

**TENNESSEE HOUSING DEVELOPMENT AGENCY
TCAP LOAN AGREEMENT**

This Loan Agreement (the "Agreement") is entered into as of _____, 2009, 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 (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 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 and received a 2009 Low-Income Housing Tax Credit 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 Reservation Notice 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: \$ _____

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] Equity, if any, and all other sources of funds, if any, is as shown on Attachment B which is attached hereto and incorporated herein by this reference.

8. Private Financing

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

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

9. Sale of Tax Credits

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

Total amount of equity expected from [Syndicator/Investor]: \$ _____
(the “[Syndicator/Investor] 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").

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. 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 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.

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"). 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.

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 Schedule

a. Attached hereto, as Attachment 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 Expenditure Schedule"). Owner shall comply with this Construction and Expenditure Schedule. THDA will use this Construction and Expenditure 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 material changes to the Construction and Expenditure Schedule may be made without the express written consent of THDA, which consent may will not be unreasonably withheld in THDA's sole discretion. No changes to the Construction and Expenditure 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")~~completion of construction of the Development shall occur~~ no later than _____ (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. THDA, in its sole discretion, will determine whether this requirement has been met.~~

~~a.d.~~ Notwithstanding any other provision of this Agreement to the contrary, the deadlines in the Construction and Expenditure Schedule and the Completion Date may be reasonably 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, ~~Private~~Senior Financing, [Syndicator/~~Investor~~] 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 ~~Private~~Senior Lender (the "First Deed of Trust") to secure a note in the amount of the ~~Private~~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, provided, however, no such subordination shall be effective without THDA's prior written consent which may be with held in THDA's sole discretion.

b. THDA expects to enter into an ~~agreement with Private~~Intercreditor Agreement (the "Intercreditor Agreement") with Senior Lender and [Syndicator/~~Investor~~], 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 ~~Private~~Senior Financing and the [Syndicator/~~Investor~~] 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's ~~receipt of Private~~ having enforceable agreements to receive Senior Financing and/or [Syndicator/~~Investor~~] Equity, with terms acceptable to THDA in its sole discretion, which approval will be confirmed by THDA in connection with the at or before 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 ~~Private~~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.

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 the Program Requirements, Assistance Funds may be used to fund approved reserves.

4. A Disbursements of Assistance Funds shall 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 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.

~~THDA will disburse an amount equal to no more than ninety percent (90%) of the requested and approved amount upon submission of documentation satisfactory to THDA in its sole discretion.~~

5. THDA's obligation to fund any draw request shall be contingent upon an inspection of progress to date that is satisfactory to THDA, in its sole discretion, and approval of each draw request by ~~Private~~Senior Lender and/or [Syndicator/Investor].
6. THDA will withhold ten percent (10%) of the total amount of Assistance Funds made available hereunder as retainage, which amount will be available to Owner as a final draw subject to compliance with all requirements in connection with such a final draw (the "Retainage").
7. In the event Owner has closed on its purchase of the property on which the Development will be located prior to the date hereof, Owner shall provide evidence to THDA of all funding requests submitted to [Senior/Private] Lender and/or Syndicator, together with evidence of any disbursements made to Owner by [Senior/Private] 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] 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] Financing and/or Syndicator Equity and may seek reimbursement for repayment of the [Senior/Private] Financing, so long as such financing did not result from the issuance of tax-exempt bonds.
- 4.8. If on the date of closing of the Assistance Funds hereunder, Owner has completed the Development, 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, including all Retainage, which must include evidence of all funding requests submitted to [Senior/Private] Lender and/or Syndicator, together with evidence of all disbursements made to Owner by [Senior/Private] Lender and/or Syndicator. Owner shall also submit with such request a Schedule of Actual Costs and Eligible Basis prepared by Owner's accountant, together with 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] 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] Financing and/or Syndicator Equity and may seek reimbursement for repayment of the [Senior/Private] Financing, so long as such financing did not result from the issuance of tax-exempt bonds.
- 5.9. Owner shall receive the disbursements of Assistance Funds in trust to be applied for the purpose of paying Eligible Costs of the Development.
- 6.10. 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.
- 7.11. All disbursements shall be made in accordance with ~~an agreement, in form and with substance acceptable to THDA~~the Intercreditor Agreement, between and among THDA, the ~~Private~~Senior Lender and the [Syndicator/Investor], if any, ~~and a Disbursement Agreement, if applicable.~~
- 8.12. 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.
- 9.13. 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.
- 10.14. THDA may reduce the amount of any disbursement requested by any amount, determined by THDA in its sole reasonable 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~~.15. 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, PrivateSenior Financing and Syndication Equity are not sufficient to complete the Development and place it in service.
16. 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.
- ~~12.~~
- ~~13~~.17. Final disbursement of Assistance Funds, including the Retainage, amounts retained under Paragraph 4 above shall be made only following 100% ~~e~~Completion of ~~e~~Construction for the Development and subject to the following requirements: ~~so long as~~ (a) Owner is not then in default under any provision of this Agreement, the Program Requirements, or the Tax Credit Program Requirements; (b) the General Contractor has complied with all provisions of the Construction Contract to the satisfaction of Owner and THDA, ~~and~~ (c) no proceedings have been instituted to enforce a mechanic's or material supplier's lien, unless bonded or insured over, and (d) all documentation required for a final draw hereunder have been submitted to and approved by THDA. ~~For purposes of this Agreement, 100% completion of construction shall be deemed to occur upon Owner's receipt of a final (not temporary) certificate of occupancy or completion from the local building inspector's office in connection with new construction work or a certificate of substantial completion from the architect in connection with rehabilitation of an existing building.~~
- ~~14~~.18. 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.
- ~~15~~.19. Owner shall demonstrate that (a) no later than February 16, 2011 or such earlier date as established by THDA, upon notice as specified herein, in its sole discretion and announced publicly in advance, Owner has ~~expended~~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 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.
 - 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.
 - ~~k.l.~~ Executive Orders Concerning MBE/WBE – Executive Orders 11625,12432,12138, and their respective implementing regulations.
 - ~~l.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 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 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 ~~such as expressly approved by THDA~~ 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~~ private senior financing ~~feasible~~ feasible for the Development based on potential rents, ~~and the underwriting requirements of the Senior Lender and Syndicator.~~ 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.
- 8.10. 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 ~~foreign entity~~ 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 ~~change its organizational structure~~ in any manner without the prior written consent of THDA, which may be withheld in THDA's reasonable ~~sole~~ 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 ~~THDA, in its sole discretion, may require and shall pay development fees only as required by the Senior Lender and Syndicator and~~ approved by THDA, in its sole discretion, Notwithstanding the foregoing, to the extent Senior Lender and/or [Syndicator/Investor] (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] or if inadequately addressed, as determined by THDA, in its sole discretion, on commercially reasonable terms or if there is no Senior Lender or [Syndicator/Investor], THDA may impose escrow and reserve requirements and limitations on payment of development fees pursuant to separate written guidelines delivered to Owner prior to execution of this Agreement. Reserves maintained for the Senior Lender or [Syndicator/Investor] 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, ~~or 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] and THDA shall have the same rights with respect to approval and/or notice as provided to Senior Lender and/or [Syndicator/Investor]. 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 ~~THDA may reasonably require and in such amounts and~~ required by the Senior Lender and [Syndicator/Investor] and approved by THDA, in its sole discretion. If not addressed by the Senior Lender or [Syndicator/Investor] to THDA's sole satisfaction, THDA may deliver separate written guidelines to Owner before or upon execution of this Agreement 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.
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 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. 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).

