



Tennessee Housing Development Agency

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MEMORANDUM

TO: TCAP Assistance Recipients

FROM: Ed Yandell, Director, Multi-Family Development
Lynn E. Miller, Deputy Executive Director and General Counsel

SUBJECT: Revised TCAP Loan Documents and Deadline

DATE: January 29, 2010

DOCUMENTS

The following documents are being posted for use with developments receiving assistance under the Tax Credit Assistance Program ("TCAP"):

1. Revised TCAP loan agreement
2. Revised Note providing for repayment or forgiveness at the end of fifteen years
3. New Note providing for repayment or forgiveness at the end of 30 years
4. New Note providing for repayment from "Excess Revenue" beginning after the end of the "Grant Period"

Development owners may choose the note option they wish to use for the TCAP assistance.

DEADLINE

Stacey Johnston will immediately be communicating with development owners and/or their representatives to get TCAP loan agreements fully executed on or before 4:30 p.m. (CDT) on Thursday, February 4, 2010. This is to ensure that the 75% commitment requirement is met to avoid the risk of a recapture of TCAP funds by HUD.

NOTE: THIS DOES NOT MEAN THAT TCAP CLOSINGS AND/OR OTHER CLOSINGS MUST OCCUR PRIOR TO THE FEBRUARY 4 DEADLINE.

As staff completes review of TCAP materials submitted on or before the January 8, 2010 deadline, communication will begin regarding closing schedules in the order THDA received complete and acceptable documentation in response to the TCAP Conditional Commitment Letters.

If a sufficient number of fully executed TCAP loan agreements are not received by the February 4 deadline and HUD recaptures TCAP funds, the amount of TCAP assistance made available to developments for which fully executed TCAP loan agreements were not timely received by THDA will be reduced in an amount proportional to the amount of TCAP funds recaptured.

**TENNESSEE HOUSING DEVELOPMENT AGENCY
TCAP LOAN AGREEMENT**

This Loan Agreement (the "Agreement") is entered into as of January 1, 2010, by and between _____ ("Owner") and the Tennessee Housing Development Agency ("THDA").

RECITALS

Owner is receiving Tax Credit Assistance Program funds from THDA under Title XII of the American Recovery and Reinvestment Act of 2009, subject to requirements contained in U.S. Department of Housing and Urban Development ("HUD") Notice: CPD-09-03-REV, issued May 4, 2009, as revised July 27, 2009, as may be further revised or modified from time to time; additional requirements and guidance as may be provided by HUD from time to time; all other TCAP restrictions and program requirements as determined by HUD, as modified or supplemented from time to time; the THDA Tax Credit Assistance Program (TCAP) 2009 Program Description dated July 2, 2009, as revised July 8, 2009, and as may be further revised or modified from time to time (the "Program Description"); the QAP (as defined below), as may be amended and supplemented from time to time; guidance as may be provided by THDA with respect to Assistance Funds as posted on THDA's website at www.thda.org, as revised or modified from time to time; those restrictive covenants [dated , as amended , encumbering the Property/~~OR~~ to be recorded against the Property] (the "Restrictive Covenants"); Section 42 of the Internal Revenue Code of 1986, as amended, including without limitation all duly enacted subsequent tax legislation ("Section 42"); United States Treasury Regulations proposed or in effect with respect to Section 42, including revenue procedures, revenue rulings or other published determinations of Treasury Department or the Internal Revenue Service ("IRS") ("Section 42 Regulations" and, together with the Restrictive Covenants, Section 42 and the relevant QAP, the "Tax Credit Program Requirements"); all terms, conditions, requirements, representations and certifications made in or in connection with the Initial Application (as defined below), the Exchange Application (as defined below), if applicable and the TCAP Application (as defined below) for the Development (as defined below) including, without limitation, all reservation notices, carryover allocation agreements or other documents by and between Owner and THDA; and that certain conditional commitment letter dated , 2009, issued by THDA and accepted by Owner (the "Conditional Commitment Letter" and, together with all items referenced in this paragraph, the "Program Requirements"); and

Owner originally received an award of low income housing tax credits pursuant to the THDA Qualified Allocation Plan (the "QAP"), based on an initial application dated (the "Initial Application") to construct or rehabilitate affordable rental housing on property located at County, Tennessee, more particularly described in Attachment Exhibit A, which is attached hereto and incorporated herein by this reference (the "Property");

[Owner, based on an exchange application submitted to THDA (the "Exchange Application"), returned prior year low income housing tax credits for 2009 low income housing tax credits in the amount of \$ and received a 2009 Low-Income Housing Tax Credit Carryover Allocation Agreement~~Reservation Notice~~ for units of affordable rental housing to be located on the Property to be known as (together with the Property, the "Development")/Owner received a Low-Income Housing Tax Credit Carryover Allocation Agreement for units of affordable rental housing to be located on the Property to be known as (together with the Property, the "Development")]; and

THDA has agreed to make Assistance Funds (as defined below) available to Owner for the Development subject to all terms, conditions and requirements of this Agreement, the Program Requirements, and the Tax Credit Program Requirements;

NOW, THEREFORE, in consideration of THDA making the Assistance Funds (as defined below) available to Owner for the Development, Owner agrees as follows:

**ARTICLE I
DEVELOPMENT DESCRIPTION**

1. Development Name and Address (the "Development")

(TN -)

2. Owner Name and Contact Information (the “Owner”)

3. Unit Information

Total Number of Units in Development: _____

Total number of low-income LIHTC-qualified units: _____ (the “Tax Credit Units”)

Total number of Section 504 accessible units: _____

~~Total number of Energy Star qualified units: _____~~

4. TCAP Assistance

Amount: \$ _____

Form: Loan

5. LIHTC Award

Amount: \$ _____ [of which \$ _____ is being returned to THDA]

Type of credit: _____ [9% / 4%]

Year of credit award: _____

6. Development Type

[new construction/acquisition/rehabilitation]

7. Development Budget

Final sources and uses statement, including without limitation, total development costs, total amount of Assistance Funds for the Development, total Senior Financing, total ~~[Syndicator/Investor]~~Syndicator Equity, if any, and all other sources of funds, if any, is as shown on ~~Attachment Exhibit B~~ which is attached hereto and incorporated herein by this reference.

8. Private Financing

Senior Lender Name and Contact Information (the “Senior Lender”)

Total amount of financing expected from Senior Lender: \$ _____ (the “Senior Financing”)

9. Sale of Tax Credits

~~[Syndicator/Investor]~~Syndicator Name and Contact Information (the “[Syndicator/Investor]Syndicator”)

Total amount of equity expected from ~~[Syndicator/Investor]~~Syndicator:
\$ _____ (the “[Syndicator/Investor]Syndicator Equity”)

ARTICLE II
AMOUNT/TERMS/USE OF ASSISTANCE FUNDS

1. Amount of TCAP Funds

THDA will make TCAP funds in the amount of \$_____ available to Owner for the Development, subject to the availability of funds, all terms and conditions of this Agreement and all Program Requirements (the "Assistance Funds"). THDA may reduce the amount of Assistance Funds based on the Cost Certification (as defined in hereinbelow) or THDA's final underwriting- to prevent oversubsidization of the Development.

2. Terms of the Assistance Funds

The Assistance Funds will be in the form of a loan evidenced by a fifteen (15) year note at 0% interest secured by a deed of trust encumbering the Property and the Development (the "Assistance Note" and the "Assistance Deed of Trust"), with repayment due only in the event of a default as defined in this Agreement, in the Assistance Note, in the Assistance Deed of Trust or in the Restrictive Covenants that have been recorded or are expected to be recorded as an encumbrance against the Property, and/or as amended as needed to comply with Program Requirements or Tax Credit Program Requirements or at the Maturity Date (as defined in the Assistance Note). The amount due under the Assistance Note, in the event of default, will be 100% of the principal amount thereof. At the end of the Compliance Period, the full amount of the Assistance Note may ~~will~~ be forgiven, subject to a determination by THDA, in its sole discretion, that no uncured event of default exists and that no set of facts exist that could ripen into an event of default with the passage of time.

OR

The Assistance Funds will be in the form of a loan evidenced by a thirty (30) year note at 0% interest secured by a deed of trust encumbering the Property and the Development (the "Assistance Note" and the "Assistance Deed of Trust"). The Assistance Funds shall be due and payable at maturity.

OR

The Assistance Funds will be in the form of a loan evidenced by a thirty (30) year note at 0% interest (the "Assistance Note") providing for repayment of the Assistance Funds from Excess Revenue (as defined in the Assistance Note) and secured by a deed of trust encumbering the Property and the Development (the "Assistance Deed of Trust")

3. Use of Assistance Funds

Assistance Funds shall be used only for costs and fees in connection with the Development that are includable in the "eligible basis" of a development under Tax Credit Program Requirements, including without limitation, costs of land acquisition, on-site demolition costs, and hazardous material remediation costs and other cost as approved by THDA in its sole discretion ("Eligible Costs"). Provided, however, to the extent permitted under Program Requirements, Assistance Funds may be used to fund approved reserves. Assistance Funds shall not, however, be used for swimming pools. Owner shall supply documentation as required by THDA, in its sole discretion, with each draw request to demonstrate that Assistance Funds are being used only for Eligible Costs. Assistance Funds may be used to repay equity or the principal amount of loans (except for loans funded with the proceeds of tax exempt bonds) that have financed Eligible Costs associated with the construction and/or rehabilitation of the Development or to reimburse Owner for Eligible Costs previously paid by Owner.

4. Limitations under Section 42 of the Internal Revenue Code

The Assistance Funds are awarded in the same manner and subject to the same limitations (including, without limitation, rent, income, use restrictions and compliance monitoring) as required with respect to the low-income housing tax credits awarded to the Development under Tax Credit Program Requirements, including, without limitation, the QAP.

5. ~~Construction and~~ Expenditure and Construction Schedule

a. Attached hereto as ~~Attachment Exhibit C~~, which is incorporated herein by this reference, is a detailed construction schedule that establishes timeframes for meeting construction and expenditure timelines (the "~~Construction and~~ and Construction Schedule"). Owner shall comply with this ~~Construction and~~ and Construction Schedule. THDA will use this ~~Construction and~~ and Construction Schedule to monitor construction of the Development and Assistance Funds expenditure rates to ensure compliance with required expenditure deadlines and all other applicable requirements including, without limitation, any other milestones identified in the Program Description. No changes to the ~~Construction and~~ and Construction Schedule may be made

without the express written consent of THDA, which consent may be withheld in THDA's sole discretion.

