

After Recording Return To:

Colorado Housing and Finance Authority  
1981 Blake Street  
Denver, Colorado 80202-1272  
Attention: Pamela W. Heath, Paralegal

TCEP SUB-AWARD AGREEMENT  
(Tax Credit Exchange Program)

This TCEP SUB-AWARD AGREEMENT (this “**Agreement**”) is made and entered into on [\_\_\_\_\_] , 20[\_\_\_] by and between the Colorado Housing and Finance Authority, a body corporate and political subdivision of the State of Colorado (together with its successors, the “**CHFA**”) and [\_\_\_\_\_] (together with its successors and assigns, the “**Owner**”).

RECITALS

WHEREAS, CHFA has entered into a grant agreement with Treasury for a grant of funds in lieu of federal low-income housing tax credits (the “**Tax Credits**”) under Section 42 of the Internal Revenue Code of 1986, as amended (the “**Code**”), pursuant to the Tax Credit Exchange Program (“**TCEP**”) under Sections 1404 and 1602 of the Recovery Act;

WHEREAS, CHFA is a “designated State housing credit agency” within the meaning of the Recovery Act and has the authority to make sub-awards of TCEP funds (“**TCEP Funds**”) to eligible applicants for qualified projects in accordance with the Program Requirements (as defined in Article I);

WHEREAS, the Owner intends to [acquire,] [construct,] [rehabilitate,] develop, improve, maintain, own, operate, lease and otherwise deal with a residential rental housing project [to be] located in [\_\_\_\_\_] , known as [\_\_\_\_\_] (the “**Project**”);

WHEREAS, the Owner has received an award of Tax Credits in [2007][2008][2009] in the amount of \$[\_\_\_\_\_] from CHFA's [2008][2009] [2010] credit ceiling (“**Tax Credit Allocation**”) and Owner has demonstrated and CHFA has determined that the Project's affordability mix set forth in the Tax Credit Allocation has not materially changed;

WHEREAS, CHFA has adopted its American Recovery and Reinvestment Act Implementation Plan (the “**Implementation Plan**”) setting forth the policies, rules and procedures that will govern the operation of TCEP and the award and use of TCEP Funds;

[WHEREAS, the Owner has obtained a commitment from [\_\_\_\_\_] (the “**Tax Credit Investor**”) to make an equity investment in the Owner of up to \$[\_\_\_\_\_] in exchange for the Tax Credits;]

WHEREAS, CHFA has determined that the Project meets the eligibility requirements of the Implementation Plan and that the Owner has been unable to obtain a commitment from [an investor for the Tax Credits] [the Tax Credit Investor] in an amount sufficient to make the [acquisition][ construction ][ and rehabilitation] of the Project financially feasible after having made good faith efforts to do so;

WHEREAS, the Owner has submitted an application to CHFA, accompanied by a completed Return of Tax Credits Form, to return [all/ \$\_\_\_\_] of its Tax Credits for a sub-award of TCEP Funds to assist in the financing of the [acquisition] [construction] [and rehabilitation] of the Project;

WHEREAS, the Owner has represented that it will expend 100% of TCEP Funds by December 31, 2010 to finance the [acquisition] [construction] [and rehabilitation] of a “qualified low-income building” within the meaning of Section 42 of the Code;

WHEREAS, in accordance with the Implementation Plan, CHFA has determined to make a sub-award of TCEP Funds to the Owner in the aggregate amount of up to \$[\_\_\_\_\_] (the “**Sub-award**”) and [to issue][has issued] a TCEP Funding Commitment (the “**TCEP Funding Commitment**”) with respect to the Project, dated \_\_\_\_\_, specifying the amount of the Sub-award and setting forth certain terms and conditions governing the disbursement of the TCEP Funds;

WHEREAS, the Owner has agreed to accept the Sub-award and the TCEP Funding Commitment, subject to the terms and conditions set forth herein and therein; and

WHEREAS, the parties have agreed that this Agreement is to be recorded in the land records of the county in which the Project is located and is to run with the land;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

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

The capitalized terms used in this Agreement shall have the meanings ascribed to them in the Recitals hereto and in this Article I; provided that certain capitalized terms used and not defined herein shall have the meanings ascribed to them in or for purposes of Section 42 of the Code.

“**Accountant’s Opinion**” shall have the meaning attributed thereto in Section 9.1C.

“**Affiliate of the Owner**” means with respect to any Person, (i) any other Person directly or indirectly Controlling, Controlled by, or under common Control with such Person, (ii) any other Person directly or indirectly Controlling 50% or more of the voting securities of such Person, or (iii) any officer, director, manager, member, or partner of such Person and other entity for which any such officer, director, manager, member, or partner acts in any such capacity.

“**Agreement**” means this Sub-award Agreement, including any subsequent amendments.

“**Application**” means the application dated \_\_\_\_\_ submitted by the Owner or on its behalf to CHFA in connection with the award of TCEP Funds to the Project, as amended and supplemented from time to time.

“**Asset Manager**” means CHFA or its designee, and any successor thereto chosen by CHFA.

“**Asset Management Fee**” means the fee payable for the services of the Asset Manager pursuant to Section 10.3 of this Agreement.

“**Authorized Officer of the Owner**” means the Persons identified in Exhibit N hereof, and any other person designated in writing to CHFA by an Authorized Officer of the Owner.

“**Budget**” means the final sources and uses, including hard and soft costs, for the Project (the Development Financing Worksheet from the Application) attached hereto as **Exhibit B**. The Budget must clearly show the total development costs of the Project, the total amount of TCEP Funds awarded to the Project and, if applicable, the total anticipated amount of Tax Credit equity to be paid to the Owner by the Tax Credit Investor.

“**Business Day**” means a day of the year on which banks are not required or authorized to close in the State.

“**Cash Expenses**” means all operating obligations of the Owner (other than those covered by insurance) including, without limitation, the payment of the monthly third-party Mortgage Loan payments, the third-party Property Management Fee, the funding of reserves in accordance with section \_\_\_ hereof, all third-party expenditures including, but not necessarily limited to, advertising costs, utilities, maintenance, repairs, legal, telephone, any other expenses which may reasonably be expected to be paid in a subsequent period but which on an accrual basis will be allocable equally per month over the calendar year, such as, but not limited to, Insurance, Real Estate Taxes, third-party Mortgage Loan payments paid other than monthly, audit, tax or accounting expenses (excluding deductions for cost recovery of buildings, improvements and personal property and amortization of any financing fees) and any seasonal expenses (such as snow removal, the use of air conditioners in the middle of the summer, or heaters in the middle of winter) which may reasonably be expected to be paid in a subsequent period. Cash Expenses payable to Owner or Affiliates of Owners will be paid after Cash Expenses payable to third parties. Construction loan interest and development costs of any nature whatsoever are not Cash Expenses except with respect to Construction loan interest attributable to units that have been placed in service.

“**Cash Receipts**” means actual cash received on a cash basis by the Owner from operating revenues of the Owner, including without limitation rental income (but not any subsidy thereof from the Owner or an affiliate thereof), tenant security deposits that have been forfeited by tenants pursuant to the laws of the State, laundry income paid to the Owner, telephone hook-up or service income, cable fees or hook-up costs, telecommunications or satellite fees or hook-up costs, but excluding prepayments, security deposits, borrowings, the Mortgage Loans, lump-sum payments, any extraordinary receipt of funds, and any income earned on investment of

funds. Neither the Owner, nor its Affiliates will be entitled to payment of any Cash Receipts for any reason (except as otherwise provided herein), including, but not limited to a separate contract, agreement, obligation or the like.

“**CHFA**” means the Colorado Housing and Finance Authority and its successors.

“**Closing**” means the date on which this Agreement is executed and delivered by all of the parties hereto.

“**Code**” means the Internal Revenue Code of 1986, as amended, and as the context may require, the Treasury Regulations promulgated thereunder, and any published rulings, procedures and notices thereunder.

“**Compliance Period**” means the compliance period described in Section 42(i)(1) of the Code, as applicable to particular building(s) in the Project.

“**Construction Completion**” means the date upon which the work has been fully completed in accordance with the Construction Contract and the Owner has received the Completion Certification, in a form substantially similar to the form attached hereto as Exhibit \_\_\_ and incorporated herein by this reference, with respect to completion of all the apartment units in the Project. Completion of Construction further means that the construction will be completed in good quality, and free and clear of all mechanic, material and similar liens and the Project has a certificate occupancy (or local equivalent) for all units. In addition to the above, Construction Completion will occur only when the statutory time period for the filing of any liens by the Contractor, subcontractors, material suppliers or any one else entitled to file a lien against the property has lapsed unless (i) all of the Contractor, subcontractors, material suppliers or anyone else entitled to file a lien against the property have provided lien waivers to CHFA and such lien waivers have been approved by CHFA and (ii) any filed liens other than the Mortgage Loans has been bonded over and have been approved by CHFA and CHFA has approved Construction Completion.

“**Construction Completion Date**” means the date upon which CHFA determines that construction of the Project is substantially complete, except for punch list items, and that the Project is ready for its intended use, which date is anticipated to occur by [\_\_\_\_\_].

“**Construction Contract**” means the Construction Contract [dated \_\_\_\_\_] [to be executed] in the amount of \$ \_\_\_\_\_, by and between the Owner and the Contractor.

“**Construction Documents**” means the Construction Contract, including, without limitation, the general conditions, project manual (including general requirements and technical specifications, drawings or sketches), the Plans and Specifications, and any addenda thereto, together with all trade contracts pursuant to which construction of the Improvements will be accomplished.

“**Construction Management Agreement**” means the Construction Management Agreement entered into between the Developer and the Owner, dated \_\_\_\_\_.

**“Construction Monitor”** means the inspector selected by CHFA for purposes of evaluating the progress of the construction [or rehabilitation] of the Project [and agreeing to the approval of construction progress payments] in accordance with the Construction Documents.

**“Construction Schedule”** means the detailed construction schedule for the Project attached hereto as **Exhibit M**.

**“Contractor”** means [\_\_\_\_\_].

**“Control”** (and the related terms “Controlling,” “Controlled by,” and “under common Control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of outstanding securities, equity, or other beneficial ownership interests, by contract or otherwise.

**“Cost Certification”** means the written certification of a certified public accountant as to the itemized amounts of the construction [rehabilitation] and development costs of the Project, as required by the QAP.

**“Debt Service Coverage”** means for the applicable period, the ratio between Net Operating Income (excluding Mortgage Loan payments) and the debt service required to be paid on the Mortgage Loan. For example, a 1.15 Debt Service Coverage means that for every \$1.00 of debt service required to be paid, there must be a \$1.15 of Net Operating Income available. A worksheet for the calculation of Debt Service Coverage is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. For the purposes of this definition: (a) any one-time up-front fee paid to the Owner from any source will not be included in Cash Receipts to calculate Debt Service Coverage; (b) Cash Expenses will include the amount of any Property Management Fee, or portion thereof, which is currently deferred and not paid; (c) Cash Expenses will include the amount of any reserve required to be funded in accordance with Article VIII that is currently deferred and not paid, and (d) Cash Expenses will be the greater of actual expenses or the expenses reflected in Exhibit E to the Budget Agreement.

**“Deferred Management Fee”** means, if there is an Affiliate acting as Property Manager and there is an Operating Deficit following the termination of the termination of the Operating Deficit Guaranty Period or the depletion of the maximum Operating Deficit amount, whichever occurs first, then 40% of the Management Fee will be deferred (“Deferred Management Fees”). Deferred Management Fee, if any, will be paid to the Property Manager as provided in Section \_\_\_\_ hereto.

**“Developer”** means [\_\_\_\_\_].

**“Development Agreement”** means the [Development Agreement] dated [\_\_\_\_\_] by and between the Owner and the Developer.

**“Development Fee”** means the fee payable to the Developer for the development and construction of the Project in accordance with the Development Agreement.

**“Draw Documents”** shall have the meaning attributed thereto in Section 4.1B.

**“Draw Schedule”** shall have the meaning attributed thereto in Section 4.3A.

**“Eligible Costs”** means any of the line-item expenditures identified in **Exhibit G** and such additional expenditures as may be approved by CHFA from time to time, provided in each such case that to the extent such costs are to be paid or reimbursed with TCEP Funds, the payment of such costs must be permissible under the Program Requirements. Eligible Costs for each residential rental building in a Project, determined at the time of Cost Certification, may not exceed 85% of such building’s Eligible Basis, determined in accordance with the Section 42(d) of the Code, as of the end of the first year of the of the “credit period” applicable to such building, as defined in Section 42(f)(1) of the Code.

**“Entity”** means any general partnership, limited partnership, corporation, joint venture, trust, limited liability company, limited liability limited partnership, business trust, cooperative or other business association.