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 ~~Private~~ Senior Lender, [Syndicator/Investor] 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 simultaneously upon execution of the Agreement.
- b. No change in the amount of PrivateSenior Financing or [Syndicator/Investor] Equity or, in the event of a reduction in PrivateSenior 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.
 - c. ~~An agreement, satisfactory to THDA in its sole discretion,~~Execution of the Intercreditor Agreement between and among THDA, PrivateSenior Lender and [Syndicator/Investor], if any.
 - d. Other conditions as THDA deems necessary, in its sole discretion.
2. In connection with the closing of the 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. Settlement Statement
 - f. 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)~~five (5)~~ 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~~construction jobs created~~
 - f. Description of jobs created~~Number of construction jobs retained~~
 - g. Names and zipcodes of contractors and subcontractors receiving more than \$25,000 of Assistance Funds~~number of non-construction jobs created~~
 - h. Names of the five (5) most highly compensated officers of Owner if, during the preceeding 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~~umber of non-construction jobs retained~~
 - ~~i.— Number of total housing units newly constructed~~
 - ~~j.— Number of total housing units rehabilitated~~
 - ~~k.— Number of low-income housing units newly constructed~~
 - ~~l.— Number of low-income housing units rehabilitated~~
4. Owner shall submit any other reports and data as THDA deems necessary, in its sole discretion, to 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. Owner shall provide quarterly financial reports on Development operation as THDA deems necessary, in its sole discretion.
6. 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. 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 [Accounting Manual for the Recipients of Grant Funds in the State of Tennessee, published by the Tennessee Comptroller of the Treasury]. 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. 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. 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 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

The occurrence of any one or more of the following shall constitute an event of default hereunder ("Event of Default"):

1. 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 Private Senior Lender or [Syndicator/Investor], 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. ~~Notwithstanding any provision hereof to the contrary, no Event of Default, breach, termination or recapture event shall be deemed to occur unless and until Owner and Syndicator receive notice of the noncompliance and fails to cure such noncompliance within thirty (30) days after receipt of such notice, or, if the noncompliance cannot reasonably be cured within thirty (30) days, Owner fails to promptly commence and diligently pursue cure of the noncompliance.~~

2. 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. Any disbursement is not ~~paid out~~ 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.
4. Failure to repay Assistance Funds expended for costs that are not Eligible Costs or expended for the Development if the Development is not (a) 100% completed by the Completion Date, or (b) placed in service in compliance with Tax Credit Program Requirements, or (c) 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. 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 those matters affecting title previously approved by THDA,~~ 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. Owner assigns this Agreement or any advance to be made hereunder or any interest in either, or if the Development or any part thereof is conveyed, assigned, pledged or encumbered in any way other than as herein provided without the prior written consent of THDA.
8. ~~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 ~~cause~~ before Completion of Construction ~~the Development~~ 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 ~~will be afforded the right to rebuild the Development and extend the Completion Date (but not beyond the TCAP outside expenditure and completion deadlines imposed by HUD).~~
9. 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~~ or the conditions of each of subparagraphs (a), (b), ~~(c)~~ and ~~(d)~~ below shall have been satisfied:
 - ~~a.~~ ~~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;~~
 - a. ~~b.~~ 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. e-~~ 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. d-~~ 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, ~~the e~~ Completion of ~~Construction~~ ~~the Development~~ can be accomplished on or before the Completion Date.
10. 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, receipts, vouchers and agreements, or any of them, under which Owner claims title to such materials, fixtures or articles.
11. 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~~ ~~sole~~ discretion, is available to Owner for the Development.
12. Owner fails to comply with any requirement of any governmental entity having jurisdiction over the Development (the "Governmental Authority") ~~by~~ ~~within~~ 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.~~ 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)~~ ~~sixtyninety (6090)~~ days, or a receiver or trustee of any property of Owner is appointed and is not discharged within ~~sixty (60)~~ ~~sixtyninety (6090)~~ 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)~~ ~~sixtyninety (6090)~~ days.
- ~~14.~~ 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

~~If~~ ~~Upon the occurrence of~~ an Event of Default ~~has been deemed to occur~~ under this Agreement ~~not cured within the applicable cure periods~~, THDA may, in its sole discretion, take any one or more of the following actions:

1. 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. Disallow all or any part of the cost of any activity or action that is not in compliance with Program Requirements or Tax Credit Program Requirements 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. 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. Recapture the full amount of Assistance Funds disbursed to the date of the Event of Default.
5. Declare the indebtedness evidenced and secured by the Assistance Note and the Assistance Deed of Trust immediately due and payable and foreclose under the Assistance Deed of Trust.
6. Withhold Assistance Funds from other developments involving entities ~~or individuals or individuals~~ related to the general partner or managing member of the Owner or the developer of the Development.
7. Take any and all other legal remedies as may be available including, without limitation, seeking specific performance.

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 before execution of this Agreement. ~~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 ~~C~~completion of ~~Construction~~~~the Project~~ 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; ~~or~~ (c) facsimile transmission to the fax numbers listed below; ~~or~~ (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](mailto: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.
- ~~9.10.~~ Notwithstanding anything to the contrary contained herein or elsewhere, ~~Owner shall be liable for the payment of the outstanding indebtedness and interest hereunder~~ the loan evidenced by the Assistance Note and the Assistance Deed of Trust shall be non-recourse to the ~~and the personal liability of Owner and any partner, member or shareholder of Owner. to pay the principal of and interest on the debt evidenced by this Agreement and the Assistance Note shall be limited to: (a) Owner's interest in the Development; and (b) the rents and profits received in connection with the Development following an uncured Event of Default. THDA shall not seek: (x) any judgment for a deficiency against Owner or any partner, member or shareholder of Owner; or (y) any judgment on the Assistance Note except as may be necessary in any action brought under the Assistance Deed of Trust to enforce the lien against the Development.~~
- ~~10.11.~~ 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~~ INTERPRETATIONS MADE BY THDA SHALL APPLY TO OWNER AND/OR THE DEVELOPMENT AS IF INCLUDED HEREIN AS OF THE DATE HEREOF.
- ~~11.~~ ~~If Owner fails to fulfill its obligations under this Agreement in a timely or proper manner, or if Owner violates any terms of this Agreement, as determined by THDA in its sole reasonable discretion, THDA shall have the right to immediately terminate this Agreement and make no further disbursements hereunder; notwithstanding the foregoing, Owner shall not be relieved of liability to THDA.~~
- ~~12.~~ ~~Owner shall not assign this Agreement or enter into a subcontract regarding this Agreement without the prior written approval of THDA.~~
- ~~13.12.~~ 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.
- ~~14.13.~~ 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.
- ~~15.14.~~ 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.

- ~~16.~~15. Owner acknowledges and agrees that language in paragraphs 14 and 15 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.
- ~~17.~~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 such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- ~~18.~~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 agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision.
- ~~19.~~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.
- ~~20.~~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.
- ~~21.~~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.
- ~~22.~~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.
- ~~23.~~22. Section and Article headings are for reference purposes only and shall not be construed as part of this Agreement.
- ~~24.~~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.
- ~~25.~~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 Tax Credit Program Requirements and Program Requirements.
- ~~26.~~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.

~~27.~~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.

~~28.~~27. In the event of any suit or claim, threatened or filed against the Property, the Development, Owner, and/or THDA, 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.

~~29.~~28. Owner certifies, to the best of its knowledge and belief, that Owner, Owner's ~~principles~~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.

~~30.~~29. 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.~~30. This Agreement may be executed in various counterparts each of which shall be an original but all of which shall constitute ~~an~~one instrument.

~~32.~~31. 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.
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.

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: _____
 Title: _____

OWNER: _____

By: _____
 Name: _____
 Title: _____

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

\$ _____, Tennessee
_____, 2009

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.

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 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.