- b. 100% of the low-income units in the Development shall be 100% complete and ready for lease-up ("100% Completion of Construction") no later than December 31, 20__ (the "Completion Date"). For purposes of this Agreement, 100% Completion of Construction shall be deemed to occur upon delivery to THDA of final (not temporary) certificates of occupancy for all units in the Development from the office of the local building inspector in the jurisdiction in which the Development is located in connection with new construction work or delivery to THDA of final (not temporary) certificates of completion for all units in the Development from the office of the local building inspector in the jurisdiction in which the Development is located in connection with rehabilitation of an existing building.
 - c. Notwithstanding any other provision of this Agreement to the contrary, the deadlines in the ~~Construction and~~ Expenditure and Construction Schedule and the Completion Date may be extended by THDA in its sole discretion (but not beyond the outside expenditure and completion deadlines required by HUD) as a result of a Force Majeure Event (as defined below).
6. Relationship Among Assistance Funds, Senior Financing, ~~{Syndicator/Investor}~~ Syndicator Equity
- a. THDA acknowledges and agrees that the Assistance Deed of Trust shall be subordinate to the deed of trust executed by Owner in favor of Senior Lender (the "First Deed of Trust") to secure a note in the amount of the Senior Financing (the "First Note") and that the subordination will continue as the First Note and/or First Deed of Trust are amended, modified, extended and/or refinanced from time to time, so long as (i) the maximum principal balance of the ~~{Senior/Private}~~ Senior Loan is not increased beyond its current maximum and (ii) the revised ~~{Senior/Private}~~ Senior Loan Documents do not materially and adversely affect the rights of THDA.
 - b. THDA expects to enter into an Intercreditor Agreement (the "Intercreditor Agreement") with Senior Lender and ~~{Syndicator/Investor}~~ Syndicator, if any, with respect to certain matters including, without limitation, reserves for the Development, developer fees associated with the Development, cost overruns, draw requests and disbursement of Assistance Funds, the Senior Financing and the ~~{Syndicator/Investor}~~ Syndicator Equity, if any.
 - c. To the extent the Assistance Deed of Trust and/or Intercreditor Agreement set forth further subordination terms [and/or HUD requirements if the Senior Financing is FHA-insured], all such terms are expressly incorporated into this Agreement and all related agreements and shall apply as if expressly set forth herein.
7. Term of Agreement
- The term of this Agreement shall equal the [Compliance Period/Extended Use Period] (as defined in the Restrictive Covenants).

ARTICLE III DISBURSEMENT OF ASSISTANCE FUNDS

1. Disbursement of Assistance Funds hereunder shall be subject in all respects to (a) THDA's receipt of funds from HUD and/or Treasury, as applicable; (b) Owner closing the having enforceable agreements to receive Senior Financing and/or {Syndicator/Investor} Syndicator Equity prior to or concurrently with the closing of Assistance Funds hereunder, with terms acceptable to THDA in its sole discretion, ~~which approval will be confirmed by THDA in connection with the execution of this Agreement~~; (c) sufficient funding, from sources other than the Assistance Funds, to complete all construction and/or rehabilitation proposed in connection with the Development, in the event of reductions in Senior Financing and/or Syndication Equity and/or cost overruns; and (d) full compliance with this Agreement, the Program Requirements, ~~and~~ Tax Credit Program Requirements, and the Intercreditor Agreement.
2. THDA shall not make and Owner shall not request disbursements of Assistance Funds until the funds are needed for payment of Eligible Costs. The amount requested and the amount disbursed in any draw shall be for Eligible Costs actually due and owing for services performed or materials received that were not included in a previous draw, as determined by THDA in its sole discretion. Owner shall not request any disbursement in excess of actual Eligible Costs incurred.
3. Assistance Funds shall not be drawn down to be placed into escrow accounts and shall not be advanced in lump sums to or on behalf of Owner. Provided, however, to the extent permitted under Program Requirements, Assistance Funds may be used to fund approved reserves.
4. A ~~D~~disbursement of Assistance Funds may initially be made at closing of the Assistance Funds (if applicable) and subsequent disbursements shall be made as construction on the Development progresses,

subject to THDA review and approval, in THDA's sole discretion, upon Owner's written requests no more frequently than monthly. Owner shall submit disbursement requests on THDA's forms for payment with supporting documentation as required by THDA in its sole discretion. THDA forms and requirements for disbursement hereunder may be modified at any time, at THDA's sole discretion. At least five (5) business days prior to closing of the ~~Assitance~~ Assistance Funds, Owner shall submit to THDA a disbursement request on THDA's form for payment with supporting documentation as required by THDA in its sole discretion. ~~Such disbursement request shall include all items necessary for Owner to close it purchase of the Property.~~

5. THDA's obligation to fund any draw request shall be contingent upon (a) compliance with all requirements of this Agreement, (b) an inspection of progress to date that is satisfactory to THDA, in its sole discretion, (c) and approval of each draw request by THDA, Senior Lender and/or ~~{Syndicator/Investor}~~ Syndicator, (d) in connection with an initial draw, submission of and approval by THDA, in its sole discretion, all documentation required to demonstrate compliance with Davis Bacon Requirements (as hereinafter defined) including, without limitation, a fully executed construction contract that meets all applicable Davis Bacon Requirements and the appropriate Davis Bacon Wage Rate Determination, (e) in connection with all subsequent draws, submission of all all documentation required to demonstrate compliance with Davis Bacon Requirements including, without limitation, certified weekly payroll information.
6. In the event Owner has closed on its purchase of the Property on which the Development will be located prior to the date hereof but has not achieved 100% Completion of Construction, Owner shall provide evidence to THDA of all funding requests submitted to ~~{Senior/Private}~~ Senior Lender and/or Syndicator, together with evidence of any disbursements made to Owner by ~~{Senior/Private}~~ Senior Lender and/or Syndicator. Owner shall have no right to submit a funding request to THDA for any Eligible Costs disbursed to Owner by ~~{Senior/Private}~~ Senior Lender and/or Syndicator at or prior to closing of the Assistance Funds made available hereunder. Notwithstanding the foregoing, Owner may seek reimbursement for Eligible Costs expended by Owner from sources other than ~~{Senior/Private}~~ Senior Financing and/or Syndicator Equity and may seek reimbursement for repayment of the ~~{Senior/Private}~~ Senior Financing, so long as such financing did not result from the issuance of tax-exempt bonds.
7. If on the date of closing of the Assistance Funds hereunder, Owner has achieved 100% Completion of Construction, then Owner shall, subject to the requirements herein for a final draw, have the right to submit a final draw request for all of the Assistance Funds which must include evidence of all funding requests submitted to ~~{Senior/Private}~~ Senior Lender and/or Syndicator, together with evidence of all disbursements made to Owner by ~~{Senior/Private}~~ Senior Lender and/or Syndicator. Owner shall also submit with such request a ~~Cost Certification~~ Schedule of Actual Costs and Eligible Basis prepared by Owner's accountant, together documentation required herein to evidence 100% Completion of Construction and documentation required in connection with any draw. Owner shall have no right to submit a funding request to THDA for any Eligible Costs disbursed to Owner by ~~{Senior/Private}~~ Senior Lender and/or Syndicator at or prior to closing of the Assistance Funds made available hereunder. Notwithstanding the foregoing, Owner may seek reimbursement for Eligible Costs expended by Owner from sources other than ~~{Senior/Private}~~ Senior Financing and/or Syndicator Equity and may seek reimbursement for repayment of the ~~{Senior/Private}~~ Senior Financing, so long as such financing did not result from the issuance of tax-exempt bonds.
8. Owner shall receive the disbursements of Assistance Funds in trust to be applied for the purpose of paying Eligible Costs of the Development.
9. Any disbursement requested or made in excess of the amount specified in Article II, Paragraph 1, or for costs or fees that are not an Eligible Costs, or otherwise in violation of this Agreement, in whole or in part, shall be immediately repaid by Owner to THDA. Owner shall pay all amounts deemed by THDA, in its sole discretion, to not be Eligible Costs from sources other than Assistance Funds.
10. All disbursements shall be made in accordance with the Intercreditor Agreement, between and among THDA, the Senior Lender and the ~~{Syndicator/Investor}~~ Syndicator, if any, and a Disbursement Agreement, if any applicable.
11. THDA may, at its discretion, disburse Assistance Funds to dual payees or to persons other than Owner, including the closing agent handling the closing of the Assistance Funds made available hereunder; provided, however, THDA shall not do so if Owner provides notice to THDA of the existence of a dispute between Owner and a payee regarding the quality or timeliness of work that is the subject of such disbursement. In the event of such disbursements, THDA shall obtain lien waivers or other appropriate documentation designed to forestall a subsequently arising lien with respect to the work for which

disbursements were made. Such disbursements shall be deemed disbursements to Owner, the repayment of which shall be secured by the lien of the Assistance Deed of Trust.

12. THDA may refuse to disburse Assistance Funds where work for which payment has been requested has not been performed in a good and workmanlike manner; where supplies, chattels and fixtures have not been furnished and installed; where property stored on or off site has not been insured and made subject to the prior lien of the Assistance Deed of Trust and where the work otherwise fails to comply with Program Requirements or Tax Credit Program Requirements.
13. THDA may reduce the amount of any disbursement requested by any amount, determined by THDA in its sole discretion, to not be an Eligible Cost. THDA reserves the right to deduct from the amount of any disbursement any amount which is or shall become due and payable by Owner under this Agreement or under any other agreement or contract between Owner and THDA.
14. Owner shall demonstrate sufficient resources to fund cost overruns, if any. Cost overruns will not result in additional Assistance Funds. THDA will not disburse Assistance Funds to Owner if, at any time, there are insufficient funds available from all funding sources to support construction and/or rehabilitation of the Development. Owner shall promptly pay any and all additional funds necessary to complete the Development if Assistance Funds, Senior Financing and Syndication Equity are not sufficient to achieve 100% Completion of Construction by the Completion Date.~~complete the Development and place it in service.~~
15. The disbursement of Assistance Funds shall not be deemed an approval or acceptance by THDA of the work or materials for which payment has been made. THDA reserves the right to disallow payment of any item of cost or expense at any time upon later review and upon Owner's final submission of cost certification items.
16. Final disbursement of Assistance Funds shall be made only following 100% Completion of Construction for the Development and subject to the following requirements: (a) Owner is not then in default under any provision of this Agreement, the Program Requirements, or the Tax Credit Program Requirements; (b) the ~~G~~general ~~C~~contractor hired by Owner to construct and/or rehabilitate the Development has complied with all provisions of the Construction Contract to the satisfaction of Owner and THDA, (c) no proceedings have been instituted to enforce a mechanic's or material supplier's lien, unless bonded or insured over, ~~and~~ (d) Owner has provided to THDA a Rental Completion Report for the Development in the form attached hereto as Exhibit D, (e) Owner has entered into an amendment of the Restrictive Covenants, in a form to be provided by THDA, recorded such amendment in the real property records of the county in which the Development is located, and provided a fully executed copy with evidence of recordation to THDA, (f) Owner has provided to THDA written certification from a certified public accountant for all costs and expenses involved in the Development as directed by THDA to satisfy THDA close out requirements, ("Cost Certification"), (g) documentation as needed to demonstrate full compliance with all Davis Bacon Requirements Davis Bacon and (h) all documentation required for a final draw hereunder have been submitted to and approved by THDA.
- ~~16. Owner shall fully account for all costs and expenses involved in the Development to satisfy THDA close out requirements at the end of the construction or rehabilitation of the Development ("Cost Certification") and throughout the disbursement period as necessary to meet all applicable Program Requirements and/or Tax Credit Program Requirements.~~
17. Owner shall demonstrate that (a) no later than February 16, 2011 or such earlier date as established by THDA, upon notice as specified herein, Owner has expended at least 75% of the Assistance Funds; and (b) no later than February 16, 2012 or such earlier date as established by THDA, in its sole discretion, Owner has expended 100% of the Assistance Funds.