**“Event of Bankruptcy”** or **“Bankruptcy”** means, as to a specified Person:

(i) the entry of a decree or order for relief by a court having jurisdiction in respect of such Person in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of his property, or ordering the winding-up or liquidation of his affairs and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days; or

(ii) the commencement by such Person of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by him to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of such Person or for any substantial part of his property, or the making by him of any assignment for the benefit of creditors, or the taking of action by the Person in furtherance of any of the foregoing.

**“Event of Default”** shall have the meaning attributed thereto in Section 11.1A.

**“Excess Amount”** shall have the meaning attributed thereto in Section 2.1C.

**“Excess Development Costs”** shall have the meaning attributed thereto in Section 7.2.

**“Expiration Date”** means December 31, 2010, as such date may be extended in accordance with Section 4.1E.

**“Fiscal Quarter”** means any of the three (3) consecutive month periods of each Fiscal Year ending on March 31, June 30, September 30 and December 31.

**“Fiscal Year”** means the twelve (12)-month period which begins on January 1 and ends on December 31 of each calendar year.

[“**General Partner**” means \_\_\_\_\_, and its successors and assigns as General Partner of the Owner.]

“**Governmental Authority**” means CHFA, the IRS or any other federal, state or local governmental agency or authority having jurisdiction over the particular matter to which reference is being made.

[“**Guarantor of Recapture**” means \_\_\_\_\_].

[“**Guarantor of Completion**” means \_\_\_\_\_].

[“**Guarantor of Lease Up**” means \_\_\_\_\_].

[“**Guarantor of Operating Deficit**” means {\_\_\_\_\_}].

[“**Guaranty**” means Guaranty of [Lease Up, Operating Deficit,] Completion or Guaranty of Recapture, as the case may be, executed by the Guarantor of Completion or the Guarantor of Recapture, as the case may be, in favor of CHFA pursuant to which the Guarantor has unconditionally guaranteed certain payment and performance obligations of the Owner under this Agreement.

“**Guidelines**” means the “*Application and Terms and Conditions: Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009*” published by Treasury in May 2009, and any updates, modifications or successor guidelines thereto.

[“HAP Contract” means the Housing Assistance Payments Contract, dated \_\_\_\_\_.]

“**HUD**” means the U.S. Department of Housing and Urban Development and its successors.

“**Implementation Plan**” shall have the meaning attributed thereto in the Recitals.

“**Improvements**” means the \_\_\_-unit residential rental housing development, including functionally related and subordinate facilities and other structures, to be developed on the Land in accordance with the Construction Documents.

“**IRS**” means the U.S. Internal Revenue Service.

“**Land**” means the real property which the Owner [owns][leases], upon which the Improvements will be constructed and which is described in **Exhibit A**.

“**Lender**” means [\_\_\_\_\_].

“**Low-Income Unit**” means [\_\_\_\_\_] of the [\_\_\_\_\_] dwelling units in the Project that are to be held for occupancy by the Owner and occupied in such a manner as to qualify such units as “low-income units” under Section 42(i)(3) of the Code.

“**LURA**” means the Land Use Restriction Agreement between CHFA and the Owner, which constitutes an “extended low-income housing commitment” as defined in Section 42(h)(6)

of the Code and in which the Owner agrees to maintain the Project for occupants who meet the income requirements under Code Section 42(g) and to maintain the Project as “rent-restricted” under Code Section 42(g) for a certain period of time set forth in the LURA, subject to certain exceptions set forth therein. The LURA shall comply with the provisions of Section 42(h)(6) of the Code.

[“**Managing Member**” means \_\_\_\_\_, and its successors and assigns as managing member of the Owner.]

“**Material Change Order**” means a change order to the Construction Contract, the Draw Schedule or any of the other Construction Documents in connection with the construction of the Improvements that would (i) extend the Construction Completion Date by more than [\_\_\_\_\_] calendar days, or (ii) results in an overall development cost increase in excess of \$[\_\_\_\_\_] or creates a financing gap that cannot be funded.

“**Minimum Set-Aside Test**” means the set-aside test described in Section 42(g)(1) of the Code selected by the Owner in its Application whereby at least [20][40]% of the units in the Project must be occupied by individuals with incomes less than or equal to [50][60]% of area median income, as adjusted for family size, determined in accordance with Section 42(g)(1) of the Code.

“**Mortgage**” means any mortgage, mortgage deed, deed of trust, deed to secure debt or any similar security instrument, as amended, restated, modified or supplemented from time to time on the Project given by the Owner to any Lender to secure any indebtedness, together with any other documents pertaining to said indebtedness, which were required by the Lender as a condition to making a Mortgage Loan.

“**Mortgage Loans**” means the loans listed on **Exhibit L**.

“**Net Operating Income**” means the cash available for distribution to the Owner on an annual basis when Cash Receipts exceed Cash Expenses.

“**Operating Budget**” means the annual operating Budget of the Owner.

“**Operating Deficit**” means, for the applicable period, insufficient funds to pay Owner operating costs when Cash Expenses exceed Cash Receipts, as determinate by third party accountant.

“**Permanent Loan Commencement**” means the first date on which all of the following have occurred: (a) all of the Mortgage Loans have closed and funded and (b) the amortization of the Senior Loan has commenced. Notwithstanding the foregoing, Permanent Loan Commencement will not occur unless, prior to closing any Mortgage Loan, the Owner has provided to CHFA, drafts of the Mortgage Loan documents for review and approval and the income and expense statements of the Owner showing Cash Receipts and Cash Expenses for each and every month since issuance of certificate of occupancy. Based on the draft or executed Mortgage Loan documents and the income and expense statements, if the terms of the Mortgage Loan are not as specified in the Application or if CHFA determines that the Debt Service Coverage of those Mortgage Loans requiring amortized monthly principal and interest payments



will fall below 1.15 based on then current Cash Expenses and Cash Receipts, then the Owner shall adjust the principal loan amount and close on a Mortgage Loan which will produce a 1.15 Debt Service Coverage or greater. If the interest rate at the time of closing of a Mortgage Loan is less than the amount stated in the Application, the Owner shall not increase the principal amount of such Mortgage Loan without CHFA's approval, even if the Debt Service Coverage remains at or above 1.15.

**"Person"** means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits; and, unless the context otherwise requires, the singular shall include the plural, and the masculine gender shall include the feminine and the neuter and vice versa.

**"Plans and Specifications"** means the plans and specifications for the construction of the Project, including, without limitation, specifications for materials, and all amendments and modifications thereof.

**"Program Requirements"** means any and all requirements for receiving and maintaining a sub-award of TCEP Funds as set forth in Sections 1404 and 1602 of the Recovery Act, the Guidelines, and any other rules, regulations, guidelines or notices published by the IRS or Treasury from time to time with respect to TCEP that are applicable to the Project.

**"Project"** means the Improvements, the [Owner's leasehold interest in the] Land, and all other real and personal property that is used in connection with the development and operation of the Land and Improvements.

**"Property Management Agreement"** means the agreement between the Owner and the Property Manager in effect or as amended from time to time providing for property management services to the Project. The Property Management Agreement shall provide that it will be terminable at will by the Owner at any time following the withdrawal or removal of the [general partner][managing member] and, in any event, on any anniversary of the date of execution of the Property Management Agreement, without payment or penalty for failure to renew the same. The Property Manager shall also provide a fidelity bond in the amount equal to at least two months of gross receipts.

**"Property Management Fee"** means the fee, which shall not exceed 7.0% of gross revenues, [subject to the approval of HUD] and payable to the Property Manager pursuant to the terms of the Property Management Agreement.

**"Property Manager"** means, initially, [\_\_\_\_\_], and any other Person acting as Property Manager under a Property Management Agreement.

**"QAP"** means CHFA's 2009 Qualified Allocation Plan for the Housing Tax Credit Program, including any amendments thereto and successor plans.

**"Qualified Tenants"** means tenants who at the time of their initial occupancy of the Project, satisfy the income limits applicable under the Minimum Set-Aside Test under executed leases with terms of not less than six (6) months at rentals meeting the requirements of the Rent Restriction Test.

**“Recapture Event”** shall have the meaning attributed thereto in Section 6.1.

**“Recapture Deed of Trust”** means the deed of trust granted by the Owner to CHFA to secure the obligation of the Owner to repay all or a portion of the Sub-award in accordance with the terms of this Agreement.

**“Recovery Act”** means the American Recovery and Reinvestment Act of 2009.

**“Rent Restriction Test”** means the test described in Section 42(g)(2) of the Code whereby the gross rent charged to tenants of the Low-Income Units in the Project may not exceed thirty percent (30%) of the applicable qualifying income levels based upon the Minimum Set-Aside Test.

**“Required In-Service Date”** means the date by which at least one unit in each building in the Project must be ready and available for occupancy in accordance with state and local laws, which date shall be December 31, 2011

**“Required Percentage”** means the minimum percentage of Low-Income Units in the Project, which shall be the greater of the Minimum Set-Aside and the Sub-award Fraction.

**“Requisition”** means a requisition or draw request for TCEP Funds signed by the Owner, the contractor and the project architect in the form attached hereto as **Exhibit H**.

**“Security Instruments”** means, collectively, (i) the Collateral Assignment of Development Agreement by and between CHFA and the Developer pursuant to which the Developer has pledged all of its rights under the Development Agreement to CHFA as additional security for performance by the Owner of all of its obligations under this Agreement, (ii) the Collateral Assignment of Property Management Agreement by and between CHFA and the Owner pursuant to which the Owner has assigned all of its rights under the Property Management Agreement to CHFA as additional security for performance by the Owner of all of its obligations under this Agreement, and (iii) the Collateral Assignment of Construction Contract by and between CHFA and the Owner pursuant to which the Owner has assigned all of its rights under the Construction Contract to CHFA as additional security for performance by the Owner of all of its obligations under this Agreement; (iv) the Collateral Assignment of Architect’s Contracts and Drawings by and between CHFA and the Owner pursuant to which the Owner has assigned all of its rights under the Architect’s Contract to CHFA as additional security for performance by the Owner of all of its obligations under this Agreement; (v) the Collateral Assignment of Housing Assistance Payments Contract (“HAP Contract”) by and between CHFA and the Owner pursuant to which the Owner has assigned all of its rights under the HAP Contract to CHFA as additional security for performance by the Owner of its obligations under this Agreement

**“State”** means the State of Colorado.

**“Sub-award”** means the Sub-award of TCEP Funds in the aggregate amount of up to \$[ ] to be made by CHFA to the Owner to assist in the financing of the construction [acquisition and rehabilitation] of the Project pursuant to all of the terms and conditions of this Agreement.

**“Sub-award Documents”** mean all of the documents executed in relation to the Sub-award, including, but not limited to, the documents listed on Exhibit B of the TCEP Funding Commitment.

**“Sub-award Fraction”** means the lesser of (i) the fraction obtained by dividing the amount of the Sub-award, once fully disbursed, into the Eligible Basis of the Project, determined in accordance with the Section 42(d) of the Code (including any increase in basis pursuant to Section 42(d)(5)(B)), and (ii) the “applicable fraction” set forth in the LURA.

**“Tax Credit Allocation”** means the award of Tax Credit authority to the Owner with respect to the Project pursuant to the QAP or a previously effective Qualified Allocation Plan of CHFA, which allocation was exchanged, in whole or in part, by CHFA for TCEP Funds.

[**“Tax Credit Investor”** means the party identified as such in the Recitals and any other party making an equity investment in the Owner in exchange for Tax Credits, together with any party authorized to act on behalf of the Tax Credit Investor hereunder or under the [operating agreement] [partnership agreement] of the Owner. ]

[**“Tax Credit Investment Documents”** means any and all documents and instruments executed or delivered by the Owner and/or the Tax Credit Investor in connection with the commitment of investor funds to the Owner for the Project in exchange for Tax Credits.]

**“Tax Credits”** means the federal low-income housing tax credits under Section 42 of the Code.

**“TCEP”** means the Tax Credit Exchange Program under Sections 1404 and 1602 of the Recovery Act, pursuant to which grants are appropriated to states for low-income housing projects in lieu of Tax Credits, as described in the Recitals.

**“TCEP Funding Commitment”** shall have the meaning attributed thereto in the Recitals.

**“TCEP Funds”** shall have the meaning attributed thereto in the Recitals.

**“Tenant Income Certification”** means a tenant’s initial tax credit certification, including the tenant income certification/certificate of resident eligibility, all sources used in verifying income and assets (including, but not limited to, third party verification, checking and savings accounts, pay stubs, verification of assets, etc.), a copy of one completed lease signed and dated for each building in the Project, and a copy of the first and last page of each resident lease in each Low-Income Unit in the Project, showing the start date of the lease and signature of the resident(s) and owner.