A default shall occur hereunder upon the occurrence of any of the following events following notice to Make 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 _____, 2009, as may be revised, modified or amended from time to time (the “TCAP Loan Agreement”);
- ~~2. Maker fails to receive Syndication Equity in the amount of \$ _____ or is in default under any and all agreements with the Syndicator;~~
- ~~3. Maker fails to receive proceeds from Private Financing from the Private Lender in the original principal amount of \$ _____, which will be reflected in a promissory note and will be secured by a Deed of Trust encumbering the Property to be recorded in the Register’s Office for _____ County, Tennessee (the “First Deed of Trust”) or is in default under any or all agreements with the Private Lender including, without limitation, the First Deed of Trust;~~
- ~~4.2. Liens, other than the First Deed of Trust, the Restrictive Covenants, the TCAP Deed of Trust, or as reflected on Exhibit B of Permitted Exceptions under the TCAP Deed of Trust, encumber the Property without the express written consent of THDA;~~
- ~~5.3. All or any interest in the Property or Maker is sold, transferred, conveyed or encumbered, except as permitted in the TCAP Loan Agreement by THDA in its sole discretion;~~
- ~~6.4. 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 ~~ninety (90)~~sixty (60) days;~~
- ~~7.5. 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~~
- ~~8. This Note is assigned or assumed.~~

Notwithstanding anything to the contrary contained herein or elsewhere, the obligation to repay this Note shall be non-recourse and the personal liability of Maker and any partner, member or shareholder of Maker 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’ 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, ~~or~~ 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: _____

SPECIMEN

The maximum principal indebtedness for Tennessee recording tax purposes is \$0 (Governmental Entity)

THIS INSTRUMENT PREPARED BY:

Tennessee Housing Development Agency
404 James Robertson Parkway, Suite 1200
Nashville, Tennessee 37243-0900
ATTN: Multifamily Development Division

**TENNESSEE HOUSING DEVELOPMENT AGENCY
TAX CREDIT ASSISTANCE PROGRAM
DEED OF TRUST**

THIS DEED OF TRUST is made and entered into as of this ____ day of _____, 20____, by and among _____, whose address is _____, Tennessee (“Owner”), Lynn E. Miller, Esq., and her successors and assigns (collectively, “Trustees”); and the Tennessee Housing Development Agency (“THDA”), a political subdivision and instrumentality of the State of Tennessee, whose address is 404 James Robertson Parkway, Suite 1200, Nashville, Tennessee 37243-0900.

RECITALS

WHEREAS, Owner is indebted to THDA as evidenced by that certain Tennessee Housing Development Agency Tax Credit Assistance Program Promissory Note of even date herewith, payable to the order of THDA, in the principal amount of _____ (\$ _____) (the “Note”);

NOW, THEREFORE, to secure the payment of the principal of and the interest on the Note, payable as therein described, including, without limitation, any future advances or future obligations made or arising after the date hereof under the Note, or any renewals, extensions or modifications thereof; to secure any and all indebtedness, liabilities and obligations of Owner to THDA, whether now or hereafter existing, arising under or in connection with that certain Tennessee Housing Development Agency TCAP Loan Agreement, dated _____, executed by Owner and THDA, as the same may be amended from time to time (the “TCAP Loan Agreement”); to secure the performance and observance by Owner of every covenant and condition contained in this Deed of Trust and in the TCAP Loan Agreement; and for and in consideration of the premises and of the debt above described, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged; Owner, by these presents, does hereby grant, bargain and sell, mortgage, warrant, convey and confirm, assign, transfer and set over unto Trustee, and unto Trustee’s successors and assigns, IN TRUST, forever, certain real estate located at _____ County, Tennessee, as more specifically described on Exhibit A, which is attached hereto and incorporated herein by this reference (the “Real Property”).

TOGETHER with all of Owner’s right, title and interest in and to (1) all buildings, improvements and structures at any time, now or hereafter, erected, situated or placed thereon; (2) all rights, privileges, easements, hereditaments, appendages and appurtenances thereunto belonging or in anywise appertaining; (3) all right, title, interest and estate of Owner in and to streets, roads, ways, sidewalks, curbs, alleys, and areas adjoining the real estate and portions thereof, and whether vacated by law or ordinance (conditionally or otherwise); (4) all rents, revenues, income, issues and profits, which are hereby specifically assigned, transferred and pledged primarily and on a parity with the real estate; (5) all existing and future leases or subleases with respect to any portion of the real estate or any improvements located thereon, together with all guarantees thereof, and all amendments, extensions, renewals, modifications, addendums, alterations, replacements or supplements thereto or substitutes therefor; (6) in the event any part of the real estate or any additions, betterments, substitutions or replacements shall be destroyed or damaged by any party or from any cause whereby Owner becomes entitled to indemnity therefor from any third person, all of such sum or sums so due from any such third person; (7) all fixtures, equipment, machinery, fixed assets, and personalty of any kind whatsoever now owned or hereafter acquired by Owner and now or at any time hereafter annexed, affixed or attached to the real estate and/or the buildings, improvements or structures thereon and all other personal property now owned or hereafter acquired by Owner and used or intended to be used in the possession, occupation or enjoyment thereof, and all replacements, additions and substitutions thereof or thereto, including (but without limiting the generality of the foregoing) all construction materials, tools and supplies, all apparatus, appliances, machinery and equipment, and all articles used to supply or provide, or in connection with, heat, gas, air-conditioning, plumbing, water, lighting, power, elevator, sewerage, refrigeration, cooling, ventilation and sprinkler systems, water heaters, all window shades, drapes and drapery equipment and apparatus, all fire prevention and extinguishing apparatus, all security and access control apparatus, all furniture and furnishings, all grounds maintenance equipment, all maintenance supplies and all rugs and carpeting; (8) all products and proceeds (including insurance proceeds) of any or all of the foregoing and all books and records of Owner relating to any of

the foregoing; (9) all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Property (as hereinafter defined) or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, minerals, royalties, easements, privileges, liberties, tenements, hereditaments and appurtenances, reversion and reversions, remainder and remainders whatsoever, in any way belonging, relating or appertaining to the Property (as hereinafter defined) or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Owner; and (10) all insurance policies, contracts, permits, licenses, plans or intangibles now or hereafter dealing with, affecting or concerning the Property (as hereinafter defined), including, without limitation, all rights accruing to the Owner from any and all contracts with all contractors, architects, engineers or subcontractors relating to the construction of improvements on or upon the Property (as hereinafter defined), including performance and/or materialmen's bonds and any other related items (the "Chattel Property" and, together with the Real Property, the "Property").

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, by acceptance of this Deed of Trust, THDA acknowledges the existence of the prior lien of the First Deed of Trust (as defined in the TCAP Loan Agreement) in favor of the Senior Lender securing the Senior Financing (as such terms are defined in the TCAP Loan Agreement) and further acknowledges, covenants and agrees that its rights under this Deed of Trust and its rights to payment of the principal, interest, and other amounts due pursuant to the Note are expressly subordinated, in right of payment and in security to the indebtedness secured by the First Deed of Trust, with the terms of such subordination being more fully set forth in the Intercreditor Agreement dated of even date herewith.

TO HAVE AND TO HOLD the Property and every part thereof whether now owned or hereafter acquired, unto the Trustee, and unto Trustee's successors and assigns, forever, IN TRUST, for the following uses and trusts and for no other purpose, and Owner covenants that it is lawfully seized and possessed of the Property as aforesaid, and has good right to convey the same, that the same are unencumbered except as to those matters expressly set forth in Exhibit B attached hereto and incorporated herein by reference (the "Permitted Encumbrances"), and that Owner does warrant and will forever defend the title thereto against the claims of all persons whomsoever, except as to the Permitted Encumbrances, to wit:

A. PROPERTY OWNER'S PERFORMANCE

To secure to THDA the due and punctual performance of each and every covenant, condition, agreement and obligation of Owner contained in the Note, this Deed of Trust, the TCAP Loan Agreement, the Restrictive Covenants, the Program Requirements and the Tax Credit Program Requirements.

B. PAYMENT OF INDEBTEDNESS

To secure to THDA the payment of all sums advanced or arising under the Note, the TCAP Loan Agreement, this Deed of Trust, the Restrictive Covenants, the Program Requirements, or the Tax Credit Program Requirements, or advanced to protect the security of this Deed of Trust, including, without limitation, attorneys' fees and expenses, all court costs and expenses, and all other fees and expenses incurred in connection with the performance or assertion of THDA's rights or duties under the Note, the TCAP Loan Agreement, the Restrictive Covenants, this Deed of Trust, the Program Requirements, and/or the Tax Credit Program Requirements.

In the event of a default under the Note, this Deed of Trust, the TCAP Loan Agreement, the Restrictive Covenants, the Program Requirements, and/or the Tax Credit Program Requirements, the entire unpaid principal sum due and payable under the Note, together with all other sums due under the Note, this Deed of Trust, the TCAP Loan Agreement, the Restrictive Covenants, the Program Requirements, and/or the Tax Credit Program Requirements shall be due and payable.

Collectively, the indebtedness under the Note, this Deed of Trust and all other indebtedness described above is referred to herein as the "Secured Indebtedness". The covenants, conditions, obligations and agreements of Owner contained in this Deed of Trust, the Note, the TCAP Loan Agreement, the Restrictive Covenants, the Program Requirements and the Tax Credit Program Requirements are referred to herein as the "Secured Covenants".