ARTICLE IV FEDERAL REQUIREMENTS

1. Owner shall develop and manage the Development in compliance with all applicable federal statutes, rules, regulations or other directives including, without limitation, the following Federal requirements ~~to the extent applicable to the Development~~:
 - a. Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR Part 100 and the regulations at 24 CFR Part 107 (Equal Opportunity in Housing).
 - b. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR Part 1.

- c. The Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146 “Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance.”
- d. Affirmative Marketing - When marketing units in the Development, Owner shall comply with the THDA affirmative fair housing marketing plan and procedures approved by THDA.
- e. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8 “Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development.”
- f. National Environmental Policy Act (NEPA) and Related Laws - Owner shall comply with all laws referenced by, and requirements set forth in, 24 CFR Part 58.6, including ongoing requirements related to any required mitigation for the Development resulting from the NEPA review and clearance, and flood insurance as required by the National Flood Insurance Reform Act of 1994, if applicable.
- g. The Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992 and implementing regulations at 24 CFR Part 35 - applicable if the Development involves rehabilitation.
- h. Davis-Bacon Prevailing Wages - The wage rate requirements of section 1606 of Division A of the American Recovery and Reinvestment Act of 2009. Owner shall provide the following to THDA evidencing compliance with the Davis-Bacon Act: (i) fully executed construction contract containing all Davis Bacon requirements’ (ii) appropriate Wage Determination/Decision, (iii) weekly certified payroll reports, (iv) monthly register of contractors, subcontractors and suppliers over \$10,000, (v) complete register of assigned employees, (vi) signed authorization of employee payroll deductions (if any), and (vii) any other documents requested by THDA that are necessary to ensure compliance with the Davis-Bacon Act (collectively, the “Davis Bacon Requirements”).
- i. “Anti-Lobbying” Restrictions - (Restrictions on lobbying in 31 USC 1352 and implementing regulations at 24 CFR Part 87 “New Restrictions on Lobbying”.) Owner and any person or entity who has or is expected to have a contract or subcontract exceeding \$100,000 in relation to the Development shall submit a certification, and a SF-LLL Disclosure of Lobbying Activities form (if required), at the time that person requests or receives TCAP funds.
- j. 2 CFR Part 2424 “Non-procurement Debarment and Suspension” - Owner shall not enter into any contract with a contractor who is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs. Owner shall comply with subpart C of 2 CFR Part 180, as required by 2 CFR Part 2424.
- k. Required Signage - Project signage must be posted in a manner consistent with criteria established by HUD.
- l. Executive Orders Concerning MBE/WBE – Executive Orders 11625,12432,12138, and their respective implementing regulations.
- m. Other Requirements - All other applicable federal, state and local laws, regulations and requirements.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

Owner represents and warrants as follows:

1. Owner is a _____, duly formed and validly existing and in good standing under the laws of the State of Tennessee, or a _____, duly formed and validly existing and in good standing in another state within the United States, and validly qualified to do business and in good standing in the State of Tennessee. Owner has full power and authority to consummate all transactions contemplated under this Agreement, including without limitation, all necessary acts to finance, construct, administer and operate the Development and to comply with all Program Requirements and Tax Credit Program Requirements.
2. This Agreement has been duly and validly executed and delivered by Owner, and constitutes a valid and legally binding obligation enforceable in accordance with its terms and Owner has duly authorized the applicable principal signatory hereof to execute all necessary documents and bind Owner in all legal matters regarding THDA, this Agreement and the Development.
3. All information set forth in all applications, in responses to all reservation notices, carryover allocation agreements and/or Conditional Commitment Letters and in the supporting documentation provided to THDA to secure Low Income Housing Tax Credits and Assistance Funds is true and correct in all material respects, or, in the case of information provided by third parties, Owner has no reason to doubt the accuracy

of such information. Owner agrees to provide immediate notice to THDA of any changes or modifications which, in any respect, may affect the ability of Owner to achieve 100% Completion of Construction~~complete the Development~~ by the Completion Date or to place the Development in service, or which may raise the costs of construction or rehabilitation beyond the amount set forth on ~~Attachment Exhibit B~~.

4. There is no action, suit or proceeding pending, or, to the best of Owner's knowledge, threatened, against or affecting, the Property, the Development or Owner in any court at law or in equity, or before or by any governmental instrumentality, whether federal, state, county or municipal. Owner shall promptly advise THDA in writing of all litigation, regardless of amount, affecting the Owner, the Property, or the Development and of all complaints or investigations commenced or filed with or by an federal, state or local governmental authority affecting Owner or its business, the Property or the Development or Owner's construction or operation of the Development or which may impede the construction and placement in service of the Development or impair, in any way, the security to THDA.
5. Any and all federal, state and local income tax returns required to be filed by Owner have been filed, and all taxes reflected upon any such tax returns, all past due taxes, interest and penalties and all estimated payments required to be paid have been paid.
6. Owner has no knowledge of any notice applicable to the Development of violations of any laws, ordinances, codes, requirements or orders of any governmental instrumentality having jurisdiction over the Development.
7. Owner has good and marketable title to an indefeasible [fee simple/leasehold] estate in the Property upon which the Development is located, subject to no lien, charge or encumbrance, except for the Permitted Encumbrances (as defined in the Assistance Deed of Trust).
8. Owner has not treated, stored, recycled, disposed of or discharged any hazardous, toxic or polluting substances on or into the Property, and Owner has no actual knowledge of any other person or entity, including, without limitation, any previous owner of the Property, having treated, stored, recycled, disposed of or discharged any hazardous, toxic or polluting substances on or into the Property. Owner has no actual knowledge of any notification having been made with regard to the discharge of hazardous, toxic or polluting substances on or into the Property under the Federal Comprehensive Environmental Response, Compensation and Liability Act or under any other federal or state law pertaining to protection of the environment.
9. Owner has made good faith efforts to secure the maximum amount of private~~privat~~ financing for the Development based on potential rents. Owner reaffirms all statements and representations it has made to THDA to demonstrate that it has made this good faith effort and acknowledges that THDA has relied upon its statements and representations in making the determination that Owner is eligible for Assistance Funds.
10. All representations, warranties, covenants, certifications and/or indemnifications made by Owner in any application to THDA for Tax Credits or Assistance Funds, in the Reservation Notice for this Development, or in the Conditional Commitment Letter for this Development are true and correct as of the date hereof and are incorporated herein by this reference as if set forth herein verbatim.

ARTICLE VI
OWNER'S COVENANTS

Owner covenants and agrees as follows:

1. Owner shall, at all times, fully and completely comply with (a) all applicable state and local ordinances, laws, rules, regulations; (b) all applicable federal laws, rules and regulations; (c) the Tax Credit Program Requirements; (d) the Program Requirements; and (e) all other requirements of this Agreement.
2. Owner shall maintain its existence as a _____ under the laws of the State of Tennessee or as a _____ under the laws of the State of _____ that is qualified to do business in the State of Tennessee. General partner(s) or managing member(s) in Owner shall not be removed nor shall their respective interests be modified in any manner without the prior written consent of THDA, which may be withheld in THDA's reasonable discretion. Limited partner interests or member interests (other than managing member interests) in Owner or any partnership or membership interest within a limited partner or member (other than managing member~~interest~~) of Owner shall be freely transferable and shall not require consent from THDA.
3. Owner shall establish and maintain escrows and reserves as THDA, in its sole discretion, may require and shall pay developer fees only as approved by THDA, in its sole discretion. Notwithstanding the foregoing, to the extent Senior Lender and/or ~~[Syndicator/Investor]~~Syndicator (i) require escrows and reserves of a type and in an amount satisfactory to THDA, in its sole discretion and/or (ii) provide for the payment of the