**“Treasury”** means the United States Department of the Treasury, including the United States of America acting through the Treasury.

**“Treasury Regulations”** means the temporary and final regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

**ARTICLE II**  
**GRANT OF TCEP FUNDS**

Section 2.1 Sub-award

A. CHFA shall make the Sub-award of TCEP Funds to the Owner pursuant to the terms and conditions of the TCEP Funding Commitment, this Agreement and the TCEP Sub-award Documents. In no event shall the aggregate amount of funds advanced pursuant to this Agreement exceed the lesser of (i) \$[\_\_\_\_\_] or (ii) the amount determined by CHFA to be necessary for the financial feasibility of the Project and its viability as a qualified low-income housing project throughout the Compliance Period.

B. The Owner shall receive the Sub-award and use the proceeds thereof to pay Eligible Costs incurred by the Owner in connection with the construction [acquisition and rehabilitation] of the Project. The funding of the Sub-award (and any portion thereof) is expressly conditioned upon the Owner complying with all of the Program Requirements and the terms and conditions of the Implementation Plan, the TCEP Funding Commitment and this Agreement.

C. If, at the time of Cost Certification, CHFA shall determine that (i) the amount of the Sub-award is more than the amount necessary for the financial feasibility of the Project and its viability as a qualified low-income housing project throughout the Compliance Period, (ii) a portion of the Sub-award has been expended on uses impermissible under TCEP (e.g., non-Eligible Costs), or (iii) the total amount of the Sub-award exceeds 85% of the Eligible Basis of the Project as determined by CHFA (in each such case, the amount determined by CHFA to have been excessive or impermissible is the ("**Excess Amount**"), CHFA shall provide the Owner with notice thereof and the Owner shall pay, in immediately available funds within ten (10) Business Days from the date of such notice, an amount equal to the Excess Amount. In addition to the foregoing, CHFA may take any other remedial action it deems necessary or advisable to fulfill its program obligations to Treasury or otherwise carryout the principal purposes of TCEP.

D. The Sub-award and each disbursement of the proceeds thereof are contingent upon the appropriation and disbursement of sufficient TCEP Funds by Treasury to CHFA for reimbursement of Eligible Costs incurred by the Owner with respect to the Project. If CHFA fails to receive adequate TCEP Fund from Treasury, CHFA shall so notify the Owner in writing within a reasonable period of time and shall not be liable for failure to make any payments under this Agreement.

E. The Owner acknowledges that Treasury has not promulgated final rules and regulations for TCEP and may adopt additional guidelines, rules or regulations, including additional requirements with respect to this Agreement and the TCEP Sub-award Documents. The Owner agrees that it shall, upon request of CHFA, execute an amendment to this Agreement or any of the TCEP Sub-award Documents to comply with any such future TCEP Program Requirements.

**Section 2.2** Term

A. This Agreement shall be effective upon its execution and delivery and shall remain in full force and effect until the expiration of the Compliance Period unless earlier terminated in accordance with the terms hereof.

**ARTICLE III**  
**INITIAL DISBURSEMENT OF TCEP FUNDS**

**Section 3.1** Due Diligence and Closing Requirements

A. The Owner shall provide CHFA with the due diligence materials listed in the TCEP Funding Commitment, all in form and substance reasonably satisfactory to CHFA, prior to Closing.

**Section 3.2** Other Closing Conditions

A. The Owner shall execute and deliver this Agreement to CHFA which shall be recorded in the land use records of the county in which the Project is located.

B. The Owner shall execute and deliver the Recapture Deed of Trust which CHFA shall record at Closing. Upon request of the Owner, CHFA shall subordinate the Recapture Deed of Trust and this Agreement to such of the Mortgage Loans as CHFA determines necessary or advisable to permit the financing of the Project.

C. The Developer and the Owner shall execute and deliver the Security Instruments to which they are a party to CHFA. Upon request of the Owner, CHFA shall subordinate the Security Instruments to such of the Mortgage Loans as CHFA determines necessary or advisable to permit the financing of the Project.

D. The Property Manager and the Contractor, respectively, shall execute and deliver the Consent to Assignment of Property Management Agreement and the Consent to Assignment of Construction Documents to CHFA

E. The Owner shall complete the "Project Performance Report" in the form attached hereto as **Exhibit J** and deliver such report to CHFA.

F. If any disbursement of TCEP Funds is requested upon the Closing, the Owner shall complete a Closing Requisition, including the Officer Certificate, attached hereto and made a part hereof as **Exhibit O**, and provide such back-up documentation as may be reasonably required by CHFA to support the request of TCEP Funds.

G. If applicable, the Owner shall provide CHFA with, and CHFA shall have approved, the Tax Credit Investment Documents. The Tax Credit Investment Documents shall be sufficient to assure that the Tax Credit Investor will make its required equity investment in the Project, assuming satisfaction of reasonable (industry standard) terms and conditions set forth therein.

**ARTICLE IV**  
**DISBURSEMENTS OF TCEP FUNDS**

**Section 4.1** Request for TCEP Funds from Treasury

A. CHFA shall use TCEP Funds it receives from Treasury with respect to the Project to reimburse the Owner for Eligible Costs incurred in connection with the development of the Project to the extent such costs are properly submitted to CHFA in accordance with the procedures set forth in this Article IV and all other terms and conditions of this Agreement. The Owner may not request a disbursement of TCEP Funds from CHFA until such funds are needed to pay Eligible Costs of the Project. Accordingly, the amount of each Requisition must be limited to the amount of money needed to pay Eligible Costs actually incurred by the Owner at the time of the Requisition, may not include amounts for prospective or future needs, and may not be placed into escrow accounts or advanced in lumps sums to the Owner.

B. Requisitions shall be submitted for approval to CHFA together with the completed and signed documents listed in **Exhibit D**, each in form and substance reasonably satisfactory to CHFA (the “**Draw Documents**”).

C. CHFA shall submit a request for TCEP Funds to the Treasury in an amount equal to the approved amount of the current Requisition (not to exceed, in the aggregate, the amount of the Sub-award) within five (5) Business Days of the later to occur of: (1) approval of the draw request by the CHFA or (2) receipt by CHFA of all of the completed and signed Draw Documents.

D. The Owner shall cooperate with CHFA in obtaining and providing any additional documentation that may be required by the Treasury to approve the request for TCEP Funds.

E. The Owner acknowledges and agrees that no TCEP Funds may be disbursed after the Expiration Date; *provided, however*, that if CHFA determines no later than \_\_\_\_\_, 2010, that by December 31, 2010, the Owner has paid or incurred (or will have paid or incurred) at least 30 percent of the total adjusted basis in land and depreciable property that is reasonably expected to be part of the Project upon completion, the Expiration Date shall be December 31, 2011. All Requisitions shall be submitted to CHFA at least ten (10) Business Days prior to the Expiration Date.

F. CHFA will not make any payments to the Owner for costs that:

- (i) are non-Eligible Costs or otherwise prohibited under Program Requirements;
- (ii) are not strictly in accordance with the terms of this Agreement;
- (iii) were requested and/or incurred after termination of this Agreement;

(iv) were requested during the occurrence and continuation of an Event of Default; or

(v) were requested and/or incurred less than ten (10) Business Days prior to the Expiration Date.

G. CHFA is authorized to make modifications to the disbursement procedures set forth herein [and the Disbursement Agreement] and to establish additional requirements for payment of the Sub-award to the Owner as may be necessary or advisable for compliance with all Program Requirements.

#### **Section 4.2** Disbursements of TCEP Funds to Owner

A. Not later than three (3) Business Days of receipt of TCEP Funds by CHFA from Treasury, CHFA shall disburse such funds to the Owner. Such funds shall be disbursed [in accordance with the Disbursement Agreement by and among CHFA, the Owner and the Lenders] [by wire transfer upon the direction of an Authorized Officer of the Owner to the parties designated in the Draw Documents] or pursuant to such other instructions as may be designated in writing by an Authorized Officer of the Owner, consistent with Program Requirements, from time to time. Draw procedures are outlined on Exhibit C hereto.

#### **Section 4.3** Draw Schedule; Change Orders

A. The Owner expects to submit Requisitions to CHFA for disbursements of TCEP Funds at the times and in the amounts set forth in the projected draw schedule attached hereto as **Exhibit K** (the “**Draw Schedule**”). The Owner shall update the Draw Schedule as and when Requisitions for disbursements of TCEP Funds are made. Any expenditures which, when added to any prior expenditure, exceeds the Budget or any line item specified in the Budget, shall require the approval of CHFA.

B. The Owner shall obtain the prior written consent of CHFA for any Material Change Order, regardless of whether any proposed disbursement of TCEP Funds would be affected by such Material Change Order. As a pre-condition to CHFA's consent to any Material Change Order, the Owner shall submit to CHFA (with a copy to the Construction Monitor ) a description of the curative actions to be taken by the Developer and the Contractor to accelerate construction progress and/or align the sources and uses of funds for the Project notwithstanding such Material Change Order (the “**Action Plan**”). The Action Plan shall be in form and substance reasonably satisfactory to CHFA and shall be signed by the Developer and the Owner as evidence of their intent to implement or cause to be implemented the Action Plan as described. Failure of the Owner to submit and/or cause implementation of an Action Plan reasonably acceptable to CHFA shall entitle CHFA to suspend making disbursements of TCEP Funds under this Agreement until such time as an acceptable Action Plan has been received and implementation thereof has commenced.

C. CHFA will not approve any Material Change Order which would, in the reasonable determination of CHFA, cause the Project to fail to meet the Required In-Service Date or prevent the Sub-award from being fully disbursed to the Owner in accordance with the requirements and procedures set forth herein by the Expiration Date.

**Section 4.4** Construction Meetings; Monitoring

The Construction Monitor shall have the right to participate in construction progress meetings and monitor the Project's construction until the Construction Completion Date.

**Section 4.5** Project Expenditures

A. The proceeds of the Sub-award must be used to pay Eligible Costs. CHFA shall determine the Owner's compliance with this requirement at the time of construction completion based upon a review of the Cost Certification for the Project. CHFA may establish such additional limitations on the expenditure of TCEP Funds as it determines are appropriate to ensure compliance with Program Requirements.

B. In the event that CHFA shall determine that the proceeds of the Sub-award have been used to pay non-Eligible Costs, whether such costs are non-Eligible Costs because they are not approved as Eligible Costs in accordance with this Agreement or because they violate Program Requirements, CHFA shall provide the Owner with written notice thereof and the Owner shall pay, in immediately available funds within ten (10) Business Days from the date of said notice, an amount equal to that portion of the Sub-award used to pay non-Eligible Costs to CHFA.

**ARTICLE V**  
**COVENANTS AND RESTRICTIONS**

**Section 5.1** Land Use Restriction Agreement ("LURA")

A. In accordance with the requirement of the QAP, the Owner and CHFA shall enter into a LURA substantially in the form attached hereto as **Exhibit E**. The terms and conditions of the LURA are incorporated herein by reference.

**Section 5.2** Compliance with Program Requirements

A. The Owner will comply with all of the Program Requirements applicable to the Project throughout the Compliance Period.

B. The Owner will comply with all of the requirements of the QAP and Section 42 of the Code to the extent necessary to receive and maintain an award of TCEP Funds, including but not limited to the submission of a Final Application and attorney's opinion letter as required by CHFA's QAP.

C. The Owner will maintain the Required Percentage throughout the Compliance Period.

D. The Owner will comply with the income and rent restrictions and maintain the "applicable fraction" set forth in the LURA throughout the term of the LURA.

E. No later than \_\_\_\_\_, which is the first anniversary of the date of this Agreement, the Owner shall have a basis in the Project that is no less than ten percent (10%) of



its “reasonably expected basis in such project” as of the Required In-Service Date for purposes of Section 42(h)(1)(E)(ii) of the Code. CHFA will ascertain and require documentation of compliance with this requirement in the same fashion as it does with respect to projects receiving carryover allocations of Tax Credits.

F. Each building in the Project which is required to contain Low-Income Units will be placed in service by the Required In-Service Date.

G. The Project will become a “qualified low-income housing project” (as defined in Section 42(g)(1) of the Code) by the end of the year following the year in which the first building in the Project, which is required to contain Low-Income Units, is placed in service.

### **Section 5.3** Covenants Regarding Sale or Assignment of Project, Contracts or Interests

A. The Owner shall not sell, lease (other than by residential or commercial leases in the ordinary course of business), transfer or otherwise dispose of any material portion of the Project, without the prior written consent of CHFA.

