

PLEDGE AND SECURITY AGREEMENT
([Partnership/Membership Interests])

THIS PLEDGE AND SECURITY AGREEMENT (this "**Agreement**") is executed to be effective as of _____, 20____, by _____, a _____, with a mailing address of _____ (together with its successors, ("**General Partner**"), for the benefit of Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas, established by Chapter 2306, Texas Government Code, with a mailing address of 221 East 11th Street, P.O. Box 13941, Austin, Texas 78722-3941 (together with its successors, "**Department**").

RECITALS

A. General Partner is the [*general partner/managing member*] of _____, a _____ (the "**Development Owner**"); and Development Owner is governed by its _____ dated as of _____ (as amended from time to time, the "**Formation Document**").

B. Department has made Department has provided or is providing equity to the Development Owner via a grant secured by a lien (the "**Equity**") as evidenced by that (i) Exchange Written Subaward Agreement dated _____, 20____, executed by Department and Development Owner (as amended from time to time, the "**Exchange Agreement**"); (ii) that Document providing a mechanism for recapture of Equity ("**Recapture Mortgage**"), and (iii) that Assignment, Pledge and Security Agreement of Developer dated of even date with the Recapture Mortgage, executed by _____, Department and (iv) Pledge and Security Agreement of Limited Partner securing and/or evidencing the Obligations (hereinafter collectively referred to as the "**Equity Documents**").

C. Department acknowledges that Development Owner has also assigned its interest in Development Owner to _____ and _____, (collectively

whether one or more, the "**Third Party Lenders**"), subject to the terms and provisions of that [*Intercreditor Agreement*] dated on or about the date hereof and executed by Department and the Third Party Lenders (the "**Intercreditor Agreement**").

D. In order to secure the full payment and performance by Development Owner of all of Development Owner's obligations, duties, expenses and liabilities under the Equity Documents (collectively, the "**Obligations**"), General Partner is entering into this Agreement for the benefit of Department.

A G R E E M E N T

For other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Department and General Partner hereby agree as follows:

1. **Definitions.**

(a) "**Collateral**" shall consist of all of the following:

(i) All of General Partner's right, title and interest in Development Owner, whether now owned or hereafter acquired, including, without limitation, its interest as [*general partnership/managing member*] in Development Owner and its right to receive distributions, allocations and payments under the Formation Document;

(ii) All fees and charges to be paid by Development Owner to General Partner, whether now owned or hereafter acquired, whether arising under the Formation Document, or otherwise;

(iii) All indebtedness of Development Owner to General Partner of any kind or description; and

(iv) To the extent not listed above as original collateral, all products and proceeds, whether cash proceeds or noncash proceeds, of any and all of the foregoing.

(b) "**Consent**" shall have the meaning assigned to such term in Section 3(b) of this Agreement.

(c)

(d) "**Event of Default**" shall have the meaning assigned to such term in Section 6 of this Agreement.

(e) "**Permitted Distributions**" has the meaning assigned to such term in Section 9 of this Agreement.

(f) "**State**" means the State of [*General Partner's state of organization*], which General Partner hereby acknowledges is its state of organization and the state in which its principal place of business is located.

(g) "**UCC**" shall mean the Uniform Commercial Code of the State, as the same may be amended from time to time.

(h) All other capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Exchange Agreement.

2. Pledge of Collateral and Grant of Security Interest. General Partner does hereby unconditionally and irrevocably assign, pledge, convey, transfer, deliver, set over and grant unto Department, its successors and assigns, as security for Development Owner's complete and timely payment and performance of the Obligations, a continuing [*first/second/third*] priority security interest under the UCC in the Collateral. General Partner hereby further grants to Department, as security for the Obligations, all rights in the Collateral as are available to a Department of such collateral under the UCC and agrees, upon request, to deliver any other documents that Department may reasonably request to effect the conveyance, transfer and grant to Department of all of General Partner's right, title and interest in and to the Collateral. General Partner further consents to Department's preparation and filing of UCC-1 Financing Statement suitable for filing in the Office of the Secretary of State of the State with respect to the Collateral.

3. Delivery to Department.

(a) General Partner agrees to execute and deliver to Department, and to cause all other necessary parties to execute and deliver to Department, such other agreements, instruments and documentation as Department may reasonably request to effect the conveyance, transfer and grant to Department of each General Partner's right, title and interest in and to the Collateral as security for the Obligations.