- developer's fee at times and in amounts satisfactory to THDA, in its sole discretion, THDA will not impose additional requirements for escrows, reserves, and/or developer's fees. If not addressed by the Senior Lender and/or ~~{Syndicator/Investor}Syndicator~~ or if inadequately addressed, as determined by THDA, in its sole discretion, or if there is no Senior Lender or ~~{Syndicator/Investor}Syndicator~~, THDA may impose escrow and reserve requirements and limitations on payment of development fees ~~pursuant to separate written guidelines delivered to Owner~~. Reserves maintained for the Senior Lender or ~~{Syndicator/Investor}Syndicator~~ will be credited toward any separate reserve requirement of THDA.
4. Owner shall, at Owner's cost and expense, cause all mechanic's liens, other lien claims, encumbrances and charges against the Development or the Property to be discharged, bonded over or affirmatively insured over.
 5. Except for Permitted Encumbrances (as defined in the Assistance Deed of Trust), Owner shall not sell, transfer, assign, convey, further encumber, alienate, hypothecate, grant a security interest in or grant any other interest of any kind in the Property or the Development or any part or parts thereof or any interest therein, except in accordance with this Agreement; provided, however, Owner may enter into agreements necessary or desirable for operation of the Development (such as easements, laundry leases, cell tower leases or cable television leases) to the same extent as allowed by the Senior Lender and/or ~~{Syndicator/Investor}Syndicator~~ and THDA shall have the same rights with respect to approval and/or notice as provided to Senior Lender and/or ~~{Syndicator/Investor}Syndicator~~. Owner shall not assign this Agreement or the Assistance Funds or encumber, alienate, hypothecate, grant a security interest in or grant any other interest in this Agreement or the Assistance Funds.
 6. Owner shall keep or cause all improvements now existing or hereafter erected on the Development insured against loss by fire, wind, and such other hazards as required by the Senior Lender and ~~{Syndicator/Investor}Syndicator~~ and approved by THDA, in its sole discretion. If not addressed by the Senior Lender or ~~{Syndicator/Investor}Syndicator~~ to THDA's sole satisfaction, THDA may deliver separate written guidelines to Owner that set forth the types and amounts of insurance that Owner must maintain for such periods and from such providers as THDA may reasonably require.
 7. Owner shall pay, or cause to be paid and discharged, all taxes and utility fees on the Property or the Development and any assessments and payments, usual or unusual, which shall be imposed upon or become due and payable or become a lien upon the Property, unless such amounts are contested by Owner and are bonded or insured over.
 8. Owner shall rehabilitate and/or construct all buildings and other improvements comprising the Development promptly and in good and workmanlike manner in conformance with all applicable requirements including, without limitation, all applicable zoning, subdivision, environmental protection, use and building codes, energy conservation standards, historic preservation requirements, laws, regulations and ordinances.
 9. Owner shall immediately report to THDA any indication of fraud, waste, abuse, or potentially criminal activity pertaining to the Assistance Funds.
 10. Owner shall at all times during the operation of the Development, employ qualified staff or engage a qualified property management company to provide management services for the Development.
 11. Owner shall cause a sign to be erected on the Property in accordance with Program Requirements as prescribed by THDA.
 12. In consideration for the fees and other benefits Owner receives from the Development and notwithstanding anything contrary in the Restrictive Covenants, Owner shall maintain the restricted uses set out in the Restrictive Covenants for the Development in accordance with the terms of the Restrictive Covenants, ~~throughout the entire 30-year extended use period.~~ [Notwithstanding the foregoing, Owner hereby waives all rights to give the written notice specified in Section 42(h)(6)(I) of the Code and any rights it may have to or under the qualified contract process (if such process is applicable)].
 13. In the event that at any time after the closing date any further action is reasonably necessary to carry out the purposes of this Agreement, the Owner shall take such further action (including the execution and delivery of such further instruments and documents) as THDA may reasonably request, at the sole cost and expense of the Owner (unless otherwise specified herein).
 - 13.14. Owner shall close all construction financing for the Development no later than July 1, 2010. In the event Owner has not closed construction financing for the Development by July 1, 2010, THDA's obligations under this Agreement shall automatically terminate; provided, however, THDA may, in its sole and absolute discretion, extend the date by which Owner must close construction financing for the Development.

ARTICLE VII
CONDITIONS PRECEDENT TO LOAN CLOSING

1. THDA shall not be obligated to close the loan evidencing the Assistance Funds until the following conditions are satisfied:
 - a. Evidence satisfactory to THDA, in its sole discretion, that all requirements, terms, covenants, conditions or obligations contained in this Agreement, the Program Description, the Conditional Commitment Letter, the Program Requirements, the Tax Credit Program Requirements, the Restrictive Covenants, the Reservation Notice, the Carryover Allocation Agreement, the First Note, the First Deed of Trust, or any agreement with Lender, ~~{Syndicator/Investor}~~ Syndicator or other person or entity providing funding for the Development that must be met prior to a closing, have been met or will be met prior to a closing of the Assistance Funds hereunder. ~~simultaneously upon execution of the Agreement.~~
 - ~~a.b.~~ Evidence satisfactory to THDA, in its sole discretion, that the Senior Financing and the Syndicator Equity, both in amounts as specified herein and upon terms approved by THDA, closed prior to or will close simultaneously with a closing of Assistance Funds hereunder.
 - ~~b.c.~~ No change in the amount of Senior Financing or ~~{Syndicator/Investor}~~ Syndicator Equity or, in the event of a reduction in Senior Financing or Syndication Equity, evidence satisfactory to THDA, in its sole discretion, that sufficient funds are available from sources other than Assistance Funds to meet the Development Budget set forth in Article I, Section 7 above.
 - d. Execution of the Intercreditor Agreement between and among THDA, Senior Lender and ~~{Syndicator/Investor}~~ Syndicator, if any.
 - e. Receipt of evidence from HUD that environmental clearance for the Development is complete and the Request for Release of Funds is approved.
 - ~~e.f.~~ Other conditions as THDA deems necessary, in its sole discretion.
2. In connection with the closing of the Assistance Funds Loan, the following documents must be fully executed and recorded, if necessary:
 - a. This Agreement
 - b. Assistance Note
 - c. Assistance Deed of Trust
 - d. Owner's Closing Certificate
 - e. General Partner/Managing Member Closing Certificate
 - f. Intercreditor Agreement among Owner, Senior Lender, Syndicator and THDA
 - g. HUD Subordination Agreement, if applicable
 - h. TCAP Addendum to Construction Contract, if necessary
 - ~~e.i.~~ Settlement Loan Closing Statement
 - ~~f.j.~~ Other documents as THDA may require (Collectively, the documents referenced in this Article VII, section 2 are referred to as the "Loan Documents").

ARTICLE VIII
RECORDKEEPING/REPORTING/AUDITS

1. Owner shall submit reports and data as required by THDA in its sole discretion to enable THDA to comply with federal reporting requirements.
2. Owner shall provide all reports and data, with form and substance satisfactory to THDA in its sole discretion, four (4) calendar days following the end of each quarter (quarters end on March 31, June 30, September 30, and December 31).
3. At a minimum, required reports shall include the following:
 - a. Name of Owner
 - b. Name of Development
 - c. Brief description of Development

- d. Location of Development – city, county, State, zip code
 - e. Number of jobs created
 - f. Description of jobs created
 - g. Names and zipcodes of contractors and subcontractors receiving more than \$25,000 of Assistance Funds
 - h. Names of the five (5) most highly compensated officers of Owner if, during the ~~preceeding~~preceding fiscal year of Owner-, Owner received more than \$25,000,000 of federal contracts and have 80% or more of their annual revenue from federal contracts
4. Owner shall submit a Rental Completion Report for the Development in the form attached hereto as Exhibit D prior to final disbursement of Assistance Funds hereunder.
- ~~4.5.~~ Owner shall submit any other reports and data as THDA deems necessary, in its sole discretion, to enable THDA to comply with~~meet~~ federal reporting requirements. FAILURE TO PROVIDE REPORTS REQUIRED BY THIS SECTION IN THE TIMEFRAME SET BY THDA MAY RESULT IN SUSPENSION OF ANY ONGOING DISBURSEMENTS BY THDA AND MAY RESULT IN ~~RECAPTURE OR~~ TERMINATION OF THIS AGREEMENT.
- ~~5.6.~~ Owner shall provide quarterly financial reports on Development operation as THDA deems necessary, in its sole discretion.
- ~~6.7.~~ THDA will post on its website at www.thda.org information about the format, frequency, duration of submission and other requirements as may be established, from time to time, by HUD, Treasury, OMB and/or the State.
- ~~7.8.~~ Owner shall maintain and preserve all documentation, books, documents, papers, contracts, and other records (written, electronic and otherwise) that support the Assistance Funds disbursed hereunder, that relate to this Agreement, the Owner, and the Development, and that demonstrate Owner has complied with the terms and conditions of this Agreement, the Program Requirements and the Tax Credit Program Requirements for a period of three (3) full years following completion or termination of this Agreement. Owner shall maintain all such records in accordance with the ~~f~~Accounting Manual for the Recipients of Grant Funds in the State of Tennessee, published by the Tennessee Comptroller of the Treasury~~f~~. Financial statements for Owner and/or the Development shall be prepared in accordance with generally accepted accounting principles by a qualified independent auditor in accordance with the Tax Credit Program Requirements and shall be submitted as THDA may require.
- ~~8.9.~~ OWNER ACKNOWLEDGES THAT THDA MAY AMEND THESE REPORTING AND RECORD KEEPING REQUIREMENTS FROM TIME TO TIME AND AGREES THAT ANY SUCH AMENDMENTS MADE TO REPORTING AND RECORD KEEPING REQUIREMENTS SHALL APPLY TO OWNER, THE DEVELOPMENT, AND THE FUNDING PROVIDED HEREUNDER UPON NOTICE FROM THDA, GIVEN AS SPECIFIED HEREIN.
- ~~9.10.~~ Owner acknowledges that all information provided to THDA by or concerning the Development, Owner, or funding provided hereunder is subject to disclosure under the Tennessee Open Records law.

ARTICLE IX
RIGHT OF ACCESS AND INSPECTION

1. Owner shall provide THDA and any representatives it may engage the right of entry and free access to the Development before, during and after the construction period, at any reasonable time, to inspect all work done, labor performed and materials furnished in and about the Development. Although THDA may, from time to time, inspect the progress of the work and determine the quality of its workmanship and materials going into the Development, Owner, upon its own responsibility, has selected architects, contractors, subcontractors, materials, and labor, or will make its own arrangements for the same and Owner acknowledges that THDA has no responsibility therefore or liability in connection therewith.
2. Owner shall provide THDA and its representatives, U.S. Treasury, the cognizant Treasury inspector general, the Comptroller General of the United States, HUD, the HUD Inspector General, the State, the Tennessee Comptroller of the Treasury or any of their respective authorized representatives, full access to Owner's facilities, the Development and to any pertinent books, documents, papers, contracts, plans, specifications, drawings and/or other records (written, electronic and otherwise) relating to Owner, the Development, and the Assistance Funds for monitoring, inspection, evaluation, and/or to make audits, examinations, excerpts, transcripts, and/or copies.

3. Owner shall make all audit, accounting or financial analysis work papers, notes and other documents available for review by THDA and its representatives, U.S. Treasury, the cognizant Treasury inspector general, the Comptroller General of the United States, HUD, the HUD Inspector General, the State, the Tennessee Comptroller of the Treasury or any of their respective authorized representatives, upon request, during normal working hours either while this Agreement is in progress or subsequent to the completion of this Agreement.