B. The Owner shall not, without the prior written consent of CHFA, permit any change in the ownership interests in the Owner or the [Managing Member][General Partner] that, when added to any prior changes in the ownership interests in such entity, exceeds 10% of the total aggregate ownership interests in the Owner or the [Managing Member][General Partner], as applicable.[FOR CORPORATIONS, USE: The Owner shall not, without the prior written consent of CHFA, permit any change in the beneficial ownership interests in the Owner which, when added to any previous changes in such ownership, exceeds [25%] of the total ownership interests in the Owner.] Any change in participation will need to maintain the experience level represented in the application. This prohibition does not apply to leases of individual residential units in the Project.

C. Without the prior written consent of CHFA, which consent shall not be unreasonably withheld, the Owner shall not:

(i) designate a new Property Manager;

(ii) designate a new Contractor;

(iii) designate a new Developer; or

(iv) make any assignment of, or material change in, the Property Management Agreement, the Development Agreement or the Construction Contract.

**Section 5.4** Operating Obligations. From the date the first apartment unit in the Project is available for its intended until the later of: (i) Permanent Mortgage Commencement or (ii) the achievement of three consecutive months of Debt Service Coverage of 1.15, the [general partner][managing member] will immediately pay Operating Deficits to the persons or entities providing goods or services to the Owner for which invoices have been submitted to the Owner, which funds will not be repayable, and the Owner will neither deduct nor capitalize any amounts paid from the proceeds of the advance by the [general partner][managing member] hereunder.

The [general partner][managing member] will not withdraw funds from the Operating Deficit Reserve until it has fully met its obligations hereunder.

### **Section 5.5** Priority of Cash Distribution

Owner will pay from Cash Receipts and/or Operating Reserves, as may be necessary:

- (i) All third-party Cash Expenses when due, unless being contested for valid reason and in good faith;
- (ii) All third-party Mortgage Loan payments, whether monthly or otherwise;
- (iii) All Cash Expenses due and payable to Affiliates of the Owner; and
- (iv) All Mortgage Loan payments due and payable to Affiliates of the Owner.

After payment of all of the foregoing, remaining cash may be distributed to the Owner annually upon satisfaction of all other terms and conditions of this Agreement, and written request and approval by the Asset Manager, whose approval will not be unreasonably withheld.

### **Section 5.6.** Obligation to Rebuild

With the approval of any lender, if such approval is required, any Insurance proceeds received by the Owner due to fire or other casualty affecting the Project will be utilized to repair and rebuild the Project in satisfaction of the conditions contained in Section 42(j)(4) of the Code and to the extent required by any lender.

## **ARTICLE VI** **RECAPTURE**

### **Section 6.1** Recapture Event

A. A “**Recapture Event**” shall be deemed to occur if, at any time during the Compliance Period, any one or more of the following events shall occur:

- (i) the Owner has not expended on the Project an amount equal to at least ten percent (10%) of its “reasonably expected basis in such project” for purposes of Section 42(h)(1)(E)(ii) of the Code by the first anniversary of the date of this Agreement;
- (ii) any building in the Project which is required to contain Low-Income Units is not placed in service by December 31, 2011;
- (iii) the Project does not become a “qualified low-income housing project” (as defined in Section 42(g)(1) of the Code) by the end of the year following the year in which the first building in the Project, which is required to contain Low-Income Units, is placed in service;
- (iv) the percentage of Low-Income Units in the Project falls below the Required Percentage;

(v) the Project ceases to be a “qualified low-income housing project” (as defined in Section 42(g)(1) of the Code);

(vi) TCEP Funds have been determined by CHFA or the Treasury to have been expended for non-Eligible Costs in violation of Program Requirements and have not been repaid;

(vii) 100% of the TCEP Funds advanced to the Owner have not been expended by the Expiration Date.

B. If a Recapture Event shall occur, the applicable portion of TCEP Funds disbursed to the Owner shall be subject to “recapture” in the amounts set forth below (the “**Recapture Amount**”).

(i) If the Recapture Event arises under Section 6.1A(iv) or (v) above, after allowing any permitted period for correction, the Recapture Amount shall be equal to the full amount of the Sub-award, less 6.67% for each year of the Compliance Period in which a Recapture Event has not occurred; provided, however, that if the Owner restores (a) the percentage of Low-Income Units to the Required Percentage and/or (b) the Project as a “qualified low-income housing project,” as applicable, the Recapture Event and any Recapture Amount may be waived by CHFA with respect to subsequent years in the Compliance Period in which the Project is in compliance, provided that such waiver is permitted under the Program Requirements.

(ii) If the Recapture Event arises under Section 6.1A(i), (ii) or (iii) above, the Recapture Amount shall be an amount equal to the amount of TCEP Funds actually disbursed to the Owner under the terms of this Agreement.

(iii) If the Recapture Event arises under Section 6.1A(vi) or (vii) above, the Recapture Amount shall be an amount equal to the amount of TCEP Funds determined to have been expended for non-Eligible Costs in violation of Program Requirements or determined to have remained unspent by the Expiration Date, as applicable.

(iv) In the event of any Recapture Event set forth above, the Recapture Amount shall include any interest or penalties that may accrue in accordance with the Program Requirements.

(v) If a Recapture Event occurs, in addition to the Recapture Amount, the Owner shall pay to CHFA upon demand an amount equal to the costs and fees incurred by CHFA in connection with the Recapture Event.

## **Section 6.2** Enforcement

A. The Recapture Amount shall be due and payable to the General Fund of Treasury and shall be deemed a debt owed to the Treasury, enforceable against any assets of the Owner. Such debt shall be secured and enforceable by the lien of the Recapture Mortgage in favor of the Treasury, which lien may be enforced by CHFA on behalf of the Treasury; provided, however, that upon any foreclosure of the lien of the Recapture Deed of Trust, CHFA may bid the lien amount on behalf of the Treasury and may take title to the Project in its own name, to be held for the benefit of the Treasury.

B. A deed of trust evidencing the lien imposed hereunder shall be filed and recorded in the real estate records of the State in which the Property is situated, as designated by the laws of such state.

C. Unless another date is specifically fixed by law, the lien imposed hereunder shall arise at the time the Recapture Amount becomes due and shall continue until liability for the Recapture Amount is satisfied in full.

D. If permitted by Program Requirements, the priority of the lien imposed hereunder shall be determined by CHFA and such priority shall be reflected upon recordation and through appropriate subordination documents.

E. If CHFA determines it to be in the best interests of current and prospective occupants of the Low-Income Units of the Project, and if permitted by the Program Requirements, CHFA may delay foreclosure or other enforcement of any Recapture Deed of Trust or obligation until the end of the Compliance Period.

F. If permitted by the Program Requirements, CHFA may defer the enforcement of remedies upon the occurrence of a Recapture Event until the end of the Compliance Period, if it determines that the Tax Credit Investor or the Lender is taking appropriate measures to correct the circumstances giving rise to the Recapture Event.

### **Section 6.3** Notice.

A. CHFA or the Asset Manager, as applicable, shall provide the Owner with written notice in accordance with Section 12.1 of any Recapture Event or of any circumstances which, with the passage of time, would give rise to a Recapture Event, of which, in either event, it shall become aware. Upon the giving of any such notice to the Owner, CHFA or the Asset Manager, as applicable, shall also provide copies of any such notice(s) to the Lender [and the Tax Credit Investor]. The failure of CHFA or the Asset Manager, as applicable, to provide notice as herein required shall not relieve the Owner of any obligation hereunder or prevent the declaration or occurrence of a Recapture Event, nor shall it serve to relieve the Owner of any of the consequences thereof.

### **Section 6.4** Right to Cure.

A. The Owner shall have the right to cure a Recapture Event within a reasonable period of time after the Owner has received notice of the circumstances giving rise to such Recapture Event or after the Owner would have become aware of the circumstances giving rise to such Recapture Event had the Owner exercised reasonable diligence with respect thereto. CHFA shall have the right to determine what constitutes “a reasonable period of time” and whether a cure has been properly and timely effected for purposes of this Section, except to the extent that such determinations are governed by or otherwise prescribed or delimited by Program Requirements. Any cure made or tendered by any Lender or any Tax Credit Investor shall be accepted or rejected on the same basis as a cure made directly by the Owner, to the extent not inconsistent with Program Requirements.

### **Section 6.5** Preservation of Rights and Remedies.

A. Any action under this Article VI will not limit or deprive CHFA or Treasury from exercising any other rights and remedies that they have under law or equity, or any rights and remedies provided herein with respect to Events of Default.

**Section 6.6** Third-Party Rights.

A. Treasury shall be deemed a third-party beneficiary of this Article VI.

**Section 6.7** Guaranty of Recapture.

A. The obligation of the Owner to pay any Recapture Amount as and when due shall be unconditionally guarantied by the Guarantor pursuant to the Guaranty.

**ARTICLE VII**  
**REPRESENTATIONS AND WARRANTIES**

**Section 7.1** Representations, Warranties and Covenants of the Owner

The Owner hereby represents, warrants and covenants to CHFA that the following are true as of Closing and will be true on the due date of each disbursement of TCEP Funds, and as applicable, throughout the Compliance Period:

A. The Owner is a duly organized [limited partnership] [limited liability limited partnership][limited liability company] validly existing under the laws of the state of its organization and has full power and authority to perform its obligations under this Agreement.

B. No litigation, demand, investigation, claim or proceeding against the Owner or any other litigation or proceeding directly affecting the Project is pending or, to the best knowledge of the Owner, threatened, before any court, administrative agency or other Governmental Authority that would, if adversely determined, have a material adverse effect on the Owner or the construction [rehabilitation], use and operation of the Project.

C. No default by the Owner or any affiliate thereof having any relationship with the Project has occurred or is continuing (nor has there occurred any continuing event which, with the giving of notice or the passage of time or both, would constitute such a default in any material respect) under any of the financing documents for the Project or other documents or instruments governing the development, use, occupancy and operation of the Project.

D. All material building, zoning, health, safety, business and other applicable certificates, permits and licenses necessary to permit the construction [rehabilitation], use, reconstruction after casualty, occupancy and operation of the Project have been or will, at the time required, be obtained and maintained (other than, prior to completion of construction of the Project or a specified portion thereof, such as are issuable only upon completion of construction or such specified portion thereof); and the Owner has not received any notice or has any knowledge of any violation with respect to the Project of any law, rule, regulation, order or decree of any Governmental Authority having jurisdiction which would have a material adverse effect on the Project or the construction [rehabilitation], use or occupancy thereof, except for violations which have been cured or can be cured within any applicable cure period, and are in

the process of being cured, and notices or citations which have been withdrawn or set aside by the issuing agency or by an order of a court of competent jurisdiction.

E. The Owner has a fee interest in the Project [and a leasehold interest in the Land] and has good and marketable title thereto, free and clear of any liens, charges or encumbrances other than the Mortgages, encumbrances the Owner is permitted to create under the terms of this Agreement, and mechanics' or other liens that have been bonded against (or as to which other cash equivalent security has been provided) in such a manner as to preclude the holder of such lien from having any recourse to the Project or the Owner for payment of any debt secured thereby.

F. No Event of Default has occurred and is continuing.

G. No Event of Bankruptcy has occurred as to the Owner, any Guarantor or the Developer.

H. As of the date of Closing, all reserves and accounts required to be maintained by the Owner under the terms of this Agreement are currently funded (or will be funded at the time(s) required) up to the specified levels.

I. Construction of the Project [commenced on \_\_\_\_\_] [will commence no later than \_\_\_\_\_].

J. The Owner will [construct] [acquire] [and substantially rehabilitate] the Project which shall be comprised of [\_\_\_\_] units of [multifamily][senior] housing in [\_\_\_\_] building(s) located in [\_\_\_\_\_], as more particularly described in Exhibit A hereto. If the Land is comprised of multiple parcels, either (a) all such parcels are contiguous, that is their boundaries meet at one or more points, except for the interposition of a road, street, stream or similar property, or (b) 100% of the units will be Low-Income Units. All utilities are, or will be, available to the Project, including sanitary and storm sewers, water, gas and electricity.

K. The sources of funds available to the Owner are sufficient to enable the Owner to complete construction of the Project in accordance with the Plans and Specifications and the Draw Schedule.

L. The Project will continue to be owned and operated by the Owner through the Compliance Period or, if later, the date (if any) through which the Owner is required to own and operate the Project pursuant to any of the documents governing the use and operation of the Project.

M. The Owner shall demonstrate that the Project has met and will continue to meet the QAP's Criteria for Approval including, without limitation: market conditions, readiness to proceed, overall financial feasibility and viability, experience of the development team, total project costs per unit, proximity to existing tax credit projects, site suitability, no outstanding noncompliance for existing projects of development or management team and minimum proforma underwriting standards.

N. The Owner has complied and will comply with all terms of the Implementation Plan, the Tax Credit Allocation and the TCEP Funding Commitment and has made no material changes in the Project as described in the Application and as approved by CHFA, without the approval of CHFA.