(b) Concurrently with the execution of this Agreement, General Partner shall cause each of the [*general and limited partners/members*] of Development Owner to execute the Consent and Waiver, in the form attached hereto as Exhibit A (the "**Consent**"), evidencing the consent of the [*general and limited partners/members*] to the assignment of General Partner's [*partnership/membership*] interests.

(c) General Partner agrees to execute and to cause the other [*partners/members*] of Development Owner to execute and deliver to Department such other agreements, instruments and documentation as Department may reasonably request from time to time to effectuate the conveyance, transfer, assignment and grant to Department of all of General Partner's right, title and interest in and to the Collateral, subject to the terms of the Equity Documents.

4. Proceeds and Products of the Collateral.

(a) Unless an Event of Default exists, Department agrees to forbear exercising its right to receive any benefits pertaining to the Collateral, and General Partner shall be permitted to exercise all rights and to receive all benefits of the Collateral, including without limitation, (i) the right to exercise all voting, approval, consent and similar rights of General Partner pertaining to the Collateral, (ii) payments due under, proceeds, whether cash proceeds or noncash proceeds, and (iii) products of the Collateral, and to retain and enjoy the same.

(b) General Partner acknowledges and agrees that, unless Department otherwise consents, General Partner shall not exercise any voting, approval, consent or other rights with respect to the Collateral at any time an Event of Default exists and General Partner has received written notice from Department instructing General Partner not to exercise any such right; provided, however, that General Partner shall exercise any such right it may have under the Formation Document with respect to the business affairs of Development Owner as is reasonably necessary to protect and preserve the Collateral.

(c) During the existence of an Event of Default, Department may exercise all rights and remedies granted to Department under this Agreement, including without limitation, the right to require the obligors under the Collateral to pay to Department all payments due under, and to pay all proceeds of, the Collateral. General Partner hereby authorizes and directs each respective obligor under the agreements constituting the Collateral to, upon receipt of written notice from Department of an Event of Default, assign, set over, transfer, distribute, pay and deliver any and all Collateral, or said payments, proceeds or products of the Collateral, to Department at such address as Department may direct, at such time and in such manner as such would otherwise be distributed, transferred, paid or delivered to General Partner. To the extent permitted under applicable law, and unless otherwise provided in the Equity Documents, upon the giving of notice of any such notice Event of Default, the security constituted by this Agreement shall become enforceable by Department without any presentment, further demand, protest or other notice of any kind, all of which are hereby expressly and irrevocably waived by General Partner. The respective obligors under the agreements constituting the Collateral shall be entitled to conclusively rely on such notice and make all such assignments and transfers of the Collateral, pay all such payments with respect to the Collateral, and pay all such proceeds and products of the Collateral, to Department.

5. Representations, Warranties and Covenants. General Partner makes the following representations and warranties:

(a) Except as otherwise disclosed to Department in writing, General Partner owns the Collateral free and clear of any claim, lien or encumbrance.

(b) Except as otherwise disclosed to Department in writing, General Partner has delivered to Department true and complete copies of the Formation Document and any other agreements pertinent to the Collateral, and such agreements are currently in full force and effect and have not been amended or modified except as disclosed to Department in writing.

(c) Except as otherwise disclosed to Department in writing, General Partner has the full right and title to its interest in the Collateral and has the full power, legal right and authority to pledge, convey, transfer and assign such interest, and none of the Collateral is subject to any existing or subsequent assignment, claim, lien, pledge, transfer or other security interest of any character, or to any attachment, levy, garnishment or other judicial process or to any claim for set-off, counterclaim, deduction or discount. General Partner shall not further convey, transfer, set over or pledge to any party any of its interests in the Collateral without the prior written consent of Department.

(d) General Partner's Employer Identification Number is _____, and its principal place of business is located at _____.

(e) General Partner agrees that it shall not, without at least thirty (30) days' prior written notification to Department, move or otherwise change its principal place of business or change its state of organization.

(f) General Partner shall not exercise any voting rights, or give any approvals, consents, waivers or other ratifications with respect to the Collateral that would violate or contravene, or which would cause or otherwise authorize General Partner to violate or contravene, any provision of this Agreement.

