cash Assistance received, reduced by one-fifteenth (or 6.67%) for each complete calendar year during the Compliance Period in which no recapture event occurs (but the Recapture Amount will never be less than AHFA's financial liability to Treasury, if any, as the result of a recapture), and only specified defaults that affect the Project's continued use as affordable housing will constitute a Recapture Event. From the Closing Date through the last day of the Compliance Period, Owner's obligations under this paragraph are FULL recourse to Owner and its general partners and will be further secured on a joint and several basis by the full faith and credit of each Guarantor.

- e) [OPTION 2 – Use for Projects with syndicated Housing Credits] Owner's Recapture Obligations Upon Default: Owner will be obligated under the Exchange Program to repay all or a portion of the Cash Assistance received (the "Recapture Amount") if a "Recapture Event" occurs. From the Closing Date until (but not including) the first day of the Compliance Period, the Recapture Amount will be an amount equal to 100% of the Cash Assistance received, and any default under the Cash Assistance Documents will constitute a Recapture Event. During the Compliance Period, the Recapture Amount will be an amount equal to 100% of the Cash Assistance received, reduced by one-fifteenth (or 6.67%) for each complete calendar year during the Compliance Period in which no recapture event occurs (but the Recapture Amount will never be less than AHFA's financial liability to Treasury, if any, as a result of the recapture), and only specified defaults under the Cash Assistance Documents that affect the Project's continued use as affordable housing will constitute a Recapture Event. From the Closing Date until (but not including) the first day of the Compliance Period, the Owner's obligation under the Exchange Program to pay the Recapture Amount following a Recapture Event will be FULL recourse to Owner and its general partners and will be further secured on a joint and several basis by the full faith and credit of each Guarantor. During the Compliance Period, but only upon satisfaction of the Conversion Conditions, the Owner's obligation under the Exchange Program to pay the Recapture Amount following a Recapture Event will not be recourse to Owner, its general partners or the Guarantors, except for applicable fees and costs, environmental cleanup, fraud or misrepresentation, or misapplication of insurance proceeds, condemnation awards or rents, all of which will remain secured by the full faith and credit of the Owner, its general partners and the Guarantors.
- f) Security for Repayment Obligation: The Owner's obligation under the Cash Assistance Documents to pay the Recapture Amount following a Recapture Event will be secured by a subordinate mortgage on the Project and a subordinate, perfected security interest in all fixtures and personal property of Owner located at the Project (behind only such mortgages and security interests as are acceptable to AHFA, which will include any construction or permanent financing identified in the Cash Assistance Commitment and any mortgage in favor of AHFA under the HOME Investments Partnership Program).
- g) Guaranties: The Owner's obligation under the Cash Assistance Documents to pay the Recapture Amount following a Recapture Event shall be guaranteed, jointly and severally (if there is more than one Guarantor), by the Guarantors identified in Owner's application for Cash Assistance, pursuant to one or more guaranty agreements in form and substance satisfactory to AHFA (each a "Guaranty Agreement"). Each Guarantor's liability will be as set forth in subparagraph d) above.
- h) No Voluntary Prepayment: Owner may not voluntarily repay or prepay the Cash Assistance, in whole or in part, at any time prior to the end of the Compliance Period.