THIS DEED OF TRUST IS GIVEN FOR THE PURPOSE OF CREATING A LIEN ON THE PROPERTY IN ORDER TO SECURE NOT ONLY ANY EXISTING INDEBTEDNESS OR ADVANCES MADE CONTEMPORANEOUSLY WITH THE EXECUTION HEREOF, BUT ALSO FUTURE ADVANCES, WHETHER SUCH ADVANCES ARE OBLIGATORY, OR TO BE MADE AT THE OPTION OF THE THDA, OR BOTH, AND WHETHER MADE BEFORE OR AFTER DEFAULT OR MATURITY OR OTHER

SIMILAR EVENTS, TO THE SAME EXTENT AS IF SUCH FUTURE ADVANCES WERE MADE ON THE DATE OF THE EXECUTION OF THIS DEED OF TRUST, ALTHOUGH THERE MAY BE NO ADVANCE MADE AT THE TIME OF THE EXECUTION HEREOF AND ALTHOUGH THERE MAY BE NO INDEBTEDNESS OUTSTANDING AT THE TIME ANY ADVANCE IS MADE AS PROVIDED BY T.C.A. § 47-28-102. THIS NOTICE REFERENCING OBLIGATORY FUTURE ADVANCES IS FOR PURPOSES OF COMPLYING WITH T.C.A. § 47-28-104(b) AND NO OTHER INFERENCE IS TO BE PRESUMED HEREUNDER.

C. OWNER REPRESENTATIONS, WARRANTIES AND COVENANTS

Owner hereby represents, warrants and covenants as follows:

1. Payment and Performance. Owner shall pay, without demand or notice, all Secured Indebtedness and shall fully perform, without demand or notice, all Secured Covenants, when such performance is due, time being of the essence for both payment and performance.
2. Construction/Rehabilitation/Acquisition. Owner shall use Assistance Funds in the amount of \$ _____ as a capital investment in that certain low income housing tax credit development known as _____ (TN__-__) located on the Real Property in accordance with the TCAP Loan Agreement, the Program Requirements and the Tax Credit Program Requirements.
3. Title to Property and Lien. Owner is a _____, organized, existing and in good standing under the laws of the State of Tennessee or a foreign _____, duly authorized to do business and in good standing under the laws of the State of Tennessee; that it has full power and is duly authorized to execute and deliver the Note, the TCAP Loan Agreement, this Deed of Trust, and all other documentation executed or to be executed in connection with the receipt of Assistance Funds; and that all action on its part necessary for the valid execution and delivery of the Note, the TCAP Loan Agreement, this Deed of Trust and all other documentation executed or to be executed in connection with the receipt of Assistance Funds and for performance by Owner thereunder has been duly and effectively taken.

Owner is the lawful owner and is now lawfully seized and possessed of a good and indefeasible title and estate in fee simple to the Real Property, free and clear of all liens, charges or encumbrances whatever, including liens of general and special taxes and assessments, excepting taxes for the current year which are not yet due, the permitted encumbrances listed on Exhibit B to the TCAP Loan Agreement, and the lien of this Deed of Trust. Owner further represents that it will forever warrant and defend the title to the Property and every part thereof unto Trustee and Trustee's successors and assigns against the claims and demands of all persons whomsoever.

4. Maintenance of Lien. Owner shall, at its expense, take all necessary action to maintain and preserve the lien and security interest of this Deed of Trust so long as the Note and the TCAP Loan Agreement are in effect.

Owner shall cause this Deed of Trust and any financing statements in respect thereof to be filed, registered and recorded in such manner and in such places as may be required by law to publish notice of and fully to protect the lien of this Deed of Trust and title of Owner to the Property. Owner, from time to time, shall perform or cause to be performed any other act as provided by law and will execute or cause to be executed any and all continuation statements and further instruments that may be requested by THDA or Trustee for such publication and protection.

5. Further Assurances. Owner shall do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, conveyances, mortgages, assignments, transfers and assurances as THDA or Trustee reasonably may require for the better assuring, conveying, mortgaging, encumbering, assigning and confirming unto THDA the Property as now or hereafter constituted.

All right, title and interest of Owner in and to all improvements, betterments, renewals, substitutions and replacements of, the Property or any part thereof, hereafter constructed or acquired by Owner, which shall become a part of the Development (as defined in the TCAP Loan Agreement), immediately upon such construction or acquisition, and without any further mortgaging, conveyance or assignment, shall become and be part of the Property and shall be subject to the lien of this Deed of Trust as fully and completely and with the same effect as though now owned by Owner, but at any and all times Owner shall execute and deliver to THDA and Trustee any and all such further assurances, mortgages, conveyances or assignments therefor and other instruments with respect thereto as THDA and Trustee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Deed of Trust.

6. Taxes, Charges and Assessments. Owner shall pay or cause to be paid (prior to delinquency):
- a. all taxes and charges on account of the use, occupancy or operation of the Property, including but not limited to all sales, use, occupation, real and personal property taxes, tax equivalents, all permit and inspection fees, occupation and license fees and all water, gas, electric light, power or other utility charges assessed or charged on or against the Property or on account of Owner's use or occupancy thereof or the activities conducted thereon or therein; and
 - b. all taxes, tax equivalents, assessments and impositions, general and special, ordinary and extraordinary, of every name and kind, which shall be taxed, levied, imposed or assessed upon all or any part of the Property, or the interest of Owner or THDA or Trustee or any of them in and to the Property.
7. Liens. Except as set forth on Exhibit B, Owner shall not, without the prior written consent of THDA, transfer, convey or otherwise part with title to all or any part of the Property, or create or permit or allow to exist or to be created any mortgage, deed of trust, pledge or other lien or encumbrance on all or any part of the Property, other than this Deed of Trust, or suffer or permit any mechanic's or materialmen's lien or any other lien of any nature whatsoever to attach to the Property or to remain outstanding against the Property.

No interest in Owner, in whole or in part, shall, without the prior written consent of THDA, be sold, transferred, conveyed, encumbered or pledged, except as otherwise permitted under the TCAP Loan Agreement.

8. Payment and Discharge of Liens. Owner shall pay, when due, all claims of every kind and nature which might or could become a lien on the Property or any part thereof and shall not, at any time, create or allow to exist any lien on the Property or any part thereof of whatsoever kind or nature, other than this Deed of Trust and the Restrictive Covenants, except the following:
- a. liens for taxes and assessments which are not delinquent although by law are given the status of a lien; or
 - b. liens for taxes and assessments which are being contested by Owner in good faith and by appropriate legal proceedings and for which Owner has posted such security for the payment of such contested claims as is requested by THDA; or
 - c. the permitted encumbrances listed on Exhibit B, which is attached hereto and incorporated herein by this reference.
9. Compliance with Orders, Ordinances. Owner shall, at its sole cost and expense, comply with all present and future laws, ordinances, orders, decrees, rules, regulations and requirements of every duly constituted governmental authority, commission and court.

Owner shall not use the Property or permit the Property to be used in any manner inconsistent with the rights of Trustee or THDA, or in violation of the provisions of the TCAP Loan Agreement, the Program Requirements, the Tax Credit Program Requirements, any insurance policy or any rules or regulations of insurance underwriters.

10. Repairs, Maintenance and Alterations. Owner shall, at its own cost and expense, keep or cause to be kept the Property in good condition, repair and working order, reasonable wear and tear excepted, and in as reasonably safe condition as its operation will permit and will make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary as well as extraordinary and foreseen as well as unforeseen, including any repairs required by any law, ordinance or regulation, and all necessary replacements or renewals. Owner shall not commit or cause or permit to be committed any waste with respect to the Property. Owner shall keep and maintain or cause to be kept and maintained all grounds, sidewalks, roads, parking and landscape areas which are part of the Property in good and neat order and repair and not to commit, suffer or permit any act to be done in or upon the Property in violation of any law, ordinance or regulation.
11. Insurance. Owner shall keep the Property insured by some reliable fire and/or hazard insurance company or companies, in an for the maximum insurable amount equal to the full replacement cost, against fire and all customary hazards, from the date Owner acquires the Property until the debt secured by this Deed of Trust is fully paid or forgiven in accordance with the Note or this Deed of Trust and, subject to the rights of the

[\[Senior/Private\] Lender](#) to have the loss made payable on the policy to THDA or the Trustee for the benefit of Owner and THDA. Owner shall provide THDA or the Trustee with proof of insurance coverage from the insurance company each time coverage is obtained or renewed and shall immediately notify THDA or the Trustee of any cancellations.