6. Event of Default. Each of the following shall constitute an Event of Default hereunder:

(a) An event of default shall have occurred under the Formation Document or the Equity Documents and such default shall not have been cured within any applicable grace period;

(b) There occurs the issuance of a writ, order of attachment or garnishment with respect to any of the Collateral and such writ, order of attachment or garnishment is not bonded, dismissed and removed within sixty (60) days thereafter; or

(c) A material breach or violation of any covenant or agreement contained herein shall have occurred that is not cured within sixty (60) days after notice has been given to General Partner by Department.

7. Remedies.

(a) During the existence of an Event of Default Department may, by giving notice of such Event of Default, at its option, do any one or more of the following:

(i) Declare all of the Obligations secured hereby to be immediately due and payable;

(ii) Either personally, or by means of a court appointed receiver, collect and/or take possession of all or any of the Collateral and exclude General Partner and all others claiming under General Partner therefrom; and thereafter exercise all rights and powers of General Partner with respect to the Collateral. If Department demands or attempts to take possession of any of the Collateral in the exercise of any rights under this Agreement, General Partner promises and agrees to promptly turn over and deliver complete possession thereof to Department;

(iii) General Partner, make such payments and do such acts as Department may deem reasonably necessary to protect its security interest in the Collateral, including without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien that is prior to or superior to the security interest granted hereunder;

(iv) Foreclose upon this Agreement as herein provided, and exercise any and all of the rights and remedies conferred upon Department by the Equity Documents, or in any other document executed by General Partner in connection with the Obligations secured hereby, either concurrently or in such order as Department may determine; and sell or cause to be sold in such order as Department may determine, as a whole or in such parcels as Department may determine, the Collateral, without affecting in any way the rights or remedies to which Department may be entitled under the other such instruments, and Department may be a purchaser at any sale;

(v) Exercise any remedies of a Department under the UCC; and

(vi) Remove General Partner as a [*general partner/member*] of Development Owner.

(b) Department shall give General Partner at least twenty (20) days' prior written notice of the time and place of any public sale of the Collateral subject to this Agreement or other intended disposition thereof to be made.

(c) The proceeds of any sale under Section 7(a) above shall be applied as follows and in the following order:

(i) To the repayment of the reasonable and actual costs and expenses of retaking, holding and preparing for the sale and the selling of the Collateral (including reasonable and actual legal expenses and attorneys' fees) and the discharge of all assessments, encumbrances, charges or liens, if any, on the Collateral prior to the lien hereof (except any taxes, assessments, encumbrances, charges or liens subject to which such sale shall have been made);

(ii) To the payment of the whole amount then due and unpaid of the Obligations;

(iii) To the payment of all other amounts then secured hereby; and

(iv) The aggregate surplus, if any, to General Partner in a lump sum, or as a court or competent jurisdiction may direct.

(d) During the existence of an Event of Default Department shall have the right to enforce one or more remedies under this Agreement and under the Formation Document, successively or concurrently, and such action shall not operate to estop or prevent Department from pursuing any further remedy it may have, and any repossession or retaking or sale of the Collateral pursuant to the terms hereof shall not operate to release General Partner until full payment of any deficiency has been made in cash.

(e) GENERAL PARTNER ACKNOWLEDGES THAT DEPARTMENT MAY BE UNABLE TO EFFECT A PUBLIC SALE OF ALL OR ANY PART OF THE COLLATERAL AND MAY BE COMPELLED TO RESORT TO ONE OR MORE PRIVATE SALES TO A RESTRICTED GROUP OF PURCHASERS WHO WILL BE OBLIGATED TO AGREE, AMONG OTHER THINGS, TO ACQUIRE THE COLLATERAL FOR THEIR OWN ACCOUNT FOR INVESTMENT, AND NOT WITH A VIEW TO THE DISTRIBUTION OR RESALE THEREOF. GENERAL PARTNER AGREES THAT DEPARTMENT SHALL BE PERMITTED TO TAKE SUCH ACTIONS AS DEPARTMENT DEEMS REASONABLY NECESSARY IN SELLING THE COLLATERAL TO AVOID CONDUCTING A PUBLIC DISTRIBUTION OF SECURITIES IN VIOLATION OF THE SECURITIES ACT OF 1933 OR THE SECURITIES LAWS OF ANY STATE, AS NOW ENACTED OR AS THE SAME MAY IN THE FUTURE BE ENACTED OR AMENDED. IN ADDITION, GENERAL PARTNER AGREES TO EXECUTE, FROM TIME TO TIME, ANY AMENDMENT TO THIS AGREEMENT OR OTHER DOCUMENT AS DEPARTMENT MAY REASONABLY REQUIRE TO EVIDENCE THE ACKNOWLEDGEMENTS AND CONSENTS OF GENERAL PARTNER SET FORTH IN THIS PARAGRAPH.