- i) No Repayment Obligation if No Recapture Event. If no Recapture Event occurs during the period beginning on the Closing Date and ending on the last day of the Compliance Period, Owner will have no further obligation to repay all or any portion of the Cash Assistance or to pay the Recapture Amount following a Recapture Event; provided, however, that Owner will remain responsible for the Project's compliance with applicable LIHTC requirements under Section 42 for the remainder of the Extended Use Period.
5. Eligible Use of Exchange Program Funds. Owner represents, warrants and agrees as follows:
 - a) all Cash Assistance will be used for construction, acquisition or rehabilitation of buildings that are qualified LIHTC buildings under Section 42;
 - b) the Project will maintain eligible basis and comply with all other requirements of Section 42 throughout the Extended Use Period; and
 - c) the Cash Assistance will be used only to pay Project costs that Owner could pay with equity proceeds received from syndication of low-income housing tax credits under Section 42 ("Eligible Costs").
6. Cash Assistance Subject to Section 42 of IRC. All Exchange Program Funds awarded to Owner are awarded in the same manner and subject to the same limitations (including rent, income, use restrictions and compliance monitoring) as required by AHFA with respect to an award of LIHTC to a project under Section 42.
7. Construction and Expenditure Schedule. Owner acknowledges that AHFA will monitor construction or rehabilitation of the Project for compliance with Program Requirements, based on the construction budget supplied by Owner to AHFA, including without limitation, the Exchange Program's statutory expenditure deadlines for disbursement of the Cash Assistance. Owner acknowledges its obligations to provide status reports to AHFA concerning the progress of the Project on the first day of each month, commencing the month following the date on which this Agreement is executed, until the Project is placed in service. Owner's failure to meet the progress deadlines contained in AHFA's reservation of Exchange Program funds for the Project may cause the reservation to be terminated. **IN ADDITION TO ALL OTHER TERMS OF CONDITIONS OF THE CASH ASSISTANCE, OWNER ACKNOWLEDGES AND AGREES THAT OWNER MUST MEET SUCH PROGRESS REQUIREMENTS WITH RESPECT TO THE PROJECT AS ARE NECESSARY IN ORDER FOR AHFA TO DISBURSE, NOT LATER THAN DECEMBER 31, 2011, NOT LESS THAN 100% OF THE CASH ASSISTANCE TO OWNER FOR THE PROJECT IN ACCORDANCE WITH THE TERMS OF THIS WRITTEN AGREEMENT AND THE CASH ASSISTANCE DOCUMENTS. IN ADDITION, EACH PROJECT OWNER THAT RECEIVES CASH ASSISTANCE MUST, NOT LATER THAN DECEMBER 31, 2010, HAVE PAID OR INCURRED AT LEAST THIRTY PERCENT (30%) OF THE OWNER'S TOTAL ADJUSTED BASIS IN LAND AND DEPRECIABLE PROPERTY THAT IS REASONABLY EXPECTED TO BE PART OF THE PROJECT. AHFA HAS NO AUTHORITY TO AMEND THESE STATUTORY DEADLINES, AND OWNER'S FAILURE TO MEET THESE DEADLINES WILL RESULT IN OWNER'S LOSS OF CASH ASSISTANCE UNDER THE EXCHANGE PROGRAM, INCLUDING TERMINATION OF FUTURE EXCHANGE PROGRAM FUNDING AND IMMEDIATE RECAPTURE OF PRIOR EXCHANGE PROGRAM FUNDING, ABSENT AN INTERVENING CHANGE IN LAW.**
8. Fund Disbursement. Owner shall not request disbursement of Exchange Program funds unless such request is for payment of Eligible Costs under the Exchange Program, and the amount requested at any time cannot exceed Eligible Costs actually incurred. Cash Assistance cannot be placed into escrow accounts or advanced in lump sums to Owner. In order to obtain a disbursement of Cash

Assistance, Owner must deliver to AHFA a fully executed draw request substantially in the form required by the Cash Assistance Documents, together with the supporting documentation referenced therein, fully executed by the other parties indicated as signatories thereon.

9. **Recordkeeping.** Owner will maintain the particular records or reports that demonstrate compliance with the requirements of this Agreement. Owner acknowledges that AHFA and Treasury must have timely access to all such records or reports. Owner must maintain all of the foregoing records for fifteen (15) years (i.e. the initial Compliance Period) or for a longer period of time, such as the length of time required by AHFA in accordance with its implementation of the LIHTC requirements or other requirements established by AHFA for the Exchange program.

10. **Reporting.** Owner will submit reports in such form and with such frequency as may be required by AHFA in order to enable AHFA to comply with the Exchange Program's reporting requirements. Owner acknowledges that the reporting requirements are subject to amendment from time to time by Treasury or OMB, and that Owner must comply with the reporting requirements, as so amended.