12. THDA's Right to Perform. In the event Owner fails to perform any Secured Covenant contained herein, or fail to make any other payment or perform any other act required to be performed hereunder or under the TCAP Loan Agreement, then, THDA, or the Trustee, upon not less than ten (10) business days prior written notice to Owner, may (but shall not be obligated to) remedy such default for the account of Owner and make advances for that purpose. No such performance or advance shall operate to release Owner from any such default. Any sums so advanced by THDA or the Trustee shall be repayable by Owner on demand with interest as specified in the Note and THDA or the Trustee any such sums as part of the debt secured by this Deed of Trust.
13. Assignment of Leases and Rents. As additional collateral and further security for the indebtedness, the Owner absolutely, presently and irrevocably does hereby collaterally assign to THDA, subject to the rights of the [Senior/Private] Lender, the Owner's estate, right, title and interest in any and all leases, tenant contracts, rental agreements, franchise agreements, management contracts, construction contracts and other contracts, licenses and permits now or hereafter affecting the Property, or any part thereof (all of the foregoing being hereinafter collectively referred to as the "Leases"), and all income, rents, issues and profits from the Property, and the Owner agrees to execute and deliver to THDA such additional instruments, in form and substance satisfactory to THDA, as may hereafter be requested by THDA further to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a consent by THDA to any Lease, or to impose upon THDA any obligation with respect thereto. So long as Owner is not in default beyond any applicable cure period, Owner shall have the right to collect, possess and use all income, rents, issues, and profits from the Property.
14. Indemnification of Trustee and THDA. 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, demands, injuries to persons or property, costs and expenses, including legal costs and expenses, losses and causes of action, of every kind and nature whatsoever and by whomsoever made, arising from or in any manner directly or indirectly growing out of (a) the use and occupancy or nonuse of the Property or any equipment or facilities thereon or used in connection therewith by anyone whomsoever, (b) any repairs, construction, restoration, replacements, alterations, remodeling on or to the Property, or any part thereof, or any equipment or facilities therein or thereon, (c) the status of title, including the priority or validity hereof, or any related matters in any lawsuit, (d) the condition of the Property, including any adjoining sidewalks, ways or alleys and any equipment or facilities at any time located thereon or used in connection therewith, (e) the 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 Deed of Trust. Owner further agrees it shall pay all costs and expenses, including, without limitation, all court costs fees and reasonable attorney fees and expenses for THDA, incurred to enforce the terms of this Deed of Trust or otherwise enforce the obligations of Owner to THDA.

If the Trustees or THDA are made parties to or intervene in any action or proceeding affecting the Property or the title thereto or the interest of the Trustees or THDA under this Deed of Trust, or if THDA or the Trustees employ an attorney to foreclose this Deed of Trust, or authorizes the Trustees to conduct Trustees' sale proceedings hereunder, the Trustees and THDA shall be reimbursed by Owner, immediately and without demand, for all reasonable costs, charges, fees and expenses, including attorney's fees and expenses and all court costs, incurred by them or either of them in any such case whether or not suit be commenced, and the same shall be secured hereby as a further charge and lien upon the Property.

D. EVENTS OF DEFAULT AND REMEDIES

1. Events of Default. It is expressly agreed that any one or more of the following events is an "Event of Default":
 - a. Any failure to pay amounts due under the Note, the TCAP Loan Agreement or this Deed of Trust, as and when they become due and payable;

- b. Any failure by Owner in the due performance or observance of any covenant, agreement, or condition contained in the TCAP Loan Agreement or this Deed of Trust;
- c. Any materially incorrect or substantial breach of any representation or warranty of Owner contained herein or in the TCAP Loan Agreement;
- d. Any insolvency by the Owner, or failure by Owner, generally, to pay its debts as such debts become due, or if a voluntary petition in bankruptcy or reorganization of Owner is filed, or if an involuntary case in bankruptcy or reorganization is filed against Owner and is not dismissed within sixty (60) days after it is filed, or if Owner makes an assignment for the benefit of creditors or a similar arrangement with its creditors is made, or if a receiver, custodian or trustee is appointed for Owner's business or property, or if Owner's interest in the Property passes by operation of law as the result of any creditor's action, suit or proceeding;
- e. Any sale, transfer, assignment, other conveyance, or encumbrance of all or any interest in or to the Property or in or to Owner that is not otherwise permitted by this Deed of Trust or the TCAP Loan Agreement, without the express written consent of THDA;
- f. The Property is subjected to actual or threatened waste, or any material part thereof is removed, demolished, or altered without the prior written consent of THDA.

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 the TCAP Loan Agreement, 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.

2.3. Remedies. Upon the occurrence of any Event of Default, then and in each and every such event:

- a. The balance of the principal of the Note then outstanding and unpaid, that is otherwise due and payable, and the accrued interest thereon shall, at the option of THDA, become and be due and payable immediately, anything in the Note or in this Deed of Trust to the contrary notwithstanding.
- b. Trustee, at the request of THDA, is hereby authorized and empowered to sell, either by himself or by agent or attorney, the Property and every part thereof at public venue or outcry at the customary time and place of sale then used for such purposes in _____ County, Tennessee, to the highest bidder for cash, at public outcry, free from the equity of redemption, any and all statutory right of redemption, including, without limitation, those provided in T.C.A. Section 66-8-101, as amended or as may be hereinafter enacted, homestead, dower, courtesy, any elective share, and all other exemptions or marital rights of every kind, which are expressly waived, after first advertising the sale for twenty (20) days by three weekly notices in any newspaper, daily or weekly, published in _____ County, Tennessee; provided that if the law requires a different advertisement and notice procedure, the Trustee shall comply with the procedure required by law. Upon such sale or sales made by Trustee under the power herein granted or upon any sale or sales under or by virtue of any judicial proceedings: (i) the whole of the Property, real, personal and mixed, may be sold in one parcel as an entirety, or the Property may be sold in separate parcels as may be determined by Trustee in the Trustee's sole discretion; and (ii) Trustee shall receive the proceeds of such sale or sales and shall execute and deliver deed or deeds or other appropriate instruments of conveyance, assignment or transfer of the Property, and any deed or other instrument of conveyance, assignment or transfer made and delivered by Trustee in pursuance of the powers granted and conferred herein, and all recitals therein contained shall be prima facie evidence of the facts therein set forth. At any sale pursuant hereto, the Property may, at THDA's option, be offered for sale for one total price, and the proceeds of such sale accounted for in one account without distinction between the items of security or without assigning to them any proportion of such proceeds, the Owner hereby waiving the application of any doctrine of marshalling. The sale may be adjourned from day to day by the Trustee or Trustee's agent or successor, by announcement at the customary place of sale on the date the sale is originally set, or any adjournment thereof, and may be reset at a later date without any additional publication. The creditor may bid at any sale under this trust conveyance.

Owner agrees that the Trustee may, at any time after default in the payment of any part of the indebtedness, enter and take possession of the Property, and shall only account for the net rents

actually received by Trustee. Owner further agrees that, in the event the Trustee fails, before selling the Property as herein provided, to enter and take possession thereof, the purchaser shall be entitled to immediate possession thereof upon the delivery to purchaser by the Trustee of a deed for the Property.

Owner agrees, to the full extent permitted by law, that in case of an Event of Default on the part of the Owner hereunder, neither the Owner nor anyone claiming through or under the Owner will set up, claim or seek to take advantage of any moratorium, reinstatement, forbearance, appraisal, valuation, stay, extension, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, or the absolute sale of the Property or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Owner, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, including the statutory right of redemption, and any and all right to have the assets subject to the security interest of this Deed of Trust marshaled upon any foreclosure.

