

**American Recovery and Reinvestment Act of 2009
Tax Credit Exchange Program (“Exchange Program”)
RECAPTURE MORTGAGE**

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON,
YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING
INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN
REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS:
YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER’S LICENSE NUMBER.**

**ARTICLE I
Definitions**

The following terms shall have the respective meanings assigned to them when used herein.

1.01 Grantor (“Development Owner”):_____.

1.02 Grantor's mailing address:_____.

1.03 Beneficiary: TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (“Department”), a public and official agency of the State of Texas, and any lawful owner, holder, pledgee, or assignee of any contractual obligation secured hereby.

1.04 Beneficiary's mailing address: Attn: Asset Manager, P.O. Box 13941, Austin, Texas 78711-3941.

1.05 Trustee: Michael Gerber of Travis County, Texas.

1.06 Architect:_____.

1.07 Asset Manager:_____ or the Department or its designee, and any successor thereto chosen by the Department.

1.08 Developer: _____ or the person entering into the Development Agreement and receiving the Developer Fee as defined herein, and any other person receiving any portion of such fee, whether by subcontract or otherwise

1.09 Developer's mailing address: _____.

1.10 General Contractor: _____, or any other general contractor engaged by Grantor and approved in writing by Lender to construct the Project or any part thereof.

1.11 Lender: _____ or any other third party loaning funds to be secured in whole or in part by the Project.

1.12 Mortgaged Property: The Real Property and the Personal Property.

1.13 Project: The residential rental housing development, including functionally related and subordinate facilities, buildings and other improvements now or hereafter erected, constructed or developed on the Real Property in accordance with the Plans and Specifications.

1.14 Real Property: The real property described in Exhibit "A" attached hereto and located

in _____ County, Texas, together with (i) all improvements thereon, all rights, hereditaments and appurtenances belonging thereto including rights of ingress and egress, easements, licenses, and all reversionary rights or interests of Grantor; (ii) all fixtures and personal property now or hereafter attached to the Real Property; (iii) all renewals or replacements thereof or articles in substitution therefore, whether or not now or later attached to the Project in any manner; and (iv) all other interests of every kind which Grantor now has or at any time hereafter acquires in and to the Real Property.

1.15 Personal Property: (i) all furniture, equipment and other personal property now or hereafter owned by Grantor and used in connection with, located on or related in any way to the Mortgaged Property, and all renewals or replacements thereof or articles in substitution therefore, whether or not the same are or shall be attached to the Project in any manner; (ii) all building materials and equipment now or hereafter delivered to the Mortgaged Property and all building and construction materials, equipment and parts intended to be installed in or on the Real Property or Project; (iii) all Plans and Specifications for the Project; (iv) all contracts and subcontracts relating to the Project; (v) all deposits (including tenant's security deposits, if any), funds, accounts (including any accounts in which escrows are deposited as a reserve for the payment of taxes, assessments and insurance on the Mortgaged Property), contract rights, instruments, documents, general intangibles (including trademarks, trade names and symbols used in connection therewith), and notes or chattel paper arising from or by virtue of any transactions related to the Mortgaged Property; (vi) all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Mortgaged Property; (vii) all bank accounts in which rental income from the Mortgaged Property is deposited; (viii) all proceeds arising from or by virtue of the sale, lease or other disposition of any of the Real or Personal Property; (ix) all proceeds (including premium refunds) payable or to be payable under each policy of insurance relating to the Project; (x) all proceeds arising from the taking of all or a part of the Real Property or any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, for any public or quasi-public use under any law, or by rights of eminent domain, or by private or other purchase in lieu thereof; (xi) all other interests of every

kind and character which Grantor now has or at any time hereafter acquires in and to the Personal Property and all property which is used or useful in connection therewith.

1.16 Anti-Terrorism Laws. Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, orders and ordinances of any governmental authority relating to terrorism or money laundering, including, without limiting the generality of the foregoing, the uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. No. 107-56); the Trading the Enemy Act (50 U.S.C.A. App. 1, *et seq.*); the International Emergency Economic Powers Act (50 U. S. C. A. §1701-06); Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (relating to “Blocking Property and Prohibiting Transactions With Persons Who Commit, Threatened to Commit, or Support Terrorism”) and the United States Treasury Department’s Office of Foreign Assets Control list of “specifically Designated National and Blocked Persons” (as published from time to time in various mediums, including, without limitation, at <http://www.treas.gov/ofac/t11sdn.pdf>).