8. Attorneys' Fees. General Partner agrees to pay to Department reasonable and actual attorneys' fees, costs and expenses that Department expends or incurs in collecting any amounts payable by General Partner hereunder or in enforcing this Agreement against General Partner whether or not suit is filed.

9. Right to Make Distributions. Except during the existence of an Event of Default, General Partner shall have the right, without the consent of Department, to make distributions as provided in the Formation Document ("**Permitted Distributions**") of proceeds of any distributions and payments received by General Partner from Development Owner or from any capital contributions of its [*partners/members*]. Any such Permitted Distributions shall be free and clear of the lien created by this Agreement.

10. Further Documentation. General Partner hereby agrees to execute (to the extent execution is required by applicable law) one or more financing statements and such other instruments as may be required to perfect the security interest created hereby, including any continuation or amendments of such financing statements.

11. Waiver and Estoppel. General Partner represents and acknowledges that it knowingly waives each and every one of the following rights, and agrees that it will be estopped

from asserting any argument to the contrary: (a) any defense that may arise by reason of the incapacity, lack of authority, death or disability of General Partner or the failure to file or enforce a claim against General Partner's estate (in administration, bankruptcy or any other proceeding; (b) any defense based upon an election of remedies by Department which destroys or otherwise impairs any or all of the Collateral; and (c) any defense based on modification of the indebtedness secured hereby.

12. No Continuing Waiver. No delay or single or partial exercise by Department of any rights or remedies hereunder shall preclude Department's exercise of any other right or remedy, whether contained in this Agreement or in any of the other documents regarding the Obligations. No actions of Department permitted under this Agreement shall in any way impair or affect the enforceability of any agreement or obligation contained herein.

13. Independent Obligations. The obligations of General Partner are independent of the obligations of any other party that may be initially or otherwise responsible for performance or payment of the Obligations, and, during the existence of an Event of Default, a separate action or actions for payment, damages or performance may be brought and prosecuted by Department against General Partner, individually, for the full amount of the Obligations then due and payable, whether or not an action is brought against any other party, whether or not Department is involved in any proceedings and whether or not Department or General Partner or other person is joined in any action or proceedings.

14. No Offset Rights of General Partner. No lawful act of commission or omission of any kind or at any time upon the part of General Partner shall in any way affect or impair the rights of Department to enforce any right, power or benefit under this Agreement.

15. Power of Attorney. Effective only during the existence of an Event of Default, General Partner hereby appoints Department as its attorney-in-fact to execute and file on its behalf any financing statements, continuation statements or other documentation required to perfect or continue the security interest created hereby. This power, being coupled with an interest, shall be irrevocable until all amounts secured hereby have been paid, satisfied and discharged in full.

16. GOVERNING LAW. THE LAWS OF THE STATE OF TEXAS GOVERN THIS AGREEMENT. THE STATE AND FEDERAL COURTS LOCATED IN TRAVIS COUNTY (AUSTIN), TEXAS HAVE EXCLUSIVE JURISDICTION AND VENUE AS TO ALL ACTIONS BROUGHT UNDER THIS AGREEMENT.

17. Successors and Assigns. All agreements, covenants, conditions and provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of General Partner and Department.

18. Notices. All notices, demands and documents that are required or permitted to be given or served hereunder shall be in writing and shall be deemed sufficiently given when delivered or mailed to General Partner and the parties listed in the Exchange Agreement, and in the manner set forth in the Exchange Agreement.

19. Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

20. Amendment. This Agreement may be modified or rescinded only by a writing expressly relating to this Agreement and signed by General Partner and Department.