O. The Project will be operated so that it will meet (and an appropriate election has been or will be made with respect to) the Minimum Set-Aside Test as of the dates established by Section 42(g)(3) of the Code and at all times thereafter through the end of the Compliance Period.

P. The Project will, at all times throughout the Compliance Period, meet the Required Percentage.

Q. At all times throughout the Compliance Period, [no less than [\_\_\_\_\_] of the units in the Project will be leased to and occupied by tenants with incomes equal to or less than sixty percent (60%) of area median income], [no less than [\_\_\_\_\_] of the units in the Project will be leased to and occupied by tenants with income equal to or less than fifty percent (50%) of area median income] [and no less than [\_\_\_\_\_] of the units in the Project will be leased to and occupied by tenants with incomes equal to or less than \_\_\_ percent (\_\_\_%) of area median income].

R. The Owner will have the right to receive annual reports from tenants of Low-Income Units of the Project concerning their incomes and family sizes. Except to the extent permitted by Section 42(g)(2)(E) of the Code, the gross rents (as adjusted in accordance with Section 42(g)(2)(B) of the Code) charged for each of the Low-Income Units will not, at any time during the Compliance Period, exceed 30% of the income limitation applicable to the tenant(s) of each such unit for purposes of the Minimum Set-Aside Test and Section 7.1Q above.

S. The Project will be operated so that [\_\_\_\_\_] of the [\_\_\_\_\_] units in the Project will qualify as Low-Income Units at all times during the Compliance Period, which is the “applicable fraction” required for purposes of the LURA.

T. None of the Low-Income Units will be occupied entirely by students (as defined in Section 151(c)(4) of the Code), unless (i) the Low-Income Unit is occupied by an individual who is (A) a student and receiving assistance under Title IV of the Social Security Act, (B) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, state or local laws, or (C) a student and previously under the care and placement of a foster care program under parts B or E of Title VI of the Social Security Act, or (ii) the Low-Income Unit is occupied entirely by full-time students and such students are (A) single parents and their children and such parents and children are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B)) of another individual, or (B) married and file a joint return.

U. All services provided to tenants will be optional (i.e., payment for the service will not be required as a condition of occupancy) and no services that are not optional (i.e., mandatory services) will be provided, or if so provided, the charges for any such services shall

be included in determining compliance with the applicable rent restriction for purposes of Section 7.1O.

V. Tenants for the units will be screened and selected from a pool of eligible tenants based on uniformly applied tenant selection criteria that are commonly employed by other property owners in determining tenant eligibility in similar projects to the Project, and:

(i) no preferences or discrimination will be employed in selecting tenants (i.e., no discrimination based on religion, race, color, creed, national origin, ancestry, legal residency, sex, sexual preference or orientation, age, physical handicap, medical condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), family status, marital status, pregnancy, childbirth or related medical condition, or membership in the sponsoring organization) as will be consistent with federal housing policy governing nondiscrimination as determined under HUD rules and regulations;

(ii) units in the Project will be available for use by the general public within the meaning of Section 1.42-9 of the Treasury Regulations and Section 42(g)(9) of the Code

(iii) the units will be rented on a non-transient basis.

W. The tenant facilities of the Project included in Eligible Basis will be available to all tenants on a comparable basis without separate fees.

X. At least one unit in each building in the Project will be ready and available for occupancy in accordance with state and local laws on or before the Required In-Service Date.

Y. Each of the representations and disclosures made by the Owner to CHFA in any application for Tax Credits and/or TCEP Funds is true and correct as of the date hereof. Each of the covenants, agreements and conditions contained in the such applications have been duly performed or satisfied by the Owner to the extent that performance or satisfaction is required on or prior to the date of Closing, and the Owner has no reason to believe that the covenants, agreements, and conditions required to be performed or satisfied after the date hereof will not be performed or satisfied in a timely manner.

Z. The LURA will be in effect as of the end of each taxable year in which the buildings in the Project are placed in service.

AA. The Project constitutes “residential rental property” within the meaning of Section 1.103-8(b)(4) of the Treasury Regulations.

BB. The Owner will develop and operate the Project in accordance with (i) the applicable provisions of Section 42 of the Code, (ii) the terms of this Agreement, (iii) the Program Requirements, (iv) all applicable federal, State, and local statutes, rules and regulations with respect to the Project including, without limitation, the Fair Housing Act (42 U.S.C. 3601, et seq.), as amended, and (v) all applicable requirements of any Governmental Authorities having jurisdiction over the Project.



CC. In the event the Federal Drug Free Workplace Act of 1988 and the regulations promulgated thereunder, including without limitation, 54 CFR 4956 (1989), as such Act and regulations have been amended are applicable, the Owner has complied and will continue to comply with such Act.

DD. No federal appropriated funds have been paid or will be paid, by or on behalf of the Owner, to any Person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and/or the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

EE. No funds have been paid for influencing or attempting to influence an office or employee of a Member of Congress in connection with a federal contract, grant, loan and/or cooperative agreement benefiting the Owner. To the best knowledge of the Owner, the Owner has complied with all restrictions, certifications and disclosure requirements contained in the Byrd amendment to the fiscal 1990 appropriations measures for the United States Department of the Interior (P.L. 101-121) and with any guidelines and rules issued by any federal entity in connection therewith, if applicable.

FF. Neither the Owner nor any of its partners, members, officers, directors, or employees, nor, to the best knowledge of the Owner, any contractor or agent of the Owner nor any affiliate (including but not limited to parents, subsidiaries and Entities under common control) of the Owner, nor any Person who or which directly or indirectly owns or controls the Owner or any of its or their constituent Entities, nor any Person who or which directly or indirectly owns or controls any affiliate of the Owner or any of its constituent Entities, nor any Person who or which directly or indirectly holds a substantial (i.e., ten percent (10%) or more) equity interest in the Owner or in any of its constituent Entities or in any affiliate of the Owner or any of its or their constituent Entities (collectively, "**Owner Parties**"), is a Barred Person or has ever been a Barred Person (as hereinafter defined). The term "Owner Parties" does not include any Tax Credit Investor or any of their officers, directors, employees, contractors and agents or any affiliate of the Tax Credit Investor. "Barred Person" means any Person with whom a U.S. Person is barred from transacting business under U.S. law, including but not limited to (i) Persons identified as specially designated terrorists, narcotics traffickers, or blocked persons by the U.S. Government on the "Specially Designated Nationals and Blocked Persons List" maintained by the U.S. Treasury Department; and (ii) Persons that are citizens of or organized or domiciled or resident in countries subject to U.S. economic embargo restrictions and thereby barred from transactions with U.S. Persons. "U.S. Person" means a Person, that is a citizen of or organized or domiciled or resident in the United States. "Owned or controlled" and variations thereof mean a direct or indirect interest in the entity in question, including but not limited to voting or non-voting equity, partnership, joint venture and other arrangements, and specifically including but not limited to (1) all members of limited liability companies, (2) all shareholders owning ten percent (10%) or more of the outstanding shares of corporations, measured on an aggregate and/or class-by-class basis, (3) all general partners of limited partnerships and general partnerships, (4) all limited partners owning twenty-five percent (25%) or more of the outstanding limited partnership interests in limited partnerships, (5) all trustees and settlors of

trusts, and (6) all beneficiaries owning twenty-five percent (25%) or more of the beneficial interests in trusts.

GG. No [General Partner][[Managing Member] nor any other Owner Party nor any of the Owner's property is or has ever been subject to or a party to or bound by any agreement or other arrangement with any Barred Person.

HH. The Owner and each other Owner Party will prevent, and have instituted or will institute (and will update from time to time to correspond to changes in circumstances and changes in applicable laws and regulations) policies and procedures to prevent, any circumstance or event described in subclauses FF. and GG. above.

II. The Owner and all other applicable Owner Parties have not engaged and shall not engage in any act or omission that would violate anti-money-laundering laws, including but not limited to 18 USC § 1956; have complied or will comply with requirements for instituting an anti-money laundering compliance program required under 31 USC § 5318(h) and applicable to all "financial institutions" as defined in 31 USC § 5312(a)(2); and have instituted or will institute policies and procedures and use commercially reasonable due diligence to identify and report Suspicious Transactions to relevant U.S. Government officials. "Suspicious Transactions" that may require reporting include, but are not limited to, (i) individual or related transactions in which a third-party provides payment in U.S. or foreign currency in excess of \$10,000 that may require reporting under 31 USC § 5331 and 26 USC § 6050I; or (ii) any transaction where the Owner or any Owner Party knows, suspects, or has reason to know that the transaction (A) is for an illegal purpose, including but not limited to money laundering; (B) is otherwise an attempt to disguise funds derived from illegal activity or evade reporting requirements under U.S. law; or (C) is suspicious because the transaction appears to serve no business or lawful purpose.

JJ. The Owner shall demonstrate that the Project has met and will continue to meet the timeline milestones outlined on **Exhibit M** hereto.

## **Section 7.2** Covenant; Guaranty of Completion

A. The Owner unconditionally covenants and warrants that it shall cause the Construction Completion Date to occur no later than December 31, 2011. The Owner shall satisfy all construction related requirements of the Mortgage Loans, including any requirement related to completion of the Project. The Owner shall pay all costs to complete construction of the Project in accordance with the Plans and Specifications when and as incurred, regardless of whether such costs exceed the amounts anticipated for such items in the Budget or the sources otherwise available to pay such costs (in either such event, said costs being referred to as "**Excess Development Costs**"). The Owner shall pay any Excess Development Costs by the earliest of (i) the date required to avoid a default or penalties under the Mortgage Loans, (ii) the date required to keep all sources of funding for the Project "in balance," (iii) the date required to keep all expenses without a specific maturity date paid on a sixty (60)-day current basis, or (iv) such earlier date as may be set forth in this Agreement. The obligation of the Owner under this Section 7.2 shall be unconditionally guaranteed by the Guarantor pursuant to the Guaranty.

### **Section 7.3** Covenant; Guaranty of Operating Deficit

A. From the date the first unit in the Project is available for its intended use until the later of” (i) Permanent Loan Commencement or (ii) the achievement of three consecutive months of Debt Service Coverage of 1.15, the [general partner][managing member] will immediately pay Operating Deficits to the persons or entities providing goods or services to the Owner for which invoices have been submitted to the Owner.

### **Section 7.4** Covenant, Guaranty of Lease Up

A. The Owner shall establish a line item in the Budget representing a lease up reserve in the amount equal to four months of gross rental income. The Lease Up Reserve may be used with the consent of CHFA to pay for any costs incurred by the Owner reasonably related to the lease-up of the Project, achieving Debt Service Coverage and achieving Permanent Mortgage Commencement. Said funds shall remain as a line item in the Budget until the date when both of the following have occurred: (i) Permanent Mortgage Commencement and (ii) sustained 1.15 Debt Service Coverage for three consecutive months. The Lease Up Reserve must be fully funded prior to the payment of any Development Fee, unless otherwise approved by CHFA.

## **ARTICLE VIII** **RESERVE ACCOUNTS**

### **Section 8.1** Replacement Reserve

A. Funding: Each year during the term of the Subaward, Owner shall deposit into the Replacement Reserve Account , the “Annual Replacement Reserve Deposit” as defined herein. The “Annual Replacement Reserve Deposit” is \$300.00 per unit for the first year and shall be increased by three percent (3%) annually each year thereafter. The Annual Replacement Reserve Deposit shall be paid in monthly installments equal to one-twelfth (1/12) of the sum necessary for Owner to reach the Annual Replacement Reserve Deposit requirement for such year on the first day of each month beginning the first month after the Project places in service.

B. Use/Disbursement. Funds in the Replacement Reserve Account may only be used as needed to cover the Project’s capital improvement needs. CHFA’s prior written approval is required for any disbursement from the Replacement Reserve Account. Owner shall make written request for such approval, in form acceptable to CHFA. Any such withdrawal approval request shall specifically itemize the capital improvements needed and shall include supporting documentation evidencing the Owner’s actual cost for each such capital need. CHFA shall approve disbursement to Owner of such sums from the Replacement Reserve Account for such capital improvement(s) approved by Authority, in its sole and reasonable discretion. CHFA, at CHFA’s discretion, may require that disbursement be made directly to the contractor. CHFA shall not be obligated to approve disbursements from the Replacement Reserve Account for the cost of routine maintenance to the Project. At Authority’s request,

Owner shall obtain lien waivers and/or releases from any contractor providing labor and/or materials to the Project for which a disbursement has been made.

### **Section 8.2** Operating Deficit Reserve

A. Funding. Upon Permanent Loan Commencement, the balance in the Operating Reserve Account shall be at least \$\_\_\_\_\_ (the “Required Minimum Balance”).