ARTICLE X
EVENTS OF DEFAULT

1. The occurrence of any one or more of the following shall constitute an event of default hereunder (“Event of Default”):
- ~~1.a.~~ Owner fails to perform, observe or meet any material requirement, term, covenant, condition or obligation contained in this Agreement, the Assistance Note, the Assistance Deed of Trust, the Program Description, the Conditional Commitment Letter, the Program Requirements, the Tax Credit Program Requirements, the Restrictive Covenants, the Reservation Notice, the Carryover Allocation Agreement, the First Note, the First Deed of Trust, any agreement with Senior Lender or ~~{Syndicator/Investor}~~ Syndicator, or any other agreement through which financial assistance is to be provided to assist in the construction and/or rehabilitation or operation of the Development, as determined in THDA’s sole discretion, and such failure is not remedied, waived or corrected within any applicable cure period, if any.
 - ~~2.b.~~ If at any time, any representation or warranty made by Owner shall be incorrect, in any material respect, as of the time made, or if at any time, any representation or warranty made by Owner shall become incorrect, in any material respect, due to changed circumstances allowed under this Agreement, and Owner does not notify THDA of such change in circumstance within ten (10) business days from such change.
 - ~~3.c.~~ Any disbursement is not accepted and applied to an Eligible Cost by Owner within three (3) days after THDA has drawn funds from HUD provided that THDA disbursed such funds to or on behalf of Owner ~~immediately upon receipt~~.
 - ~~d.~~ Failure to ~~repay~~ expend Assistance Funds only expended for costs that are not Eligible Costs and failure to immediately repay the same upon notice from THDA.
 - ~~e.~~ Failure to achieve ~~or expended for the Development if the Development is not (a)~~ 100% e Completion of Construction by the Completion Date.
~~ed by the Completion Date, or (b)~~
 - ~~f.~~ Failure to place the Development in service in compliance with Tax Credit Program Requirements, ~~or~~
 - ~~g.~~ Failure to make any payment, when due, under the Assistance Note.
 - ~~4.~~ ~~(e) otherwise in full compliance with Program Requirements and Tax Credit Program Requirements.~~
 - ~~5.~~ ~~Owner fails to comply with any requirements, covenants, terms, conditions or obligations contained in any other agreement with THDA and such non-compliance extends beyond any applicable cure period.~~
 - ~~6.h.~~ If at any time, title to any part of the Development is not satisfactory to THDA by reason of any lien, encumbrance or other defect (even though the same may have existed at the time of any prior disbursement), except the Permitted Encumbrances (as defined in the Assistance Deed of Trust) and Owner has failed to commence and proceed diligently to correct such lien, encumbrance or other defect within ten (10) days after notice to Owner, or if the title insurance company shall fail or refuse to insure any disbursement to be secured by the Deed of Trust as a valid second lien on the Development, subject only to those matters affecting title as may be approved by THDA in its sole discretion.
 - ~~7.i.~~ Owner assigns this Agreement or any advance to be made hereunder or any interest in either, or if the Development or any part thereof or any interest therein is conveyed, assigned, pledged or encumbered (except for Permitted Encumbrances as defined in the Assistance Deed of Trust) in any way other than as herein provided without the prior written consent of THDA.
 - ~~8.j.~~ If the improvements are partially or totally damaged or destroyed by fire or any other casualty or eminent domain proceedings result in condemnation of all or any part of the Development before Completion of Construction and the restoration thereof cannot be expected to be completed so that the Development will be completed on or before the Completion Date; provided, however, so long as

Owner is not otherwise in default under this Agreement and establishes to THDA's reasonable satisfaction that sufficient funds exist (including the Assistance Funds) to restore the Development, Owner shall rebuild the Development and extend the Completion Date (but not beyond the outside expenditure and completion deadlines imposed by HUD).

~~9.k.~~ If there is any cessation of construction of the Development for any period in excess of fourteen (14) successive calendar days, unless the cessation of construction shall have been caused by conditions beyond the control of Owner, including, without limitation, acts of God or the elements, fire, strikes, labor disputes, delays in delivery of material and disruption of shipping (each a "Force Majeure Event") and the conditions of each of subparagraphs (i), (ii), and (iii) below shall have been satisfied:

~~a.~~ (i) Owner shall have made adequate provision, reasonably acceptable to THDA, for the protection of materials stored on site and for the protection of the Development, to the extent then constructed and/or rehabilitated, against deterioration and against other loss or damage and theft;

~~b.~~ (ii) Owner shall have furnished to THDA satisfactory evidence that such cessation of construction will not adversely affect or jeopardize the rights of Owner under contracts relating to the construction of the Development; and

~~c.~~ (iii) From time to time, upon THDA's request therefore during any such cessation of construction, Owner shall furnish to THDA satisfactory evidence that, notwithstanding such cessation of construction, 100% Completion of Construction can be accomplished on or before the Completion Date.

~~10.l.~~ Except as specifically agreed to by THDA, in its sole discretion, if (i) Owner executes any chattel mortgage or other security agreement on any materials, fixtures or articles used in the construction and/or rehabilitation or operation of the Development or on articles of personal property located therein, or (ii) any such materials, fixtures or articles are not in accordance with the Development construction documents or are purchased pursuant to any conditional sales contract or other security agreement or otherwise so that the ownership thereof will not vest unconditionally in Owner free from encumbrances, or (iii) Owner does not furnish to THDA, upon request, the contracts, bills of sale, statements, receipted vouchers and agreements, or any of them, under which Owner claims title to such materials, fixtures or articles.

~~11.m.~~ Any statements, details, budgets or revisions submitted by Owner to THDA indicate, in THDA's sole discretion, that the estimated cost of construction or rehabilitation of the Development is in excess of the amount of funds available to Owner to complete and pay for such construction or rehabilitation and Owner is unable to provide sufficient information to THDA, within fourteen (14) days after notice provided as specified herein, to demonstrate that additional funding, as required by THDA in its reasonable discretion, is available to Owner for the Development.

~~12.n.~~ Owner fails to comply with any requirement of any governmental entity having jurisdiction over the Development (the "Government Authority") by the later to occur of the last day of the time period provided by the Governmental Authority or within fourteen (14) days after notice of such requirement shall have been given to Owner by such Governmental Authority, or fails to furnish to THDA, upon request, official reports made by any such Governmental Authority.

~~13.o.~~ A petition in bankruptcy or for reorganization or for an arrangement under any bankruptcy or insolvency law or for a receiver or trustee for any of its property is filed by Owner, or a petition in bankruptcy or for reorganization or for an arrangement under any bankruptcy or insolvency law or for a receiver or trustee of any of its property is filed against Owner which is not dismissed within sixty (60) days, or a receiver or trustee of any property of Owner is appointed and is not discharged within sixty (60) days, or Owner makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts, or Owner is adjudged insolvent by any State or Federal court of competent jurisdiction, or an attachment of execution is levied against any substantial portion of the property of Owner which is not discharged within sixty (60) days.

~~14.2.~~ Notwithstanding any provision hereof to the contrary, no Event of Default shall be deemed to occur unless and until THDA provides notice to Owner, as specified in Article XIII, section 4 herein, of the Event of Default and Owner fails to cure the Event of Default within thirty (30) days of the date of the notice from THDA, or, if the Event of Default cannot reasonably be cured within thirty (30) days, Owner fails to commence cure of the Event of Default within ten (10) days of the date of the notice from THDA and/or fails to diligently pursue cure of the Event of Default.

~~15. THDA shall provide Private Lender and Syndicator with a copy of any written notice of an Event of Default provided to Owner pursuant to this Deed of Trust. THDA hereby agrees that the cure of any Event of Default made or tendered by Private Lender or the Syndicator shall be accepted or rejected by THDA on the same basis as if the cure were made or tendered by Owner and, if accepted by THDA, shall be deemed a cure by Owner.~~

ARTICLE XI
ENFORCEMENT/REMEDIES IN THE EVENT OF DEFAULT

1. If an Event of Default has been deemed to occur under this Agreement, THDA may, in its sole discretion, take any one or more of the following actions:
 - ~~1.a.~~ Temporarily halt disbursements until the Event of Default is corrected. Notwithstanding the foregoing, THDA may make any disbursement if any such Event of Default exists without thereby waiving the right to demand payment of the indebtedness and to foreclose and without becoming liable to make any other or further disbursement hereunder.
 - ~~2.b.~~ Disallow all or any part of the cost of any activity or action that is not an Eligible Cost and in connection therewith, Owner shall, immediately upon demand, reimburse THDA any funds used for other than Eligible Costs. If not paid, an action will arise immediately for collection of any funds spent by Owner for other than Eligible Costs and will include fees and costs associated with enforcement and collection of such funds by THDA.
 - ~~3.c.~~ Suspend or terminate, in whole or in part, this Agreement or funding made available hereunder, in which case, all obligations of THDA under this Agreement, at THDA's option, shall cease. Notwithstanding the foregoing, Owner shall not be relieved of liability to THDA.
 - ~~4.d.~~ Require repayment of~~capture~~ the full amount of Assistance Funds disbursed to the date of the Event of Default, provided, however, such repayment obligation shall be non-recourse against Owner and its [partner(s)/member(s)].
 - ~~5.e.~~ Declare the indebtedness evidenced ~~and secured~~ by the Assistance Note and secured by the Assistance Deed of Trust immediately due and payable and foreclose under the Assistance Deed of Trust, provided, however, such repayment obligation shall be non-recourse against Owner and its [partner(s)/member(s)].
 - ~~6.f.~~ Withhold Assistance Funds from other developments involving entities or individuals related to the general partner or managing member of the Owner or the developer of the Development.
 - ~~g.~~ Take any and all other legal remedies as may be available including, without limitation, seeking specific performance.
- ~~7.2.~~ Owner's [general and limited partners/members and managing member] shall have the right, but not the obligation, to cure defaults hereunder in the same manner as Owner.

ARTICLE XII
ASSET MANAGEMENT/COMPLIANCE MONITORING

1. Owner acknowledges that THDA must perform asset management functions so as to ensure compliance with Program Requirements and Tax Credit Program Requirements and to assure the long-term viability of the Development. Owner covenants to assist THDA and to provide information, materials and documentation, as THDA determines necessary, in THDA's sole discretion, to fulfill obligations THDA may have in connection with performing asset management functions.
2. Owner acknowledges that THDA must perform financial management functions so as to ensure compliance with Program Requirements and Tax Credit Program Requirements and to assure the long-term viability of the Development. Owner covenants to assist THDA and to provide information, materials and documentation, as THDA determines necessary, in THDA's sole discretion, to fulfill obligations THDA may have in connection with performing financial management functions.
3. Owner shall at all times expend and account for Assistance Funds in accordance with federal and state laws and procedures for expending and accounting to permit preparation of required reports and to support the application of funding expenditures adequate to establish that such Assistance Funds have not been used in violation of the restrictions and prohibitions of applicable statutes. Effective control and accountability must be maintained for all Assistance Funds.
4. Owner shall at all times maintain program, financial, and accounting records sufficient to demonstrate that Assistance Funds were used in compliance with the Program Requirements, the Tax Credit Program Requirements and any other applicable requirements.

5. Owner shall pay reasonable fees as THDA, in its sole discretion, may determine in connection with required asset management and financial management functions and set forth in a fee schedule to be provided by THDA. Assistance Funds shall not be used to pay these fees.