THDA may, at any time and from time to time, without assigning cause, in THDA's sole and absolute discretion, remove the Trustee herein named and appoint a successor to execute this trust, by an instrument in writing duly executed by THDA and filed for record in the county in which the Property is located and, upon the execution and filing of such instrument, the title herein conveyed to the Trustee shall be vested in the successor so appointed.

In the event of a sale of the Property under and by virtue of this trust, Owner, and all persons holding under Owner, shall be and become the tenants at will of the purchaser from and after the execution and delivery of a deed to the purchaser.

~~3.4.~~ Application of Proceeds of Sale. Upon the foreclosure and sale of the Property, or any part thereof, the proceeds of such sale or sales shall be applied by Trustee as follows:

First: To pay all the costs and charges of executing this trust, including, without limitation, reasonable compensation of Trustee and reasonable attorney's fees and expenses, recording fees and taxes, cost of procuring title certificates, continuing abstracts, title searches or examinations reasonably necessary or proper and the expenses of any litigation which may arise on account of the execution and enforcement of this trust.

Second: To repay all amounts advanced pursuant to the Note, the TCAP Loan Agreement, or hereunder.

Third: To repay the balance of the indebtedness evidenced by the Note and other obligations secured thereby, with interest thereon as therein provided.

Fourth: To pay the remainder, if any, to Owner.

~~4.5.~~ Remedies Cumulative. No remedy conferred upon or reserved to Trustee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

~~5.6.~~ Delay or Omission Not a Waiver. No delay or omission of Trustee or THDA to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or an acquiescence therein; and every power and remedy given by this Deed of Trust to Trustee or THDA may be exercised from time to time and as often as may be deemed expedient by Trustee or THDA.

E. DEFEASEANCE

If Owner shall pay and discharge or provide, in a manner satisfactory to THDA, for the payment and discharge of all sums payable hereunder, including all sums due under the Note, and the TCAP Loan Agreement, and if the Note and interest and all sums due under the TCAP Loan Agreement are paid or forgiven, then, all property, rights and interest hereby conveyed or assigned or pledged shall revert to Owner, and the estate, right, title and interest of the Trustee and THDA therein shall thereupon cease, terminate and become void; and this Deed of Trust, and the covenants of Owner contained herein, shall be discharged. In such case, THDA, on demand of Owner and at Owner's cost and expense, shall execute and deliver to Owner an instrument, in proper form for recording, acknowledging the satisfaction and termination of this Deed of Trust.

F. MISCELLANEOUS PROVISIONS

1. Incorporation. The provisions of the Note, the TCAP Loan Agreement, the Program Requirements, and the Tax Credit Program Requirements are incorporated herein by reference as fully and to the same extent as though set out herein verbatim and a default thereunder shall be a default hereunder.
2. Severability. In case any one or more of the provisions contained in this Deed of Trust shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions, shall not in any way be affected or impaired thereby.
3. Limitation on Interest. No provisions of this Deed of Trust shall require the payment or permit the collection of interest in excess of the maximum permitted by law. If any excess of interest in such respect is herein provided for, or shall be adjudicated to be so provided for herein, neither Owner nor its successors or assigns shall be obligated to pay such interest in excess of the amount permitted by law, and the right to demand the payment of any such excess shall be and hereby is waived. This provision shall control any provisions of this Deed of Trust inconsistent with this provision.
4. Notices. All consents, demands or other communications required or contemplated by this Deed of Trust 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; or (c) facsimile transmission to the fax numbers listed below, or 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

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. Successors and Assigns. All covenants, promises and agreements in this Deed of Trust, shall bind and inure to the benefit of the respective successors and assigns of Owner, THDA and Trustee, whether so expressed or not. Notwithstanding the foregoing, Owner shall not assign this Deed of Trust or any rights, powers, duties, obligations or privileges hereunder without the express written consent of THDA.
6. Removal, Resignation and Liability of Trustee. The Trustee may resign at any time by written instrument delivered to THDA. THDA shall have the unqualified and unlimited right to remove the Trustee, at any time or from time to time, and for any reason whatsoever. In the event of such resignation or removal, or in the event of Trustee's death, THDA shall be entitled to select and appoint a successor Trustee hereunder, and any such successor Trustee shall thereupon succeed to Trustee as Trustee hereunder and to all of the rights, powers, duties, obligations, and estate of the Trustee as if specifically named herein.
7. Personal Property. Owner grants and transfers to THDA a security interest in the Chattel Property. Upon a default by Owner, THDA shall, at its option and without notice or demand, be entitled to enter upon the Property to take immediate possession of the Chattel Property. Upon request, Owner shall assemble and

make the Chattel Property available to THDA at a place designated by THDA which is reasonably convenient to both parties. THDA may retain the cash portion of the Chattel Property in partial satisfaction of the indebtedness secured hereby or sell all or any remaining portion of the Chattel Property at public or private sale in accordance with the Uniform Commercial Code as adopted in Tennessee or in accordance with the foreclosure advertisement and sale provisions under this Deed of Trust, as applicable. Owner agrees that a commercially reasonable manner of disposition of the Chattel Property upon a default shall include, without limitation and at the option of THDA, the sale of the Chattel Property, in whole or in part, concurrently with a foreclosure sale of the Property in accordance with the provisions of this Deed of Trust. If THDA disposes of any or all of the Chattel Property after default, the proceeds shall be applied in the following order: (a) to the expenses of taking, holding, preparing for sale, selling and the like; (b) to the reasonable attorney's fees and legal expenses incurred by THDA; and (c) to the satisfaction of the indebtedness secured hereby.

This instrument is intended to be a security agreement pursuant to the Tennessee Uniform Commercial Code covering any part of the items or types of Chattel Property that may be subject to a security interest pursuant to the Tennessee Uniform Commercial Code. Owner hereby grants THDA a security interest in such items or types of property. This Deed of Trust or a reproduction hereof is sufficient as a financing statement. In addition, Owner will execute and deliver to THDA, upon its request, any financing statements or amendments thereto or continuation statements thereof that THDA may require to perfect a security interest.

8. Governing Law, Venue. This Deed of Trust and the rights and obligations of the parties hereunder shall be governed by and construed and enforced in accordance with the laws of the State of Tennessee and, where applicable, laws of the United States of America. Owner hereby irrevocably consents to the jurisdiction and venue of any state court located within Davidson County, Tennessee or any federal court located in or having jurisdiction over Davidson County, Tennessee for any disputes pertaining to the Note or the Deed of Trust.
9. Mechanic's Liens. Except as set forth on Exhibit B, the lien of this Deed of Trust shall have priority, at all times, over any and all mechanic's and materialmen's liens. THDA does not consent to any contract for labor or materials within the meaning of T.C.A. Section 66-11-108. No contract for labor or material will be let by Owner except with the express stipulation that the mechanic's and materialmen's liens therefor shall at all times be subordinate to the lien of this Deed of Trust.
10. Future Advances. Notwithstanding anything to the contrary contained in the Note, the TCAP Loan Agreement or this Deed of Trust, THDA shall have no obligation to make any advances under the Note, the TCAP Loan Agreement or this Deed of Trust which would not be secured hereby or enjoy the same priority granted other advances secured hereby.
11. Amendment. All actions, as deemed necessary by THDA, shall be taken to amend this Deed of Trust to comply with Program Requirements, and any and all applicable rules, regulations, policies, procedures, and rulings or other official statements pertaining to the Assistance Funds.
12. Compliance With Applicable Laws. Owner and the Property shall comply with all Program Requirements and all other applicable federal, state or local laws, statutes, ordinances, codes, rules or regulations, as the same may be amended from time to time.
13. Captions, Gender, Number. The captions of the sections herein are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof. Wherever used, the singular number shall include the plural, and the plural the singular, and the use of any genders shall be applicable to all genders.
14. Definitions. All terms not otherwise defined herein shall have the meaning ascribed to them in the TCAP Loan Agreement or the Program Requirements.
15. Consents and Approvals. All approvals and consents hereunder shall be in writing and no approval or consent shall be deemed to have been given hereunder unless evidenced in a writing signed by the party from whom the approval or consent is sought.

16. Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of the Owner and THDA under this Deed of Trust, the Note and any and all other documents related thereto.

IN WITNESS WHEREOF, Owner has executed and delivered this Deed of Trust as of the day and year first above written.