B. Use/Disbursement: Funds in the Operating Reserve Account may only be used by Owner to pay operating expenses excluding repair and maintenance items following full funding of the Project’s Operating Deficits. CHFA’s prior written consent is required for any disbursements (i) if the balance in the Operating Deficit Reserve Account is below the Required Minimum Balance; or (ii) if the disbursement would cause the balance of the Operating Reserve Account to fall below the Required Minimum Balance. If CHFA’s approval is required for such disbursement, then Owner shall make written request for such approval, in form acceptable to CHFA. Any such withdrawal approval request shall specifically itemize the operating expense(s) which the disbursement is expected to fund and shall include supporting documentation evidencing the Owner’s actual cost for each such operating expense(s). CHFA shall approve disbursement to Owner of such sums from the Operating Reserve Account to cover those operating expenses approved by Authority, in its sole and reasonable discretion. Authority, at Authority’s discretion, may make disbursement directly to or direct that such disbursement be made directly to the contractor/vendor.

### **Section 8.3** Lease-Up Reserve

A. Funding. The [general partner][managing member] shall establish a line item in the Budget representing a lease-up reserve on behalf of the Owner in the amount equal to four months of gross rental income (\$\_\_\_\_\_).

B. Use/Disbursement. The Lease-Up Reserve may be used with the consent of CHFA to pay for any costs incurred by the Owner reasonably related to lease-up of the Project, achieving Debt Service Coverage and achieving Permanent Loan Commencement. Said funds shall remain as a line item in the Budget until the date when both of the following have occurred: (a) Permanent Loan Commencement; and (b) sustained 1.15 Debt Service Coverage for three consecutive months, unless sooner disbursed as herein provided. Upon satisfaction of the conditions, the funds in the Lease-Up Reserve may be distributed as provided in Section \_\_\_\_\_ hereof. The Lease-Up Reserve must be fully funded prior to the payment of any Development Fee, unless otherwise approved by CHFA in its sole discretion.

### **Section 8.4** Funding of Reserve Accounts

A. Unless Treasury issues guidance provides otherwise, the reserve accounts required hereunder shall not be funded with TCEP Funds; provided, however, that to the extent that amounts have been disbursed to the Owner or the Developer in payment of fees or for reimbursements of previously paid expenditures, such amounts may be used to fund reserve accounts as permitted by CHFA and unless otherwise prohibited by Program Requirements. All Accounts shall be established with and held by CHFA or a third party (such as a nationally chartered bank) approved or required by CHFA. Unless otherwise specified herein or approved

by CHFA in writing. At any time during the term of the Subaward, Owner shall, upon request, provide CHFA with evidence of the existence of and amounts deposited in any or all such Accounts. Owner shall not withdraw any funds from an Account without the prior written approval of CHFA and only for the purposes for which such Account was specifically established. At CHFA's request, Owner shall furnish CHFA with an accounting of any disbursements made from an Account.

#### **Section 8.5** Requirements of Lender and Tax Credit Investor

A. CHFA may determine that any or all requirements with respect to reserve accounts pursuant to this Article VIII are satisfied by accounts established pursuant to the requirements of the Lender and/or the Tax Credit Investor, and if so, shall notify the Owner, Lender and Tax Credit Investor to that effect.

### **ARTICLE IX** **BOOKS AND REPORTING**

#### **Section 9.1** Financial Status Reports

A. The Owner shall maintain or cause to be maintained for the term of this Agreement a complete and accurate set of books and supporting documentation of transactions with respect to the conduct of the Owner's business. CHFA and its duly authorized representatives (including its Asset Manager) shall have the right to examine the books of the Entity and all other records and information concerning the operation of the Project from time to time without prior notice during regular business hours provided that such examination shall not unreasonably disrupt or interfere with the Owner's business or operations.

B. The Owner shall send to CHFA or the Asset Manager no later than fifteen (15) calendar days following the close of each Fiscal Quarter the following information (which need not be audited): (i) a balance sheet as of the end of each Fiscal Quarter, (ii) a statement of income, with a year to date comparison to the current Project's annual budget, for each such Fiscal Quarter, (iii) a statement of cash flows, (iv) a quarterly property activity summary in a form attached hereto as **Exhibit I**, (v) a report of the significant activities of the Owner during the Fiscal Quarter; and (vi) an estimate of available Net Operating Income as of the end of such Fiscal Quarter (collectively, the "**Quarterly Financial Status Reports**"). If the Quarterly Financial Status Reports are not delivered to the Asset Manager when due hereunder, then the Owner shall be obligated to pay to CHFA or the Asset Manager (as the agent and representative of CHFA) an amount equal to \$100 per day for each day after the due date until such Quarterly Financial Status Reports are delivered. Failure to deliver the Quarterly Financial Status Reports when due hereunder may also result in the suspension of any disbursements of TCEP Funds hereunder and/or give rise to a Recapture Event.

C. The Owner shall prepare or cause to be prepared balance sheets as of the end of each Fiscal Year and financial statements for such Fiscal Year which are accompanied by the opinion of a third-party accountant that said balance sheets and statements have been prepared in accordance with generally accepted accounting principles applied consistently with prior

periods, identifying any matters to which such accountant takes exception and stating, to the extent practicable, the effect of each such exception on such financial statements (the “**Accountant’s Opinion**”). As a note to such financial statements, the Owner shall prepare (or shall cause to be prepared) a schedule of all loans to the Owner, setting forth the purpose(s) for which the proceeds of such loan were applied by the Owner and such schedule will be reviewed by the third-party accountant. The Owner shall transmit to CHFA or the Asset Manager a copy of the final financial statements (with the Accountant’s Opinion) within ninety (90) days after the end of each such Fiscal Year. If the final financial statements (with the Accountant’s Opinion) are not delivered to the Asset Manager when due hereunder, then the Owner shall be obligated to pay to the Asset Manager (as the agent and representative of CHFA) an amount equal to \$100 per day for each day after the due date until such statements are delivered.

D. The third-party accountants also shall prepare and sign the federal and state income tax returns of the Owner. The Owner shall transmit to CHFA or the Asset Manager a copy of the completed federal income tax return and all state income tax returns. If the Owner fails to complete and transmit to the Asset Manager such tax returns within ninety (90) days after the end of such Fiscal Year, then the Owner shall be obligated to pay to the Asset Manager (as the agent and representative of CHFA) an amount equal to \$100 per day for each day after the due date until such items are delivered. In the event that any such items will not be delivered within the time limits set forth herein, the Owner shall immediately notify the Asset Manager, and shall furnish it with copies of any extensions.

E. An annual pro forma operating budget shall be prepared by the Owner and furnished to CHFA or the Asset Manager within ninety (90) days prior to the beginning of each Fiscal Year.

F. The Owner shall submit to CHFA or the Asset Manager any other financial reports that CHFA deems necessary to comply with Section 1602 of the Recovery Act and Program Requirements, as the same may be amended from time to time.

G. In the event that the Owner fails to submit to CHFA or the Asset Manager, as the case may be, in a timely and satisfactory manner any report required by this Agreement, CHFA may, in its sole discretion, withhold any or all payments otherwise due or requested by the Owner hereunder until such time as the Owner fully cures or performs any and all delinquent reporting obligations.

H. The Owner shall submit to CHFA or the Asset Manager an Officer Certification with each submission described in this Section 9.1, substantially in the form attached hereto as Exhibit O.

## **Section 9.2** Compliance Monitoring Reports

A. No later than six (6) months before initial occupancy of the dwelling units is scheduled to begin, the Owner shall supply the Asset Manager with a management and marketing plan (the “**Marketing Plan**”) for the Project. The Marketing Plan will describe (i) the level of on-site staff to be employed at the Project, with a brief job description for each person, (ii) the type, frequency, media, approximate cost, and timetable, of advertising for the Project,

(iii) a brief survey of properties in the vicinity which may be perceived as comparable, and their current rents, and (iv) a timetable of pre-opening marketing activities as well as expected lease-up. The Marketing Plan must be acceptable to the Asset Manager, which acceptance may not be unreasonably withheld.

B. Until such time as one hundred percent (100%) of the Low-Income Units in the Project have been leased and occupied by Qualified Tenants, the Owner shall supply the Asset Manager with the following items:

(i) bi-weekly leasing reports, showing the number of applications taken away by prospective tenants, the number submitted, the number being evaluated and the number accepted since the date of the last report;

(ii) a monthly Section 42 Compliance Form in the form attached hereto as **Exhibit F**;

(iii) as soon as they become available, Tenant Income Certification files for the initial tenants in the first five (5) Low-Income Units in the Project; and

(iv) upon completion of lease-up of the Low-Income Units in the Project, Tenant Income Certification files for all initial tenants in all the Low-Income Units in the Project.

Thereafter, the Owner shall supply CHFA or the Asset Manager, within five (5) days after the end of each Fiscal Quarter, a Section 42 Compliance Form in the form attached hereto as **Exhibit F**.

C. The Owner shall submit to CHFA or the Asset Manager any other compliance reports that CHFA deems necessary to comply with Program Requirements.

D. CHFA reserves the right to carryout regular and periodic field inspections to ensure compliance with Program Requirements and the requirements of this Agreement.

**Section 9.3** Project Performance Reports. No later than five (5) business days following the end of each calendar quarter, commencing with first full calendar quarter ending after the date hereof through the Construction Completion Date, the Owner shall complete the "Project Performance Report" in the form attached hereto as Exhibit J and deliver such report to CHFA.

## **ARTICLE X** **ASSET MANAGEMENT**

### **Section 10.1** Appointment of Asset Manager

A. CHFA shall be the Asset Manager of the Project, unless a third party Asset Manager shall have been designated by CHFA at any time during the term of this Agreement.

B. CHFA may appoint a third-party Asset Manager to perform its Asset Management duties hereunder by giving written notice to the Owner.

## **Section 10.2** Asset Management Duties

A. The Asset Manager will provide the following services to the Project:

- (i) select and consult with the Construction Monitor ;
- (ii) review the use of the proceeds of the Sub-award to ensure such proceeds are being spent only in accordance with the requirements of this Agreement, in particular and without limitation, Article IV hereof, and with Program Requirements;
- (iii) review and report to CHFA no less than quarterly on the progress of construction of the Project, its compliance with the Draw Schedule, the Construction Schedule, the Plans and Specifications, and the Budget, and any Change Orders, changes to anticipated sources and uses, or other matters which, in the judgment of the Asset Manager, may adversely affect the ability of the Owner to complete construction of the Project
- (iv) review all financial status reports required to be delivered pursuant to Section 9.1 of this Agreement;
- (v) review all compliance monitoring reports required to be delivered pursuant to Section 9.2 of this Agreement; and
- (vi) advise CHFA as to such measures as may be necessary or desirable to remedy any unfavorable compliance or financial circumstances concerning the Project.

B. The Asset Manager or CHFA, as the case may be, may take such of the following actions with respect to the Project as CHFA shall deem advisable:

- (i) declare that an Event of Default has occurred hereunder, specifying the nature of said Event of Default;
- (ii) exercise any of the remedies provided to CHFA pursuant to this Agreement with respect to an Event of Default;
- (iii) recommend to CHFA (I) that further disbursements of TCEP Funds be delayed, suspended or terminated, (II) that the Developer, the Property Manager, the Contractor or any other party providing services to the Owner be replaced, (III) any appropriate measures to assure that the Construction Completion Date can be achieved within the applicable time period and available resources, and (IV) such measures as may be needed to address instances of noncompliance with Program Requirements, the LURA, or the requirements of this Agreement; and
- (iv) advise CHFA that a Recapture Event has occurred or that circumstances exist which may give rise to a Recapture Event, together with making such suggestions for remediation as the Asset Manager deems appropriate.



### **Section 10.3** Asset Management Fee

A. In consideration of the services and obligations of the Asset Manager hereunder, the Owner hereby agrees to pay to the Asset Manager an annual fee (the “**Asset Management Fee**”) as follows:(i) a lump sum of \$300 per unit for the first year (to be billed by Asset Manager shortly after the closing of the Sub-award) and (ii) on every anniversary thereafter, an amount equal to \$150 per unit, which amount shall be increased three percent 3% per year thereafter. In addition to the Asset Management Fee payable to the Asset Manager, the Owner hereby agrees to pay, which payment shall be considered an “asset management fee” for purposes of the Program Requirements, (i) out-of-pocket costs and expenses of the Asset Manager in performing its duties hereunder and (ii) the actual costs of CHFA incurred in performing services as Asset Manager as determined by CHFA.