ARTICLE XIII
GENERAL CONDITIONS

The following conditions shall be applicable throughout the term of this Agreement:

1. If THDA, at any time during construction, reasonably determines that there is any conflict resulting from any identity of interest by and between Owner and a construction party, including, but not limited to a determination that the Development construction is, in any way, likely to be delayed or will unreasonably escalate in price, THDA may, in its sole discretion, require Owner to terminate the related party, employ an independent construction manager, or take whatever other or additional action THDA deems necessary to ensure the timely and satisfactory Completion of Construction by the Completion Date and Assistance Funds shall not be available to pay costs attendant thereto.
2. No disbursement of Assistance Funds hereunder shall constitute a waiver of any of the conditions of THDA's obligation to make further advances nor, in the event Owner is unable to satisfy any such condition, shall any waiver of such condition have the effect of precluding THDA from thereafter declaring such inability to be an Event of Default as herein provided.
3. All conditions of the obligation of THDA to make disbursements hereunder are imposed solely and exclusively for the benefit of THDA and its assigns and no other person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that THDA will refuse to make advances in the absence of strict compliance with any or all thereof and no other person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by THDA at any time if in its sole discretion it deems it advisable to do so.
4. All consents, demands or other communications required or contemplated by this Agreement shall be in writing and shall be made by one of the following methods: (a) certified, first class mail, return receipt requested and postage prepaid; (b) overnight courier service with an asset tracking system; (c) facsimile transmission to the fax numbers listed below; (d) electronic mail transmission to the e-mail addresses listed below; or (e) at such other addresses the parties hereto may designate in writing:

To THDA: Tennessee Housing Development Agency
404 James Robertson Parkway, Suite 1200
Nashville, TN 37243-0900
Attention: Ed Yandell
Phone: (615) 815-2142
Fax: (615) 564-2700
E-mail: eyandell@thda.org

To Owner: _____

All consents, demands, or other communications from THDA to Owner shall be considered effectively given as of the date sent via one of the methods specified above. In addition, notices, instructions or other communications from THDA to Owner shall be deemed given when posted by THDA on its website at www.thda.org.

All communications from Owner to THDA shall be deemed given when received by THDA at the address specified above.

5. Inspections and approvals related to the Development, and the workmanship and materials used therein impose no responsibility or liability of any nature whatsoever on THDA. THDA's sole obligation hereunder is to disburse Assistance Funds if and to the extent required by this Agreement.
6. All rights, powers and remedies herein given to THDA are cumulative and not alternative and are in addition to all statutes or rules of law; any forbearance or delay by THDA in exercising the same shall not be deemed to be a waiver thereof, and the exercise of any right or partial exercise thereof shall not preclude the further exercise thereof, and the same shall continue in full force and effect until specifically waived by an instrument in writing executed by THDA. All representations and covenants by Owner shall survive the

making of disbursements of Assistance Funds and the provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

7. Owner agrees that the Assistance Note and the Assistance Deed of Trust shall be made subject to all the terms, covenants, conditions, obligations, stipulations, and agreements contained in this Agreement to the same extent and effect as if fully set forth in and made a part of the Assistance Note and the Assistance Deed of Trust, and Owner and THDA agree that this Agreement is made subject to all the terms, covenants, conditions, obligations, stipulations and agreements contained in the Assistance Note and the Assistance Deed of Trust to the same extent and effect as if fully set forth herein and made a part of this Agreement.
8. THDA may assign this Agreement and the Assistance Note and the Assistance Deed of Trust to any other person, firm or corporation provided that all of the provisions of this Agreement shall continue to apply to the Assistance Note and the Assistance Deed of Trust. In the event of such assignment, it shall be deemed to be a compliance by THDA with this Agreement and to have been made in pursuance of this Agreement and not to be a modification hereof and the advances made by any such assignee shall be evidenced and secured by the Assistance Note and the Assistance Deed of Trust.
9. This Agreement may not be assigned or transferred by Owner by operation of law or otherwise and Owner may not delegate its duties hereunder without the prior written consent of THDA. Any approval of an assignment and/or reimbursement of payment to any third party on behalf of Owner shall not establish any legal relationship between THDA and the other third party, and under no circumstances shall THDA be held liable for any act or omission pursuant to such an assignment.
10. Notwithstanding anything to the contrary contained herein or elsewhere, the [Assistance Funds made available hereunder](#), ~~loan~~ evidenced by the Assistance Note and [secured by](#) the Assistance Deed of Trust, shall be non-recourse to the Owner and any partner, member or shareholder of Owner.
11. This Agreement is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Agreement supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral. This Agreement may be amended only by a written amendment executed by all parties hereto. Notwithstanding the foregoing, THDA reserves the right to amend, modify, change, clarify, or interpret this Agreement or any other requirement applicable to Owner and the Development as determined necessary by THDA, in its sole discretion, to meet applicable federal requirements by posting such information to the THDA website at www.thda.org or by otherwise providing notice as specified herein. OWNER ACKNOWLEDGES AND AGREES THAT FROM AND AFTER THE DATE OF SUCH POSTING OR OTHER NOTICE AS PROVIDED HEREIN, ALL SUCH AMENDMENTS, MODIFICATIONS, CHANGES, CLARIFICATIONS, OR INTERPRETATIONS MADE BY THDA SHALL APPLY TO OWNER AND/OR THE DEVELOPMENT AS IF INCLUDED HEREIN AS OF THE DATE HEREOF.
12. Owner warrants that no part of amounts disbursed or paid under this Agreement shall be paid directly or indirectly to an employee or official of THDA or of the State as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to Owner in connection with the loan evidenced by the Assistance Note and secured by the Assistance Deed of Trust and/or any work contemplated or performed relative to this Agreement.
13. The undersigned certifies to the best of his or her knowledge that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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 the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. Owner acknowledges and agrees that the certifications made in this paragraph are material representations of fact upon which reliance was placed when this transaction was made or entered into.
14. The undersigned certifies to the best of his or her knowledge that if any funds other than Federal appropriated funds have been paid or will be paid 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Owner acknowledges and agrees that the certifications made in this paragraph are material representations of fact upon which reliance was placed when this transaction was made or entered into.

15. Owner acknowledges and agrees that language in paragraphs 134 and 145 above shall be included in all documents related to the Development as THDA may direct in its sole discretion and all certifications and disclosures related to the Development, as required by THDA in its sole discretion, shall be made.
16. Owner hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of Owner on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal or State constitutional, or statutory law. Owner shall, upon request, show proof of efforts to prevent such ~~non~~ discrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
17. Failure by any party to this Agreement to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this ~~a~~ Agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision.
18. The parties hereto, in the performance of this Agreement, shall not be deemed to be acting as employees, partners, joint venturers, or associates of one another. THDA and Owner expressly acknowledge that they are independent contracting entities and that nothing in this Agreement shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Owner, being an independent contractor and not an employee of THDA, agrees to carry adequate public liability and other appropriate forms of insurance, including ~~adequate public liability and other~~ appropriate forms of insurance on Owner's employees, and to pay all applicable taxes incident to this Agreement.
19. THDA shall have no liability with respect to the Development or Owner or any party connected with the Development or Owner except as specifically provided in this Agreement.
20. This Agreement and all matters relating thereto shall be governed by, construed, and interpreted in accordance with the laws of the State of Tennessee. Owner acknowledges and agrees that any rights or claims against THDA or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.
21. If any terms and conditions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Agreement are declared severable.
22. Section and Article headings are for reference purposes only and shall not be construed as part of this Agreement.
23. The Agreement is subject to the availability of Assistance Funds. In the event that Assistance Funds are not available, THDA reserves the right to terminate this Agreement upon written notice to the Owner. Such termination shall not be deemed a breach of this Agreement by THDA. Upon such termination, Owner shall have no right to recover from THDA any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
24. The provisions of this Agreement are intended to comply with the applicable Tax Credit Program Requirements and Program Requirements, as the same may be amended or interpreted from time to time by regulation or public pronouncement from HUD, Treasury or the IRS. If any provision of this Agreement is inconsistent with any provisions of Tax Credit Program Requirements, Program Requirements, or official interpretations thereof, then such inconsistent provision(s) shall be construed and applied in a manner so as to comply with applicable Tax Credit Program Requirements and Program Requirements.
25. Owner shall indemnify and hold harmless THDA and THDA's directors, officers, agents, and employees from and against any and all claims, liabilities, damages, losses, injuries, costs, expenses, losses and causes of action, of every kind whatsoever, that are paid incurred, suffered by or asserted against THDA, as a direct or indirect result of its provision of Assistance Funds and/or tax credits to support the construction and operation of the Development or which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of Owner, its employees, or any person acting for or on its or their behalf relating to this Agreement. Owner further agrees it shall pay all costs, including court costs, and all fees, including reasonable attorney fees for THDA, incurred to enforce the terms of this Agreement or otherwise enforce the obligations of Owner to THDA.

26. Owner expressly agrees to indemnify, defend and hold harmless THDA from any and all environmental liabilities, claims, damages, injuries, costs, expenses and losses, of every kind whatsoever, that are paid, incurred, suffered by or asserted against THDA, as a direct or indirect result of the presence of any hazardous substance on the Property or the escape, seepage, leakage, spillage, discharge, emission or release thereof on the Property.
27. In the event of any suit or claim, threatened or filed against the Property, the Development, Owner, and/or THDA in connection with the Property and/or the Development, Owner shall give THDA immediate notice thereof and shall provide all assistance required by THDA in THDA's defense. THDA shall give Owner written notice of any such claim or suit, and Owner shall have full right and obligation to conduct Owner's own defense thereof. Nothing contained herein shall be deemed to accord to Owner, through its attorney(s), the right to represent THDA in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.
28. Owner certifies, to the best of its knowledge and belief, that Owner, Owner's principals and Owner's contractor:
 - a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
 - b. have not within a three (3) year period preceding this Agreement been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Agreement had one or more public transactions (Federal, State, or Local) terminated for cause or default.
29. Notwithstanding anything contained herein to the contrary, THDA may exercise all rights, powers and remedies under this Loan Agreement as provided under TCAP Program Requirements and any laws, regulations, interpretations, and guidance related thereto or issued in connection therewith by the United States Department of Treasury, all as may be supplemented, amended or modified from time to time.
30. Owner and the undersigned acknowledge that Tennessee Code Annotated, Section 13-23-133, makes it a Class E felony for any person to knowingly make, utter or publish a false statement of substance for the purpose of influencing THDA to allow participation in any of its programs, including the Low Income Housing Tax Credit Program, and the TCAP Program. Owner and the undersigned further acknowledge that all statements, representations, warranties, covenants and agreements contained in and documentation or materials submitted in connection with Owner, the Development, under the Tax Credit Program Requirements or under the Program Requirements are statements of substance made for the purpose of influencing THDA to provide Assistance Funds to the Development.
31. This Agreement may be executed in various counterparts each of which shall be an original but all of which shall constitute one instrument.
32. Time is of the essence of this Agreement.

ARTICLE XIV
SPECIAL PROVISIONS REQUIRED BY THE STATE OF TENNESSEE

This Agreement provides a loan of Assistance Funds to Owner that is funded in whole or in part under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, (Recovery Act). Owner shall ensure that all applicable requirements, including but not limited to those set forth herein, of the Recovery Act are met and that Owner provides information to THDA as required.