BY: _____
NAME: _____
TITLE: _____

STATE OF _____)
COUNTY OF _____)

Before me, _____, a Notary Public of the State and County aforesaid, personally appeared _____ with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged himself to be _____, a _____ of _____, the within named bargainer, a _____, and that he as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited partnership by himself as such _____.

WITNESS my hand and Official Seal at office this _____ day of _____, 20__.

Notary Public

My Commission Expires: _____

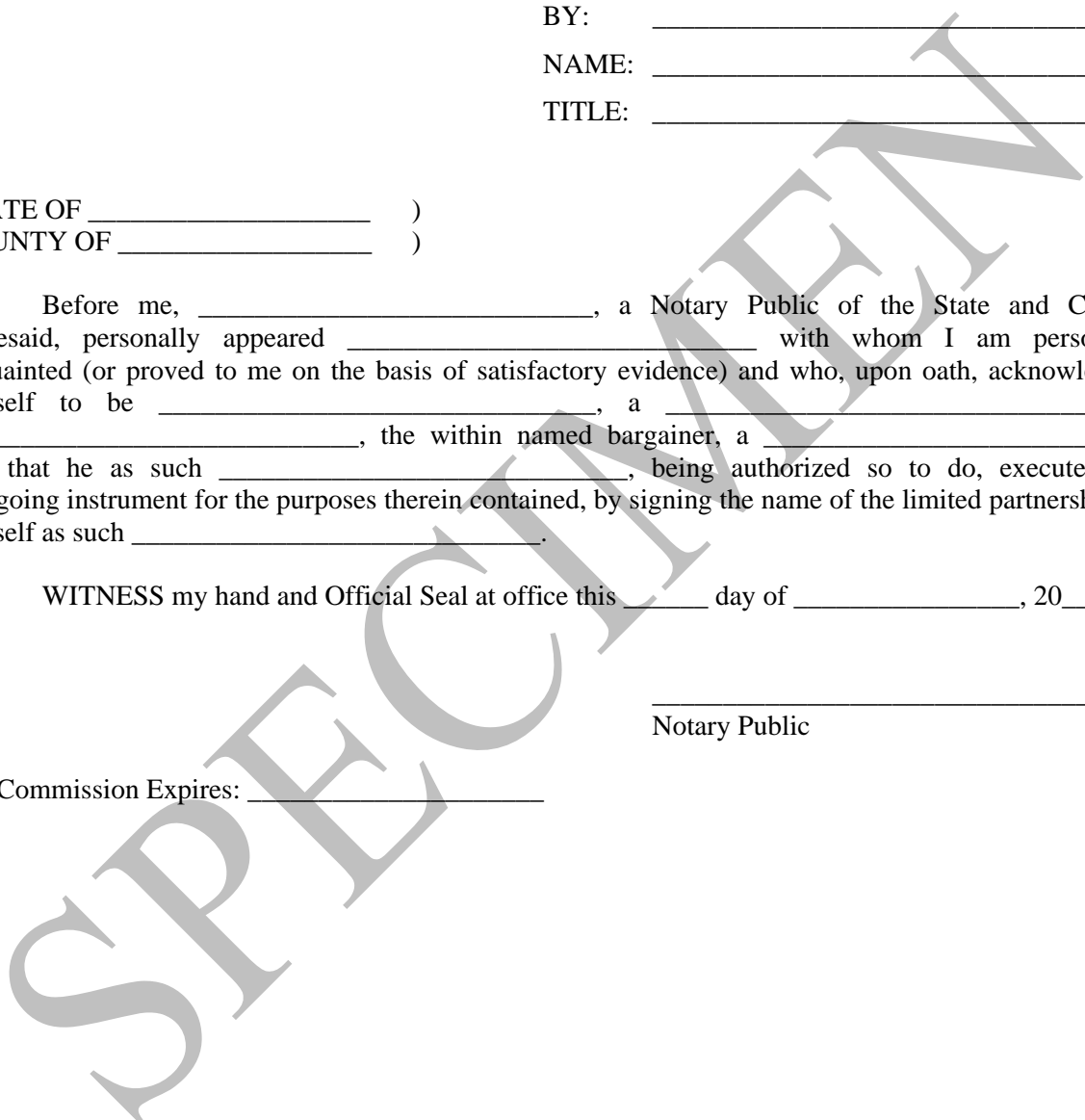


EXHIBIT A

[property description]

SPECIMEN

EXHIBIT B

Permitted Encumbrances

- 1.
- 2.
- 3.
- 4.

SPECIMEN

TENNESSEE HOUSING DEVELOPMENT AGENCY
ADDENDUM TO CONSTRUCTION CONTRACT
[TCAP Funds only]

This Addendum to Construction Contract (“Addendum”) is entered into as of _____, by and between _____, a [Tennessee/_____] limited partnership (“Owner”), and _____ (“Contractor”). Owner and Contractor agree that the Contract (as defined below) shall be modified and amended as set forth in this Addendum.

Article 1. Definitions. Owner and Contractor agree that the following capitalized terms shall have the following meanings:

- 1.01. “Business Day” means any day on which THDA is open for business.
- 1.02. “Contract” means the construction contract, dated _____, between Owner and Contractor for the construction work at the Development.
- 1.03. “Development” means the _____ unit rental housing project to be constructed and owned by Owner and located in _____ County, Tennessee, which will be known as “_____” (TN0_ - _____)
- 1.04. “Draw Request” has the same meaning as in the Loan Agreement.
- 1.05. “Funds” means those TCAP funds made available by THDA.
- 1.06. “HUD” means the United States Department of Housing and Urban Development or any successor.
- 1.07. [“Intercreditor Agreement” means the agreement between THDA, Senior Lender and Syndicator.](#)
- 1.08. “Lead Paint” means “lead-based paint” as defined in the Lead Paint Act.
- 1.09. “Lead Paint Act” means the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. §4821 et seq., and its implementing regulations, as amended from time to time.
- 1.10. “Loan” means the loan of Funds from THDA to Owner.
- 1.11. “Loan Agreement” means the TCAP Loan Agreement to be executed between THDA and Owner, which agreement will set forth (among other things) the procedure for disbursing Funds to Owner during construction of the Development.
- 1.12. “MBE/WBE” means minorities, women, and entities owned by minorities and women.
- 1.13. [“Retainage” has the same meaning as in the Loan Agreement.](#)
- 1.14. [“Senior Lender” has the same meaning as in the Loan Agreement.](#)
- 1.15. “THDA” means the Tennessee Housing Development Agency and its successors and assigns.
- 1.16. “Unit” means any housing unit in the Development.

Article 2. Warranties and Representations. Notwithstanding anything to the contrary contained in the Contract, Contractor hereby warrants and represents as follows:

2.01. No member, employee, officer, agent, consultant, or official of THDA or any member of the immediate family of any such person has any direct or indirect interest in the Contract or any proceeds or benefits arising from it.

2.02. Neither Contractor nor any of its principals are presently debarred, suspended, proposed for debarment or suspension, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

2.03. No federally appropriated funds, including the Funds, have been paid or will be paid, by or on behalf of Contractor, to any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2.04. If any funds other than federally appropriated funds have been paid or will be paid to any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this Contract, Contractor shall complete and submit HUD Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Article 3. Contractor Covenants. Notwithstanding anything to the contrary contained in the Contract, Contractor hereby covenants as follows:

3.01. Contractor shall comply with Executive Order 11246, Executive Order 11375, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act, and their implementing regulations, as amended, which prohibit discrimination against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, or handicap.

3.02. Contractor shall comply with Executive Orders 11625, 12432, 12138, and their implementing regulations, as amended, which require the inclusion to the maximum extent possible of MBE/WBEs in carrying out any activity pursuant to this Contract. Contractor shall maintain records and data evidencing: (a) the racial, ethnic, or gender character of each business entity performing work on any Unit; (b) the amount of each contract or subcontract; and (c) that MBE/WBEs have equal opportunity to compete for and obtain business.

3.03. Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874 et seq.), the Davis-Bacon Act, (40 U.S.C. 276a et seq.) and Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.), and their implementing regulations, as amended. Contractor shall abide by the provisions set forth in HUD Form 4010 attached as Exhibit A and incorporated by reference. Contractor shall attach a copy of that Form to any and all contracts with subcontractors performing work on any Unit. Upon request, Contractor shall promptly provide Owner with information or documents substantiating or evidencing its compliance with such laws and regulations.