## **ARTICLE XI** **DEFAULT; TERMINATION**

### **Section 11.1** Default

A. Any of the following events shall constitute an “**Event of Default**” under this Agreement and any of the Sub-award Documents:

(i) a breach by the Owner of any of its representations or warranties contained in this Agreement or in the performance of any of its obligations under this Agreement, in either event that (a) has or might reasonably be expected to have a material adverse impact on the operation of the Project or the ability of the Owner to meet its timelines milestones, as described on **Exhibit M** hereto, and (b) is not cured or corrected within ten (10) Business Days (in the case of a monetary default) or twenty (20) Business Days (in the case of a non-monetary default) following notice of such breach or default from the Asset Manager to the Owner, *provided, however*, that if a non-monetary default cannot reasonably be corrected or cured within twenty (20) Business Days and the Owner commences a cure within twenty (20) Business Days and proceeds in good faith to effect such cure thereafter, the cure period with respect to such breach or default shall be extended for up to the lesser of (x) an additional seventy (70) Business Days or (y) the latest permissible date for cure of the applicable breach under the Program Requirements without causing a Recapture Event; or

(ii) the commencement of foreclosure proceedings with respect to any Mortgage, which have not been withdrawn or dismissed within thirty (30) calendar days after the date of such commencement; or

(iii) a violation of any law, regulation or order applicable to the Owner or the Project that has or might reasonably be expected to have a material adverse impact on the operation of the Project and is not cured within the applicable cure period, if any, provided in such law, regulation, or order; or

(iv) a default has occurred under the LURA, which is not cured within the time period for cure as provided therein; or

(v) repeated or prolonged failure to provide reports required by Sections 9.1, 9.2 or 9.3; or

(vi) gross negligence, fraud, willful misconduct, misappropriation of funds, or criminal activity by the Owner or any Affiliate of the Owner providing services to or in connection with the Owner or the Project; or

(vii) the Construction Completion Date as set forth in the Construction Schedule attached hereto as **Exhibit M** has been delayed by more than two weeks calendar days and the Owner has failed to submit an acceptable Action Plan to CHFA in accordance with Section 4.3; or

(viii) a Recapture Event shall occur and the Recapture Amount due in connection therewith shall remain unpaid for a period of ten (10) Business Days after notice thereof from CHFA or Treasury, unless a later date is specified in such notice; or

(ix) the Owner violates the covenants contained in Section 5.3 hereof;

(x) a default shall occur under any of the Mortgage Loans.

#### **Section 11.2 Remedies on Default**

A. Following receipt by the Owner of a deficiency letter from CHFA and the expiration of all applicable cure periods, if any, CHFA shall have the right to exercise any of the following remedies upon an Event of Default:

(i) temporarily suspend making payments of TCEP Funds under this Agreement pending cure of the deficiency or default by the Owner;

(ii) cease making any further payments under this Agreement;

(iii) terminate this Agreement;

(iv) require that the Developer, the Property Manager, the Contractor or any other party providing services to the Owner be replaced;

(v) declare the Owner the Developer, the Property Manager, the Contractor or any other party providing services to the Owner not to be in good standing for the purpose of participating in CHFA's programs;

(vi) remove the [General Partner] [Managing Member] of the Owner and provide for CHFA or the Asset Manager, in its capacity as [special limited partner] [special member], to act in its stead, pending appointment of a replacement [General Partner] [Managing Member] under the organizing documents of the Owner;

(vii) draw upon and apply any escrows and/or reserve accounts in accordance with their terms;

(viii) call upon the Guaranty in accordance with its terms and the terms of this Agreement;

(ix) exercise any rights it may have under the Recapture Deed of Trust (in the event of a default under Section 11.1(vii) above) and the Security Instruments, including foreclosure of the liens thereunder; and

(x) exercise any other rights and remedies that may be available under law or in equity.

B. In addition to the remedies described in Section 11.2A above, the Owner shall, upon demand by CHFA following an Event of Default, (i) repay any amount of the Sub-award previously disbursed to the Owner under the terms of this Agreement and (ii) pay to CHFA an amount equal to the costs and fees, including attorneys' fees, incurred by CHFA in connection with the Event of Default and/or the exercise of remedies with respect thereto.

C. CHFA may defer the enforcement of remedies upon the occurrence of an Event of Default for such period as it determines appropriate, if it determines that [the Tax Credit Investor or] the Lender is taking appropriate measures to correct the circumstances giving rise to the Event of Default.

D. Each right and remedy provided in this Agreement is distinct from all other rights or remedies under this Agreement, the Recapture Deed of Trust, the Security Agreements, or the LURA, or otherwise afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

### **Section 11.3** Third-Party Rights to Notice and Cure

A. CHFA shall provide the Lenders [and the Tax Credit Investor] with a copy of any written notice of default provided to the Owner pursuant to the terms of this Article XI. CHFA hereby agrees that any cure of any default made or tendered by a Lender [or the Tax Credit Investor] shall be deemed to be a cure by the Owner and shall be accepted or rejected on the same basis as if such cure were made or tendered by the Owner.

### **Section 11.4** Enforcement of Provisions

A. The Owner acknowledges that one of the primary purposes for requiring compliance with the provisions of this Agreement is to assure compliance with Section 42 of the Code and the other Program Requirements. In consideration for receiving the Sub-award, the Owner hereby agrees and consents that CHFA, the State and/or the United States of America shall be entitled to enforce specific performance by the Owner (and its successors and assigns) of its obligations under this Agreement in any tribunal in the State for any and all breach of the conditions and restrictions hereof or material representations made by the Owner at any time in addition to all other remedies expressly provided in this Agreement and/or by law or in equity.

**ARTICLE XII**  
**GENERAL PROVISIONS**

**Section 12.1** Notices

A. Except as otherwise specifically provided herein, all notices, demands or other communications hereunder shall be in writing and shall be deemed to have been given (i) two (2) Business Days after being deposited in the United States mail and sent by certified or registered mail, postage prepaid, (ii) one (1) Business Day after being delivered to a nationally recognized overnight delivery service, (iii) on the day sent by telecopier or other facsimile transmission, answerback requested, or (iv) on the day delivered personally, in each case, to the parties at the addresses set forth below or at such other addresses as such parties may designate by notice to the Partnership:

(i) If to CHFA, at 1981 Blake Street, Denver, CO 80202-1272, tel. (303) 297-2432, with copies to CHFA, General Counsel, Director of Asset Management, Manager of Program Compliance.

(ii) If to the Owner, at [\_\_\_\_\_] with copies to [\_\_\_\_\_].

(iii) If to the Lenders pursuant to Section 6.3 or 11.3, at [\_\_\_\_\_].

(iv) If to the Tax Credit Investor pursuant to Section 6.3 or 11.3, at [\_\_\_\_\_].

**Section 12.2** Rules of Construction

A. Unless the context clearly indicates to the contrary, the following rules apply to the construction of this Agreement:

(i) Words importing the singular number include the plural number and words importing the plural number include the singular number;

(ii) Words of the masculine gender include correlative words of the feminine and neuter genders, and vice-versa;

(iii) The table of contents and the headings or captions used in this Agreement are for convenience of reference and do not constitute a part of this Agreement, nor affect its meaning, construction, or effect;

(iv) Words importing persons include any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization, or government or agency or political subdivision thereof;

(v) Any reference in this Agreement to a particular "Article," "Section," or other subdivision shall be to such Article, Section, or subdivision of this Agreement unless the context shall otherwise require;

(vi) Each reference in this Agreement to an agreement or contract shall include all amendments, modifications, and supplements to such agreement or contract unless the context shall otherwise require; and

(vii) When any reference is made in this document or any of the schedules or exhibits attached hereto to the Agreement, it shall mean this Agreement, together with all other schedules and exhibits attached hereto, as though one document.

**Section 12.3 Binding Provisions**

A. The covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the heirs, legal representatives, successors and assignees of the respective parties hereto, except in each case as expressly provided to the contrary in this Agreement.

**Section 12.4 Assignments.**

A. This Agreement and the proceeds of the Sub-award may not be assigned, pledged, hypothecated, transferred, mortgaged or otherwise conveyed to any Person or Entity.

**Section 12.5 Absence of Rights in Third-Parties.**

A. No provision of this Agreement shall be construed in any manner so as to create any rights in Persons or Entities that are not a party to this Agreement other than Treasury as contemplated in Article VI hereof. The provisions of this Agreement shall be interpreted solely to define specific duties and responsibilities between the Owner, CHFA, and the Asset Manager (as agent and representative of CHFA), and shall not provide any basis for claims of any other Person or Entity other than Treasury.

**Section 12.6 Applicable Law**

A. This Agreement shall be construed and enforced in accordance with the internal laws of the State.

**Section 12.7 Counterparts**

A. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all the parties hereto. Any counterpart of this Agreement, which has attached to it separate signature pages which together contain the signatures of all the parties hereto or is executed by an attorney-in-fact on behalf of some or all of the parties, shall for all purposes be deemed a fully executed instrument.

**Section 12.8 Survival**

A. All representations, warranties, and indemnifications contained herein shall survive the termination of this Agreement.

**Section 12.9** Separability of Provisions; Rights and Remedies; Arbitration; Consistency with Program Requirements

A. Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

B. Unless otherwise specifically provided herein, the rights and remedies of any of the parties hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. Each of the parties confirms that damages at law may be an inadequate remedy for breach or threat of breach of any provisions hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other parties for a breach or threat of breach of any provision hereof, it being the intention by this paragraph to make clear that under this Agreement the respective rights and obligations of the parties shall be enforceable in equity as well as at law or otherwise.

C. The provisions of this Agreement are intended to implement the Section 1602 Program in accordance with the Program Requirements and with Section 42 of the Code as applicable to the Tax Credit Exchange Program, and shall be interpreted consistently therewith. In the event of any conflict between the provisions of this Agreement and the Program Requirements, the Program Requirements shall govern, and to the extent necessary, the inconsistent provisions of this Agreement shall be without effect.

**Section 12.10** Independent Contractor; Indemnification

A. It is expressly understood and agreed by the parties hereto that CHFA is contracting with the Owner as an independent contractor, and that Owner, as such, agrees to hold harmless and to indemnify CHFA and its officers, agents and employees from and against any and all claims, demands and causes of action of every kind and nature which may be asserted by any third-party in connection with, arising out of, or in any way incident to the services performed by the Owner under this Agreement.

**Section 12.11** Conflict of Interest

A. No person who (i) is an employee, agent, consultant, officer or elected or appointed official of CHFA or of any applicant that received funds and who exercises or has exercised any functions or responsibilities with respect to activities assisted with funds provided under this Agreement, or (ii) who is in a position to participate in the decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from an TCEP-assisted activity, or have an interest in any contract, subcontract or agreement (or the proceeds thereof) with respect to a TCEP-assisted activity either for themselves or those whom they have family or business ties, during their tenure and for one-year thereafter.

**Section 12.12 Non-Discrimination**

A. The Owner shall ensure that no person shall on the grounds of race, color, religions, sex, handicap, familial status, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with TCEP Funds provided under this Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, each of the Parties has executed this Agreement as of the date first written above.

Colorado Housing and Finance Authority, a  
body corporate and political subdivision of the  
State of Colorado

By: \_\_\_\_\_  
Milroy A. Alexander, Executive Director

STATE OF COLORADO )  
 ) ss.  
\_\_\_\_\_ AND COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 200\_\_  
by \_\_\_\_\_, as \_\_\_\_\_ of the Colorado  
Housing and Finance Authority, a body corporate and political subdivision of the State of  
Colorado.

Witness my hand and official seal.

My Commission expires: \_\_\_\_\_

[SEAL]

\_\_\_\_\_  
Notary Public



OWNER:

STATE OF COLORADO )  
 ) ss.  
\_\_\_\_\_ AND COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 200\_\_  
by «Signor1» as «Title1» of \_\_\_\_\_, a  
\_\_\_\_\_.

Witness my hand and official seal.