Owner shall comply with the following, to the extent applicable to Assistance Funds:

1. Federal Grant Award Documents, as applicable.
2. Executive Office of the President, Office of Management and Budget (OMB) Guidelines as posted at www.whitehouse.gov/omb/recovery_default/, as well as OMB Circulars, including but not limited to A-102 and A-133 as posted at www.whitehouse.gov/omb/financial_offm_circulars/.
3. Office of Tennessee Recovery Act Management Directives.

4. The Recovery Act, including but not limited to the following sections of that Act:
- a. Section 1604 – Disallowable Use. No funds pursuant to this Agreement may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
 - b. Section 1512 – Reporting and Registration Requirements. Owner shall report on use of Recovery Act funds provided through this Agreement. Information from these reports will be made available to the public.
 - c. Section 1553 – Recovery Act Whistleblower Protections. An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee’s duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of one or more of the following related to the implementation or use of covered funds:
 - (1) gross mismanagement,
 - (2) gross waste,
 - (3) substantial and specific danger to public health or safety,
 - (4) abuse of authority, or
 - (5) violation of law, rule, or regulation (including those pertaining to the competition for or negotiation of a contract).

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Owner and any subcontractor shall post notice of the rights and remedies as required under Section 1553. (Refer to Section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 located at www.recovery.gov, for specific requirements of this section and prescribed language for the notices.)

- d. Section 902 – Access Of Government Accountability Office. Owner shall provide that the Comptroller General and his representatives are authorized:
 - (1) to examine any records of Owner or any of its subcontractors, that directly pertain to, and involve transactions relating to, this Agreement or a subcontract; and
 - (2) to interview any officer or employee of Owner or any of its subcontractors regarding such transactions.
- e. Section 1514 – Inspector General Reviews. Any inspector general of a federal department or executive agency shall review, as appropriate, any concerns raised by the public about specific investments using funds made available in the Recovery Act. Any findings of such reviews not related to an ongoing criminal proceeding shall be relayed immediately to the head of the department or agency concerned. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in the Recovery Act, shall be posted on the inspector general’s website and linked to the website established by Recovery Act Section 1526, except that portions of reports may be redacted to the extent the portions would disclose information that is protected from public disclosure under sections 552 and 552a of title 5, United States Code.
- f. Section 1515 – Access of Offices of Inspector General to Certain Records and Employers. With respect to this Agreement, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:
 - (1) to examine any records, of Owner or any of its subcontractors, that pertain to and involve transactions relating or pursuant to this Agreement; and
 - (2) to interview any officer or employee of Owner or any subcontractors regarding such transactions.

- g. Section 1606 – Wage Rate Requirements. All laborers and mechanics employed by Owner pursuant to this Agreement shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference.

For purposes of this Agreement, laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards.

- h. “Buy American” provisions do not apply, unless the Development is a mixed-finance development and a public housing authority or other governmental entity or any instrumentality of either is the general partner of owner or otherwise exercises significant functions within Owner.
5. Owner agrees to comply with any modifications or additional requirements that may be imposed by law and future guidance and clarifications of Recovery Act requirements.
6. If Owner enters into one or more subcontracts in connection with construction or rehabilitation of the Development under this Agreement, each subcontract shall contain provisions specifically imposing on the subcontractor all applicable requirements set forth in this Article XV.

[Signatures on next page]

Specimen

[EXECUTION PAGE FOR TCAP LOAN AGREEMENT]

IN WITNESS WHEREOF, the parties hereto, with intent to be legally bound hereby, have caused this Agreement to be executed on the day and year first above written.

THDA: Tennessee Housing Development Agency

By: _____

Name: Ed Yandell
Title: Director of Multifamily Development

Specimen

[EXECUTION PAGE FOR TCAP LOAN AGREEMENT]

IN WITNESS WHEREOF, the parties hereto, with intent to be legally bound hereby, have caused this Agreement to be executed on the day and year first above written.

OWNER: _____

By: _____

Name: _____

Title: _____

Specimen

[Exhibit A](#)

[The Property](#)

Specimen

Exhibit B

Sources and Uses of Funds

Specimen

Specimen

TENNESSEE HOUSING DEVELOPMENT AGENCY
TAX CREDIT ASSISTANCE PROGRAM
PROMISSORY NOTE

\$ _____, Tennessee
_____, 2010~~09~~

For value received, _____ (“Maker”) promises to pay to the order of the Tennessee Housing Development Agency (“THDA”) the principal sum of _____ and 00/100 Dollars (\$_____) (the “TCAP Funds”), in legal tender, at zero percent (0%) per annum, without demand or notice, as provided herein. Payment, if and when due, shall be made at the offices of THDA or such other place as THDA may designate.

The entire principal sum of this Note shall be due and payable on the date that is the end of the fifteen year period that commences on the first day of the taxable year in which the first building which is part of the Property is placed in service as low-income housing in accordance with the Tax Credit Program Requirements (the “Maturity Date”) or in the event of a default hereunder, as described below. So long as there is no default hereunder, ~~or under that certain Deed of Trust of even date herewith (the “TCAP Deed of Trust”) encumbering the property located at _____ (the “Property”), such performance shall be deemed adequate consideration so that, subject to the sole discretion of THDA, all principal sums advanced hereunder may be deemed to be fully paid and discharged on the Maturity Date. the entire principal sum due and payable under this Note shall be forgiven at the end of the fifteen (15) year period that commences on the first day of the taxable year in which the first building which is part of the Property is placed in service as low income housing in accordance with the Tax Credit Program Requirements.~~

The terms of repayment, without limitations, may be extended or amended in writing by mutual consent of the parties at any time for any reason.

A default shall occur hereunder upon the occurrence of any of the following events following notice to Maker and opportunity to cure as specified in the TCAP Loan Agreement (as defined below):

1. The TCAP Funds advanced to Maker hereunder are not used in accordance with the Program Requirements, the Tax Credit Program Requirements and that certain written agreement between Owner and THDA dated _____, 2010~~09~~, as may be revised, modified or amended from time to time (the “TCAP Loan Agreement”);
2. Liens, other than Permitted Exceptions under the TCAP Deed of Trust, encumber the Property without the express written consent of THDA;
3. All or any interest in the Property or Maker is sold, transferred, conveyed or encumbered, except as permitted in the TCAP Loan Agreement;
4. The insolvency of Maker or the commencement of legal or equitable proceedings under any bankruptcy, reorganization, insolvency, moratorium or other law or laws for the relief of the Maker, whether commenced by the Maker or by some other party, including, without limitation, the appointment of a receiver, trustee, or liquidator over Maker or any property of Maker which proceedings are not dismissed within sixty (60) days; or
5. Maker fails to comply, in all material respects, with all requirements, terms, provisions or conditions of this Note, the TCAP Loan Agreement, the Restrictive Covenants, the TCAP Deed of Trust, all Program Requirements, the Tax Credit Program Requirements, and/or the First Deed of Trust; ~~or~~

Notwithstanding anything to the contrary contained herein or elsewhere, ~~neither the obligation to repay this Note shall be non-recourse and the personal liability of Maker nor and any partner, member or shareholder of Maker shall have any personal liability for the payment of principal due and payable under this Note, except for payment of all fees and expenses, including reasonable attorney fees, all court costs and expenses and all costs and expenses of collection, incurred by THDA upon the occurrence of an event of default hereunder, or under the TCAP Loan Agreement, the TCAP Deed of Trust, the Restrictive Covenants, the Program Requirements and/or other Loan Documents. to pay the principal of and interest on the debt evidenced by this Note shall be limited to: (a) Maker’s interest in the Property; and (b) the rents and profits received in connection with the Property following an uncured Event of Default.~~ THDA shall not seek any judgment for a deficiency against Maker or any partner, member or shareholder of Maker. ~~Nothing contained herein, however, shall be deemed to prejudice the rights of THDA to recover from Maker all funds, damages and costs (including, without limitation, attorney’s fees and court costs) incurred by THDA as a result of fraud or material misrepresentation by or on behalf of Owner.~~

In the event of a default under this Note, the entire unpaid principal sum due and payable under this Note, together with any amounts due under the TCAP Deed of Trust, the TCAP Loan Agreement, the Restrictive Covenants and/or the Program Requirements shall, at the option of THDA, be immediately due and payable without demand or notice. Any payment not made when due shall bear interest at the maximum lawful rate. Should efforts be made to collect this Note, or any part of the indebtedness evidenced hereby, by law or through an attorney, Maker shall pay all reasonable attorneys’ fees and expenses, all court costs and expenses, and all costs and expenses of collection. Any failure on the part of THDA to exercise its rights hereunder shall not, in any event, be considered a waiver of any such rights nor shall such failure preclude THDA from exercising such rights at any time. Maker hereby waives all rights of protest, notice of demand, protest and demand, notice of protest, presentment, demand, dishonor and non-payment. The terms of this Note shall be construed in accordance with the laws of the State of Tennessee and any applicable Federal laws or regulations. Terms not expressly defined here in shall have the meanings ascribed to them in the TCAP Loan Agreement, the TCAP Deed of Trust, or the Intercreditor Agreement.

This Note may not be assigned by Maker or assumed without THDA's express written consent.

This Note shall not be prepaid prior to the end of the grant period which begins on the date hereof and ends on the date THDA submits the financial status report to HUD for financial close out of the TCAP Funds made available hereunder. Thereafter, this Note may be prepaid, in whole or in part, at any time, without payment of any premium or penalty, only with THDA's prior written consent.

Notwithstanding anything contained herein to the contrary, THDA may exercise all rights, powers and remedies under this Promissory Note as provided under the Tax Credit Assistance Program and any laws, regulations, interpretations, and guidance related thereto or issued in connection therewith by the United States Department of Housing and Urban Development, as may be supplemented, amended or modified from time to time.

MAKER:

By: _____

Title: _____

Specimen

**TENNESSEE HOUSING DEVELOPMENT AGENCY
TAX CREDIT ASSISTANCE PROGRAM
PROMISSORY NOTE**

\$ _____, Tennessee
_____, 2010

For value received, _____ (“Maker”) promises to pay to the order of the Tennessee Housing Development Agency (“THDA”) the principal sum of _____ and 00/100 Dollars (\$_____) (the “TCAP Funds”), in legal tender, at zero percent (0%) per annum, without demand or notice, as provided herein. Payment, when due, shall be made at the offices of THDA or such other place as THDA may designate.