3.04. Contractor shall comply with the Lead Paint Act, which (among other things) prohibits the use of Lead Paint in the construction of any Unit and requires that any and all Lead Paint abatement activities, including (but not limited to) clean-up of the work site and waste disposal, shall be conducted in compliance with the Lead Paint Act.

3.05. Contractor shall construct any Unit in accordance with all applicable codes, laws, regulations and requirements and shall correct any work which fails to conform to such standards and shall remedy any defects due to faulty materials or workmanship which appear within one year from the date of final

completion of the construction of the Development. This Section 3.06 applies to work done by subcontractors as well as to work done by employees of Contractor.

3.06. Contractor shall adhere to the [draw submission requirements as contained in the Intercreditor Agreement or as otherwise provided by Senior Lender and/or THDA.](#) ~~following disbursement procedures:~~

~~(a) Contractor shall complete the applicable parts of the Draw Request, shall execute the Draw Request, and forward it to Owner.~~

~~(b) Contractor shall comply with the method and form of disbursement as set forth in the Loan Agreement.~~

~~(c) Contractor shall not submit the first Draw Request relating to the construction of the Development earlier than the date set forth in the Loan Agreement.~~

~~(d) THDA shall have at least 10 Business Days to either disburse the Funds pursuant to a Draw Request or to deny in writing the Draw Request.~~

~~(e)~~ In addition to any information required by the Loan Agreement, a Draw Request shall include a Contractor lien waiver and any subcontractor lien waivers, as required by THDA, and the following information, accompanied by evidence in form and content satisfactory to THDA: (1) the portion of the construction work completed at that time; (2) that all construction before the date of the Draw Request has been done substantially in accordance with approved plans and specifications and in a good and workmanlike manner; (3) that all funds previously advanced by THDA have been applied directly to the costs for which funds were requested under the applicable Draw Request; (4) Contractor's certification of receipt of any applicable permits, licenses, or certificates required under local, state, or federal law; and (5) that all change orders have been approved in writing by THDA [and by Senior Lender.](#)

3.07. Contractor agrees that at no time and in no event shall THDA be obligated to disburse the Funds: (a) with respect to hard costs in excess of the actual costs incurred; (b) if the Project has been damaged by fire or other casualty [and THDA determines that Owner is unable to obtain insurance proceeds or other funds to repair such damage;](#) (c) if in the reasonable judgment and opinion of THDA, the estimated remaining cost of construction of the Development (including any allowable soft costs) exceeds the total of: (1) the remaining portion of the Funds available for any Unit, plus (2) the remaining portion of any other funds committed to the construction of the Development; (d) if condemnation proceedings or similar type of proceedings are begun for all or a material part of the Development; (e) if, in the reasonable judgment and opinion of THDA, either Contractor, Owner, or the Project has failed to satisfy or is in violation of any requirement set forth in any applicable regulations or guidelines of THDA or HUD [following notice to Owner and an opportunity to cure as specified in the Loan Agreement;](#) or (f) if there is any default under the Loan Agreement, [after expiration of all applicable cure periods.](#)

3.08. Contractor shall have a written contract with each and every subcontractor performing work on any Unit. The written contract shall expressly require: (a) the subcontractor to comply with the Lead Paint Act; (b) the subcontractor to warrant and represent that no member, employee, officer, agent, consultant, or official of THDA or any member of the immediate family of such person, has any interest, direct or indirect, in any agreement pertaining to the construction of any Units or any proceeds or benefits arising from such an agreement; (c) the subcontractor to warrant and represent that neither it nor any of its principals are presently debarred, suspended, proposed for debarment or suspension, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency; (d) the subcontractor to warrant and represent that no federal appropriated funds have been paid or will be paid, by or on behalf of subcontractor, to any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative

agreement; (e) the subcontractor to warrant and represent that if any funds other than federally appropriated funds have been paid or will be paid to any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this Contract, subcontractor shall complete and submit HUD Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (f) the subcontractor shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, or handicap; (g) the subcontractor to construct any Unit in accordance with all applicable codes, laws, regulations and requirements; and (h) the subcontractor to certify that it will provide a drug-free workplace for its employees during the performance of its subcontract in accordance with Tennessee Code Annotated Section 50-9-101 et seq. ~~in accordance with the requirements of O.C.G.A. §5-0-24-3 (b)(7).~~

3.09. Contractor shall maintain proper and accurate books, records, and accounts reflecting its performance under this Addendum and the Contract, which shall be separate from any general accounting records which Contractor may maintain in connection with Contractor's general business activities. Contractor agrees that THDA, the Comptroller of the State of Tennessee, HUD, Office of Inspector General, the Comptroller of the United States, the General Accounting Office, or any of their authorized representatives shall have, during regular business hours, access to all such books, records, and accounts for a period of not less than 5 years after delivery of final payment to Contractor under the Contract. In addition, with respect to any disputed matters (i.e., audits, disputes, or litigation), Contractor shall maintain all such books, records, and accounts for a period of not less than 5 years after all such disputed matters are resolved in accordance with applicable federal or state laws, regulations, or policies.

3.10 Contractor agrees to the following: (a) Contractor agrees to make available at all reasonable times during the term of the Contract plus an additional 3 years thereafter, any and all records, information, data, reports, plans, projections, matters, contracts, memoranda, correspondence, and other materials relating to the Contract for inspection by THDA, the Comptroller of the State of Tennessee, HUD, Office of Inspector General, the Comptroller of the United States, the General Accounting Office, or any of their authorized representatives; (b) Contractor agrees to include the substance of this clause in all subcontracts related to the Contract.

3.11. Contractor understands and agrees that, before THDA is obligated to release ~~any the R~~Retainage held by THDA, Owner and Contractor must satisfy the ~~following~~ requirements contained in the Loan Agreement. ~~:(a) full and final completion of the work required under the Contract, as determined by THDA or its representative; (b) THDA's receipt of the Contractor's certification of the actual cost of the work; and (c) THDA's receipt of an audit report and opinion letter from a certified public accountant (the "CPA"), which report and opinion must certify the Contractor's costs and be prepared in accordance with generally accepted account principles and generally accepted auditing standards (the General Contractor's certification and the CPA's audit report and opinion letter, as required by this section, are collectively referred to as the "Cost Certification"). The Cost Certification is subject to THDA's review and must be in a form satisfactory to THDA and in accordance with THDA requirements.~~ For a period of 5 years following completion of construction, THDA, the Comptroller of the State of Tennessee, HUD, Office of Inspector General, the Comptroller of the United States, the General Accounting Office, or any of their authorized representatives shall have the right to audit all of Contractor's books and records pertaining to the Development ~~the Cost Certification~~, and Contractor agrees that it will cooperate with any such audit, ~~and will cause the CPA to cooperate with any such audit.~~ Contractor will give the persons conducting any such audit access to Contractor's records relating to the Contract and the Development. Contractor further understands and agrees that the total payments from all sources to Contractor in connection with the Development shall be limited as provided in the Loan Agreement ~~not exceed the actual allowable amount for construction, as determined by THDA or its representative.~~

3.12. Contractor understands and agrees that Contractor's payment and lien rights are expressly subordinate to THDA's lien and shall execute and procure lien waivers as reasonably requested by THDA to confirm that no mechanics' or materialmen's liens may exist with priority over THDA's deed of trust.

3.13. Contractor acknowledges receipt of a copy of the Loan Agreement and that the Loan Agreement imposes certain requirements on connection with the [construction/rehabilitation] of the Development. Contractor agrees to perform its work in compliance with those requirements.

Article 4. Effect of Addendum. This Addendum is made a part of the Contract (whether physically attached or not), and, to the extent that there is any conflict between the terms of the Contract and this Addendum, the parties agree that the terms of the Addendum shall prevail and be given effect.

By: _____
its sole/managing General Partner

By: _____

Attest: _____

Name: _____

Title: _____

[SEAL]

By: _____

Name: _____

Title: _____

Attest: _____

Name: _____

Title: _____

[SEAL]

SPECIMEN