21. Termination. This Agreement shall terminate, and shall be of no further force or effect upon the earlier to occur of the repayment in full of the Obligations of General Partner or upon the mutual consent of General Partner and Department.

22. INTERCREDITOR AGREEMENT. ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT ARE SUBJECT TO THE TERMS AND PROVISIONS OF THE INTERCREDITOR AGREEMENT. IN THE EVENT OF A CONFLICT BETWEEN THE TERMS AND PROVISIONS OF THIS AGREEMENT AND THOSE OF THE INTERCREDITOR AGREEMENT, THE TERMS OF THE INTERCREDITOR AGREEMENT SHALL CONTROL.

[Signature Page Follows]

This Agreement is executed to be effective as of the date first set forth above.

GENERAL PARTNER: _____,

a _____

By: _____,

Name: _____,

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____, 20____, by _____, _____ of _____, a _____, on behalf of said _____.

Notary Public, State of _____

[S E A L]

DEVELOPMENT OWNER: _____,

a _____

By: _____,

Name: _____,

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____
_____, 20____, by _____, _____ of _____
_____, a _____, on behalf of said _____.

Notary Public, State of _____

[S E A L]

DEPARTMENT:

a public and official agency of the State of Texas,

By: _____,

Name: Michael Gerber,

Title: Executive Director

STATE OF TEXAS §

§

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this ____ day of _____, 20____, by _____, _____ of _____, a _____, on behalf of said _____.

Notary Public, State of _____

[S E A L]

**EXHIBIT A
TO
PLEDGE AND SECURITY AGREEMENT**

Consent and Agreement of [*Partners/Members*]

CONSENT TO PLEDGE AND SECURITY AGREEMENT
OF [PARTNERS/MEMBERS] OF
_____, A _____

The undersigned, being all the [partners/members] (collectively, the "[Partners/Members]" of _____, a _____ ("**Development Owner**"), hereby represent and certify to _____, a Delaware limited liability company (the "**Department**"), as follows:

1. Each has received notice from Department that Department has a security interest in 100% of the [general partnership/membership] interest in Development Owner owned by _____ ("**General Partner**"), and registered to General Partner (the "**Collateral**").

2. Other than the notice from Department referred to above, the [Partners/Members] have not received any notice from any entity or person claiming an adverse claim against, lien on or security interest in the Collateral.

3. The security interest of Department referred to above was duly registered in the books and records of Development Owner effective _____, 20____.

4. General Partner's interests in Development Owner are not represented in any certificate, instrument or document, and such interest may be assigned, transferred or pledged without the party receiving such assignment, transfer or pledge taking physical possession of any certificate, instrument or document.

5. The [Partners/Members] hereby consent to the execution and delivery of the Pledge and Security Agreement by General Partner and agree hereby to be bound by Section 4 thereof to assign, set over, transfer, distribute, pay and deliver the Collateral and any and all payments, proceeds or products due to General Partner under the Collateral to Department.

6. The [Partner/Members] hereby consent to the admission of Department, its nominee, designee or any person or entity acquiring its interest under the Pledge and Security Agreement, as a [general partner/member] of Development Owner upon receipt of notice by Department of an Event of Default by General Partner thereunder, and agree that Department or such nominee, designee or person acquiring Department's interest thereunder shall not be deemed to have assumed any of General Partner's liability by virtue of such admission as the general partner of Development Owner.

[Signature Page Follows]

The undersigned execute this Consent to Security Interest and Agreement of Partners of _____, to be effective as of _____, 20____.

[GENERAL PARTNER/MEMBER]: _____,
a _____

By: _____,
Name: _____,
Title: _____

[GENERAL PARTNER/MEMBER]: _____,
a _____

By: _____,
Name: _____,
Title: _____

LIMITED PARTNER: _____,
a _____

By: _____,
Name: _____,
Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____
_____, 20____, by _____, _____ of _____
_____, a _____, on behalf of said _____.

Notary Public, State of _____

[S E A L]

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____
_____, 20____, by _____, _____ of _____
_____, a _____, on behalf of said _____.

Notary Public, State of _____

[S E A L]

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____
_____, 20____, by _____, _____ of _____
_____, a _____, on behalf of said _____.

Notary Public, State of _____

[S E A L]