11. **Enforcement.** Owner's obligations with respect to Cash Assistance awarded to the Project will be enforceable through the recordation of a restriction that is binding on all owners, and successors (e.g. covenant on the property) and that is enforceable by AHFA, Treasury and residents of the Project. The affordability requirements applicable with respect to LIHTC will also be enforced by recorded restriction. Owner shall also grant AHFA a mortgage and assignment of rents with respect to the Project. In the event Owner defaults under this Agreement or any Program Requirement, AHFA (and, to the extent applicable, other beneficiaries hereof) shall be entitled to injunctive relief and specific performance in addition to all other remedies available under applicable law and shall be entitled to recover the costs of pursuing such remedies, including reasonable attorney's fees. Without limiting the foregoing, AHFA may require repayment of Cash Assistance expended for ineligible costs, for a project that was never completed, or for a project that failed to meet the LIHTC requirements of Section 42.

12. **Asset Management.** AHFA will perform asset management of the Project to ensure compliance with Section 42 and the long-term viability of the Project. Fees for this required service will be charged to Owner. Owner acknowledges that AHFA will require, among other information upon request, the following information:

- a) During construction, a status report on the first day of each month until the Project is placed in service.
- b) On the placed in service date, satisfactory evidence of initial lease up with all LIHTC units occupied by qualified low-income tenants.
- c) After the placed in service date, no less often than annually, annual budget, rent roll, confirmation of eligibility of low-income tenants, rent levels, audited financial statements, and periodic statements for all reserve accounts.

In addition, AHFA will perform annual site visits in order to inspect the Project and review tenant files. If the Project is found to be out of compliance with the Exchange Program, AHFA will take remedial actions that are appropriate to the nature of the noncompliance, including without limitation, drawing on reserve accounts, seeking rental adjustments, approaching creditors if necessary for debt service relief, or pursuing other remedies available under the Exchange Program documents, such as suspension or termination of construction draws, immediate recapture of the Cash Assistance, direct collection of rents or foreclosure.

13. **Duration of Agreement.** This Agreement shall be in effect throughout the Project's Extended Use Period.

14. **Acknowledgment of Written Requirements.** Owner may request copies of the above-referenced Program Requirements as published in the Federal Register by contacting AHFA.

15. **Severability.** Invalidation of any provision herein by judgment or court order shall in no way effect any other provision of this Agreement, all of which shall remain in full force and effect.

16. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Alabama and, as applicable, the laws of the United States.

17. **Usage.** Whenever used herein, the singular shall include the plural and the plural shall include the singular, and the use of gender shall include all genders.

18. **Captions.** The captions and titles of the various paragraphs in this Agreement are for convenience and reference only, and in no way define, limit or describe the scope or intent of this Agreement.

19. **Effect of this Amended and Restated Written Agreement.** This Agreement amends, restates and replaces in its entirety the prior Written Agreement executed by Owner and AHFA with respect to the Project. This Agreement shall be deemed effective as of September 14, 2009, the effective date of the prior Written Agreement.

[Remainder of this page intentionally blank.]

IN WITNESS WHEREOF AHFA and Owner have executed this Agreement on the dates indicated below, to be effective as of the date hereinabove first written.

LENDER:

ALABAMA HOUSING FINANCE AUTHORITY,
acting solely in its capacity as a “state housing credit
agency” with respect to funds allocated to the State of
Alabama by the United States Department of the
Treasury under its Grants to States for Low-Income
Housing Projects in Lieu of Low-Income Housing
Credits for 2009, established under Section 1602 of
the American Recovery and Reinvestment Act of
2009

By: _____
Robert Strickland
Its: Executive Director

Date: February ____, 2010

OWNER:

«OWNER_NAME_1»

By: _____
Its:

Date: February ____, 2010

Addendum A

Legal Description

The below-described property located in the city of «Apartment_City», «Apartment_County» County, Alabama:

[To be provided.]