The entire principal sum of this Note shall be due and payable on the date that is thirty (30) years from the date hereof (the “Maturity Date”) and in the event of a default hereunder (as described below), provided, however, THDA, in THDA’s sole discretion, may forgive repayment of this Note at the Maturity Date so long as there is no default hereunder, or under that Certain Deed of Trust of even date herewith (the “TCAP Deed of Trust”) encumbering the property located at _____ (the “Property”).

The terms of repayment, without limitations, may be extended or amended in writing by mutual consent of the parties at any time for any reason. This Note shall not be prepaid prior to the end of the grant period which begins on the date hereof and ends on the date THDA submits the financial status report to HUD for financial close out of the TCAP Funds made available hereunder. Thereafter, this Note may be prepaid, in whole or in part, without payment of any premium or penalty, only with THDA’s prior written consent.

A default shall occur hereunder upon the occurrence of any of the following events, following notice to Maker and opportunity to cure as specified in the TCAP Loan Agreement (as defined below):

1. The TCAP Funds advanced to Maker hereunder are not used in accordance with the Program Requirements, the Tax Credit Program Requirements and that certain written agreement between Owner and THDA dated _____, 2010, as may be revised, modified or amended from time to time (the “TCAP Loan Agreement”);
2. Liens, other than Permitted Exceptions under the TCAP Deed of Trust, encumber the Property without the express written consent of THDA;
3. All or any interest in the Property or Maker is sold, transferred, conveyed or encumbered, except as permitted in the TCAP Loan Agreement;
4. The insolvency of Maker or the commencement of legal or equitable proceedings under any bankruptcy, reorganization, insolvency, moratorium or other law or laws for the relief of the Maker, whether commenced by the Maker or by some other party, including, without limitation, the appointment of a receiver, trustee, or liquidator over Maker or any property of Maker which proceedings are not dismissed within sixty (60) days; or
5. Maker fails to comply, in all material respects, with all requirements, terms, provisions or conditions of this Note, the TCAP Loan Agreement, the Restrictive Covenants, the TCAP Deed of Trust, all Program Requirements, the Tax Credit Program Requirements, and/or the First Deed of Trust.

Notwithstanding anything to the contrary contained herein or elsewhere, neither Maker nor any partner, member or shareholder of Maker shall have any personal liability for the payment of principal due and payable under this Note except for payment of all fees and expenses incurred by THDA, including reasonable attorney fees and all court costs, incurred by THDA upon the occurrence of an uncured event of default hereunder, under the TCAP Loan Agreement, the TCAP Deed of Trust or other Loan Documents. THDA shall not seek any judgment for a deficiency against Maker or any partner, member or shareholder of Maker.

In the event of a default under this Note, the entire unpaid principal sum due and payable under this Note, together with any amounts due under the TCAP Deed of Trust, the TCAP Loan Agreement, the Restrictive Covenants and/or the Program Requirements shall, at the option of THDA, be immediately due and payable without demand or notice. Any payment not made when due shall bear interest at the maximum lawful rate. Should efforts be made to collect this Note, or any part of the indebtedness evidenced hereby, by law or through an attorney, Maker shall pay all reasonable attorneys’ fees and expenses, all court costs and expenses, and all costs and expenses of collection. Any failure on the part of THDA to exercise its rights hereunder shall not, in any event, be considered a waiver of any such rights nor shall such failure preclude THDA from exercising such rights at any time. Maker hereby waives all rights of protest, notice of demand, protest and demand, notice of protest, presentment, demand, dishonor and non-payment. The terms of this Note shall be construed in accordance with the laws of the State of Tennessee and any applicable Federal laws or regulations. Terms not expressly defined here in shall have the meanings ascribed to them in the TCAP Loan Agreement, the TCAP Deed of Trust, or the Intercreditor Agreement.

This Note may not be assigned by Maker or assumed without THDA’s express written consent.

Notwithstanding anything contained herein to the contrary, THDA may exercise all rights, powers and remedies under this Promissory Note as provided under the Tax Credit Assistance Program and any laws, regulations, interpretations, and guidance related thereto or issued in connection therewith by the United States Department of Housing and Urban Development, as may be supplemented, amended or modified from time to time.

MAKER:

By: _____

Title: _____

**TENNESSEE HOUSING DEVELOPMENT AGENCY
TAX CREDIT ASSISTANCE PROGRAM
PROMISSORY NOTE**

\$ _____, Tennessee
_____, 2010

For value received, the undersigned, _____, a _____, ("Maker"), promises to pay to Tennessee Housing Development Agency ("THDA") the principal sum of _____ and 00/100 Dollars (\$ _____) (the "TCAP Funds"), in legal tender, at zero percent (0%) per annum, without demand or notice, as provided herein. Payment, if and when due, shall be made at the offices of THDA or such other place as THDA may designate.

This loan is payable as follows:

- (a) Commencing on the annual anniversary of the date hereof, payment of principal only shall be made from surplus of revenues generated by that certain low income housing tax credit development known as _____ (TN__-__) (the "Development) over expenses incurred by the Development after payment of all of the following: (i) all payments required under the Senior Financing (as defined in that certain TCAP Loan Agreement dated _____, 2010 (the "TCAP Loan Agreement"), (ii) any and all partnership fees or payments, (iii) operating expense loans, (iv) deferred developer's fees, (v) asset management fees, (vi) property management fees, (vii) priority distributions or payments to the general partner or investor or (viii) any other fees or payments due and payable by Maker, as approved by THDA in its sole discretion ("Excess Revenue"). Notwithstanding the foregoing, prior to the end of the Grant Period, 50% of Excess Revenue shall be deposited into the operating reserve account established for the Development and the other 50% of Excess Revenue may be retained by Maker. After the end of the Grant Period, 50% of Excess Revenue shall be applied to repayment hereunder and the other 50% of Excess Revenue may be retained by Maker. For purposes of this Note, the end of the Grant Period shall be that date upon which THDA submits the financial status report to HUD for final closeout of the TCAP Funds made available hereunder.
- (b) There will be no interest due and payable on the TCAP Loan.
- (c) The maturity date of this Note is thirty (30) years from the date hereof.
- (d) Notwithstanding the above, any balance of principal remaining unpaid shall be due and payable upon an event of default, as hereinafter defined, under the Loan Documents (as defined in the TCAP Loan Agreement), upon sale of the Development, upon refinancing of the Senior Financing (as defined in the TCAP Loan Agreement) or upon maturity, whichever occurs earlier.

The terms of repayment, without limitations, may be extended or amended in writing by mutual consent of the parties at any time for any reason.

This Note and the TCAP Deed of Trust may be assumable, subject to THDA's prior written consent, in the event of an approved sale or transfer of the Development. This Note shall not be prepaid prior to the end of the Grant Period. Thereafter, this Note may be prepaid, in whole or in part, at any time, only with THDA's prior written consent.

Simultaneously with the execution of this Note, Maker has executed and delivered to THDA the TCAP Deed of Trust which encumbers the Development and the property upon which it is located as security for this Note. All of the terms, covenants, provisions, conditions, stipulations and agreements contained in the Loan Documents (as defined in the TCAP Loan Agreement), are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein, and Maker covenants and agrees to perform the same, or cause the same to be kept and performed, strictly in accordance with the terms and provisions thereof.

Maker agrees that its obligations hereunder shall be and remain in full force and effect, and in no way impaired until it makes full and actual payment of the principal sum and fees due or to become due under the Loan Documents to THDA unless the terms of this Note are modified in writing by THDA. Notwithstanding anything to the contrary contained herein or elsewhere, neither Maker nor any partner, member, or shareholder of Maker shall have any personal liability for the payment of principal due and payable under this Note, except for payment of all fees and expenses, including reasonable attorney fees and all court costs, incurred by THDA upon the occurrence of an event of default under this Note, the TCAP Deed of Trust, the TCAP Loan Agreement or other Loan Documents. Notwithstanding anything to the contrary contained herein or elsewhere, THDA shall not seek any judgment for a deficiency against Maker or any partner, member or shareholder of Maker. THDA shall look solely to the Development for satisfaction of the outstanding indebtedness thereunder.

A default shall occur hereunder upon the occurrence of any of the following events, following notice to Maker and opportunity to cure as specified in the TCAP Loan Agreement:

- 1. The TCAP Funds advanced to Maker hereunder are not used in accordance with the Program Requirements, the Tax Credit Program Requirements and the TCAP Loan Agreement;
- 2. Liens, other than Permitted Exceptions under the TCAP Deed of Trust, encumber the Property without the express written consent of THDA;
- 3. All or any interest in the Property or Maker is sold, transferred, conveyed or encumbered, except as permitted in the TCAP Loan Agreement;

4. The insolvency of Maker or the commencement of legal or equitable proceedings under any bankruptcy, reorganization, insolvency, moratorium or other law or laws for the relief of the Maker, whether commenced by the Maker or by some other party, including, without limitation, the appointment of a receiver, trustee, or liquidator over Maker or any property of Maker which proceedings are not dismissed within sixty (60) days; or
5. Maker fails to comply, in all material respects, with all requirements, terms, provisions or conditions of this Note, the TCAP Loan Agreement, the Restrictive Covenants, the TCAP Deed of Trust, all Program Requirements, the Tax Credit Program Requirements, and/or the First Deed of Trust.

In the event of a default under this Note, the entire unpaid principal sum due and payable under this Note, together with any amounts due under the TCAP Deed of Trust, the TCAP Loan Agreement, the Restrictive Covenants and/or the Program Requirements shall, at the option of THDA, be immediately due and payable without demand or notice. Any payment not made when due shall bear interest at the maximum lawful rate. Should efforts be made to collect this Note, or any part of the indebtedness evidenced hereby, by law or through an attorney, Maker shall pay all reasonable attorneys' fees and expenses, all court costs and expenses, and all costs and expenses of collection. Any failure on the part of THDA to exercise its rights hereunder shall not, in any event, be considered a waiver of any such rights nor shall such failure preclude THDA from exercising such rights at any time. Maker hereby waives all rights of protest, notice of demand, protest and demand, notice of protest, presentment, demand, dishonor and non-payment. The terms of this Note shall be construed in accordance with the laws of the State of Tennessee and any applicable Federal laws or regulations. Terms not expressly defined here in shall have the meanings ascribed to them in the Loan Documents.

This Note may not be assigned by Maker or assumed without THDA's express written consent.

Notwithstanding anything contained herein to the contrary, THDA may exercise all rights, powers and remedies under this Promissory Note as provided under the Tax Credit Assistance Program and any laws, regulations, interpretations, and guidance related thereto or issued in connection therewith by the United States Department of Housing and Urban Development, as may be supplemented, amended or modified from time to time.

IN WITNESS WHEREOF, Maker has caused these presents to be executed on this ____ day of _____, 2010.

WITNESS (ATTEST)

By: _____

By: _____

WITNESS (ATTEST)

By: _____

By: _____