My Commission expires: \_\_\_\_\_

[SEAL]

\_\_\_\_\_  
Notary Public

**Exhibit A**

**LEGAL DESCRIPTION**

**Exhibit B**

**DEVELOPMENT BUDGET**

(attached behind)

## Exhibit C

### DRAW PROCEDURES

[Draw Procedures are contained in the Disbursement Agreement]

During the [rehabilitation] [construction] period, the Owner agrees to conduct the [rehabilitation][rehabilitation] in accordance with the following terms and conditions:

- (a) All materials incorporated in the Project shall have been purchased so that the absolute ownership thereof shall become vested in Owner immediately upon delivery thereof to the Project or installation thereon.
- (b) The Owner shall provide CHFA with each application for payment submitted by the contractor (each a "Draw Request") or requisition for an advance of the Sub-award on the documentation outlined on Exhibit D hereto at or prior to the time of its submittal to the Title Company for payment. The Owner shall include in the Draw Request all documents necessary to satisfy the requirements hereof, [the Disbursement Agreement], any documents required by the Title Company, the latest architect's field report, and any proposed change order. Applications shall be for amounts equal to (i) the total value of the work acceptably completed, plus (ii) the value of materials and equipment not incorporated in the work, but delivered to and suitably stored at the site, less (iii) ten percent (10%) retainage.
- (c) The Owner shall obtain from the contractor and all subcontractors and materialmen dealing directly with the principal contractor acknowledgments of payment and releases of lien down to the date covered by the last advance, and concurrently with the final payment for the completed Project. Such acknowledgments and releases shall be in the form required by the Title Company and shall cover all work done, labor performed and materials (including equipment and fixtures) furnished.
- (d) CHFA and its agents, at all times during the [rehabilitation][construction], shall, have the right of entry and free access to the Project during normal business hours and the right to inspect all work done, and materials, equipment and fixtures furnished, installed or stored in and about the Project, and to inspect all books, contracts and records of the Borrower.
- (e) The Owner shall immediately advise the Authority of the filing of any mechanic's or materialmen's lien or of any notice of intent to file such a lien of which it has knowledge.
- (f) CHFA shall have been furnished with an endorsement to the title insurance policy by the Title Company, disclosing no additional exceptions to title to the Property or Improvements and increasing the amount of the coverage equal to the amount of the advance requested plus the total of all prior advances.

(g) Owner shall have inspected the work in place and determined that all work completed to the date of the request for an advance has been performed in accordance with the plans in a good and workmanlike manner and that the Improvements theretofore completed are of a value reasonably determined by CHFA to be not less than the amount theretofore disbursed, plus the amount requested.

(h) Changes in the Plans, or changes by altering or adding to the work contemplated, or orders for extra work must have received the prior written approval of CHFA.

(i) Line items cannot be changed after the first construction draw. If a line item will be over the budget amount, the amount of overage will first be taken from the contingency budget or other cost saving line items. The Owner must submit a revised budget (actual v. revised) with the draw request and include a written request to reallocate funds from another source. CHFA must approve the reallocation of funds. If the Owner or Contractor anticipates cost overruns, CHFA must be consulted.

(k) All changes in the plans and specifications prepared in connection with the [construction][rehabilitation] of the Project, or changes to any terms of the Contract Documents, or orders for extra Work, or changes made by altering or adding to the Work shall be made only following completion of a written Change Order executed by the Owner and the Contractor (except for CHFA's correction orders, if any, as described in the CHFA Supplement to Construction Contract) and after the Change Order has been submitted to and placed on file with CHFA. Any changes in the Contract Documents for extra Work, or changes by altering or adding to or eliminating any of the Work that will result in any net construction cost increase or decrease or will change the design concept or may result in changes to the date of Substantial Completion or Final Completion may be effected only with the prior written approval of CHFA. Approval of CHFA of such changes will not be unreasonably withheld.

(l) The Owner shall, at the completion of the [rehabilitation][construction], provide CHFA with: (i) certification of substantial completion on AIA Document G704, (ii) certificates of occupancy, (iii) a certification of actual costs, executed by the Owner and audited by an independent certified public accountant, (iv) an as-built survey, in accordance with CHFA requirements; (v) evidence of property and liability coverage.

## Exhibit D

### DRAW DOCUMENTS

Two complete copies for every draw of the following:

1. AIA Application for Payment forms G702 and G703
2. Invoice for each line item in amount requested
3. Change Order form G701, if applicable
4. Soft cost invoices
5. Construction loan balance spreadsheet
6. Conditional lien waivers for General Contractor and Subcontractors (for current draw request)
7. Unconditional lien waivers for General Contractor and Subcontractors (for prior draw request).
8. List of names and addresses for General Contractor, sub-contractors and the amount to be disbursed for each minus 10% retainage.
9. Officer Affidavit (Exhibit O) from Owner.
10. Unconditional, final lien waiver from General Contractor on Final Draw.
11. Any other supporting documentation as may be required by the Loan Agreement in connection with such additional disbursement of funds.
12. A statement prepared by the Contractor and co-signed by Owner, disclosing the various subcontracts and other contracts and agreements, written or oral, entered into by the Contractor in connection with [construction][rehabilitation], setting forth: (i) the names of all subcontractors and other parties with whom the Contractor has contracted or agreed to date; (ii) whether such contract or agreement is written or oral; (iii) the addresses and principal places of business of each such subcontractor and other party; (iv) the labor, materials or other work to be furnished pursuant thereto; (v) the amount of each subcontract, contract or other agreement; (vi) the amounts paid to date; and (vii) the balance due thereunder, and attaching copies of each such written subcontract, contract and other agreement.
13. Architect's monthly field report, updated progress schedule report.
14. All insurance must be current. Draws will not be funded if any portion of the insurance has expired.
15. Funding for off-site stored materials is not permitted unless an exception is granted in the approval or project/site requirements to justify such storage.

**Exhibit E**

**Form of Land Use Restriction Agreement**

(attached behind)

**Exhibit F**

**SECTION 42 COMPLIANCE FORM**

(attached behind)



**Exhibit G**

**ELIGIBLE COSTS**

**Exhibit H**

**FORM OF DRAW REQUEST OR REQUISITION**

(attached behind)

AIA Application for Payment forms G702 and G703, signed and notarized.

## **Exhibit I**

### **QUARTERLY PROPERTY ACTIVITY SUMMARY**

**Rental Revenue, Leasing and Marketing:** Overview of all property activity relative to tenant attraction and rental revenue generation.

**Other Revenue:** Overview of all property activity to other revenue generation including tenant associated fees for delinquency fees, late fees, bad debt, and property damage.

**Vacancy:** Overview of rental activity in the immediate vicinity and its relation to marketing, leasing, vacancy and property performance.

**Operating Expenses:** Overview of all property expenses by category and line item if expense for the period was in excess of 10% over budget or more than \$15,000.00 in amount.

**Property Condition Assessment:** Complete description of property condition, repairs made during the reporting period, source of funding repair expenditures (operating expense or replacement reserve), comparison of activity to current property capital expenditure budget. Property should be inspected quarterly and a narrative provided describing overall condition and any conditions identified in the current inspection that warrant attention.

**Compliance Monitoring:** Overview of all compliance issues relating to leasing activity during the period. This narrative should include description of any compliance reviews conducted by during the period, whether self-imposed or by third-parties, any findings identified during said reviews, and remediation action to be implemented.

**Exhibit J**

**PROJECT PERFORMANCE REPORT**

Name of Recipient (Owner):	
Name of Project:	
Brief Description of Project:	
Location of Project (City, County, State and Zip Code):	
Number of Construction Jobs Created:	
Number of Construction Jobs Retained:	
Number of Non-Construction Jobs Created:	
Number of Non-Construction Jobs Retained:	
Number of Total Housing Units Newly Constructed:	
Number of Total Housing Units Rehabilitated:	
Number of Low-Income Housing Units Newly Constructed:	
Number of Low-Income Housing Units Rehabilitated:	

The undersigned, by executing this Project Performance Report (the "Report"), hereby certifies that the undersigned is the fully elected and acting manager of \_\_\_\_\_ (the "Owner") and that the representations in this report are true and correct as of the date hereof.

**OWNER**

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

By: \_\_\_\_\_  
[Name], [Title]

**Exhibit K**

**PROJECTED DRAW SCHEDULE**

[attached behind]

**Exhibit L**

**MORTGAGE LOANS**

**Exhibit M**

**CONSTRUCTION SCHEDULE**

[attached behind]

**Exhibit N**

**AUTHORIZED OFFICER(S) OF THE OWNER**

**NAME**

**TITLE**

**SPECIMEN SIGNATURE**

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____



**EXHIBIT O**

**TCEP Requisition – Officer’s Affidavit**

TCEP Agreement No. \_\_\_\_\_

TCEP Requisition -- Officer’s Affidavit  
(To be delivered to CHFA before each draw)

\_\_\_\_\_, being duly sworn, deposes and says:

Affiant is the \_\_\_\_\_ of \_\_\_\_\_ (“Owner”), and has made due investigation as to the matters in this Affidavit and does hereby certify the following to induce the Colorado Housing and Finance Authority (“CHFA”) to advance \$\_\_\_\_\_ to Owner pursuant to the terms of a TCEP Sub-award Agreement (the “Sub-award Agreement”), dated \_\_\_\_\_, between CHFA and Owner, and Requisition Number \_\_\_\_\_, dated \_\_\_\_\_, being submitted to CHFA in connection with this Affidavit:

1. Representations and Warranties. All representations and warranties contained in the Sub-award Agreement are true and accurate in all material respects as of the date of this Affidavit.
  
2. No Event of Default. No Event of Default exists under any Sub-award Document, and no event or condition has occurred and is continuing or existing, or would result from the advance about to be made, which, with the lapse of time or the giving of notice, or both, would constitute such an Event of Default.
  
3. Construction Continuous; No Casualty or Taking. Construction of the Work has been carried on with reasonable dispatch and has not been discontinued at any time for reasons within the control of Owner. The Improvements have not been damaged by fire or other casualty. No part of the Premises has been taken by eminent domain, and no proceeding or negotiation for any such taking is pending or threatened.
  
4. Construction on Schedule. Construction of the Work is progressing in such manner so as to insure completion of the Work in substantial accordance with the Plans and Specifications on or before the Completion Date, as defined in the Sub-award Agreement.

5. Advances Applied to Construction Costs. All funds received from CHFA previously as advances under the Sub-award Agreement have been expended for the sole purpose of paying costs of construction (“Costs”) previously certified to CHFA in Requisitions. No part of said funds has been used, and the funds to be received pursuant to the Requisition submitted with this Affidavit shall not be used, for any other purpose. No item of costs previously certified to CHFA in a Requisition remains unpaid as of the date of this Affidavit.

6. Statements Truthful; Costs Accurate; Advances to Pay Costs. All of the statements and information set forth in the Requisition being submitted to CHFA with this Affidavit are true and correct in every material respect at the date of this Affidavit. All Costs certified to CHFA in the Requisition accurately reflect the precise amounts due.

All the funds to be received pursuant to the Requisition shall be used solely for the purposes of paying the items of Cost specified in the Requisition or for reimbursing Owner for such items previously paid by Owner.

7. No Liens; No Impairment of Owner’s Ability to Perform. Except as provided in the TCAP Loan Documents, nothing has occurred which has or may result in the creation of any lien, charge, or encumbrance upon the Premises or anything affixed to or used in connection with the Premises or Work or which has or may substantially and adversely impair the ability of Owner to make all payments of principal and interest on the Recapture Note, the ability of Owner to meet its obligations under the Sub-award Documents or, to the best of its knowledge, the ability of any Guarantor to meet its obligations under the Guaranty.

8. No Prior Loan Requisition For Expenses. None of the labor, materials, overhead or other items of expense specified in the Requisition submitted with this Certificate has previously been made the basis of any Requisition by Owner or of any payment by CHFA.

9. Work Status. The status of the Work is as set forth in the Requisition and as described below: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

10. Aggregate Cost of Completion of Improvements. The estimated aggregate cost of completing the Work including but not limited to labor, materials, architectural and engineering fees, management, financial and other overhead costs and expenses, does not exceed \$\_\_\_\_\_.

11. All Preconditions to Advance Have Been Satisfied. All conditions to the advance which is to be made in accordance with the Requisition submitted with this

Affidavit (in addition to those conditions to which reference is made in this Affidavit) have been met in accordance with the terms of the Sub-award Agreement.

12. No Litigation. There is neither any action, litigation, 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 of our knowledge after due investigation, threatened against or affecting the Owner, nor is there any basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the validity or the enforceability of any of the Sub-award Documents or the transactions contemplated therein, or which would have a materially adverse effect on the business, prospects or condition (financial or otherwise) of the Owner.

13. Terms. The capitalized terms used in this Affidavit have the meaning given to them in the TCAP Agreement. This Affidavit is subject to and incorporates the terms of the Sub-award Agreement.

[14. Senior Loan. Owner has executed a promissory note evidencing a construction loan from \_\_\_\_\_ (the "Senior Lender"), in the amount of \$\_\_\_\_\_ (the "Senior Note"). The Senior Note and all other documents related thereto are referred to herein as the "Senior Loan Documents."]. No Event of Default specified in the Senior Loan Documents and no event which, with notice or lapse of time or both would become such an Event of Default, has occurred and is continuing with regard to the Senior Loan Documents].

Owner:

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

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**Exhibits**

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- Exhibit B** – Development Budget
- Exhibit C** – Draw Procedures
- Exhibit D** – Draw Documents
- Exhibit E** – Form of Land Use Restriction Agreement
- Exhibit F** – Section 42 Compliance Form
- Exhibit G** – Eligible Costs
- Exhibit H** – Form of Requisition
- Exhibit I** – Quarterly Financial Summary
- Exhibit J** – Project Performance Report
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