1.17 Business Day: Monday through Friday excluding state and federal holidays.

1.18 Code: The Internal Revenue Code of 1986, as amended, and as the context may require, the Treasury Regulations promulgated thereunder, and any published rulings, procedures and notices thereunder.

1.19 Construction Completion Date. The date on which the Architect certifies that construction of the Project is substantially complete, and that the Project is ready for its intended use as evidenced by receipt of certificates of occupancy (or the jurisdictional equivalent).

1.20 Construction Contract(s). The construction contract by and between the Development Owner and the General Contractor.

1.21 Development Agreement. The development agreement by and between the Development Owner and the Developer.

1.22 Disbursement Agreement: The Disbursement Agreement of even date herewith executed by and between Grantor (or the Development Owner of the LURA if different from Grantor), Lender and Beneficiary, which agreement sets forth, among other things, the manner in which the construction of the Project will proceed

1.23 Eligible Costs: Any of the line-item expenditures to be reimbursed with the funds under the Exchange Program and such additional expenditures as may be approved by the Department or Asset Manager from time to time. The payment of such costs must be permissible under the Program Requirements. Eligible Costs for each residential rental building in a Project, determined at the time of Cost Certification, may not exceed 85% of such building’s eligible basis.

1.24 Environmental Laws and Regulations. Any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Mortgaged Property, including without limitation, the following, as now or hereafter amended, National Environmental Policy Act of 1969 and Related Laws (“NEPA”) and implementing regulations at 24 CFR Part 58, Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), 42 U.S.C.A. §9601 *et seq.*; Resource, Conservation and Recovery Act (“RCRA”), 24 U.S.C.A. §6901 *et seq.* as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”), Pub. L. No. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C.A. §2601 *et seq.*; Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C.A. §1101 *et seq.*; Clean Water Act (“CWA”), 33 U.S.C.A. §1251 *et seq.*, Clean Air Act (“CAA”), 42 U.S.C.A. §7401 *et seq.*; Federal Water Pollution Control Act (“FWPCA”), 33 U.S.C.A. §1251 *et seq.*; and any corresponding state laws or ordinances including but not limited to the Texas Water Code (“TWC”) §26.001 *et seq.*; Texas Health & Safety Code (“THSC”) §361.001 *et seq.*; Texas Solid Waste Disposal Act, Tex. Rev. Civ. Stat. Ann. Art. 4477-7; and regulations, rules, guidelines, or standards promulgated pursuant to such laws, statute and regulations, as such statutes, regulations, rules, guidelines, and standards are amended from time to time.

1.25 Exchange Program. The federal housing Tax Credit Exchange Program under Title XII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (“Recovery Act”) pursuant to which grants are appropriated to states for rental housing developments that receive an Award of Tax Credits under Section 42(h) of the Code.

1.26 Governmental Requirements. All laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Mortgaged Property is located, and any other political subdivision, agency or instrumentality exercising jurisdiction over Grantor or the Mortgaged Property including, without limitation, the following: the Civil Rights Act of 1964 (42 U.S.C. 2000(d); Executive Order 11-63, as amended by Executive Order 12259; Executive Order 11246; Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*); Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*); Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*); Fair Housing Act (42 U.S.C. 3601 *et seq.*); the Americans with Disabilities Act of 1990 (P.L. 101-336); of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations (24 CFR Part 8); Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*); Federal Drug Free Workplace Act of 1988 and the regulations promulgated thereunder including, without limitation, 54 CFR Part 4956, Section 3 of the Housing and Urban Development Act of 1968; Executive Orders 11625, 12432 and 12138, as amended; the Copeland “Anti-Kickback” Act (18 U.S.C. § 874 *et seq.*); the Davis-Bacon Act (40 U.S.C. § 276a *et seq.*); Sections 103 and 107 of the Work Hours and Safety Standards Act. (40 U.S.C. § 327 *et seq.*); the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. § 4201 *et seq.*); the Housing and Community Development Act of 1974; the National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*); (“NEPA”); the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4321 *et seq.*); the State of Texas Senate Bill 1356; Title 8, and Chapter 92 of the Texas Property Code; Solid Waste Disposal Act TEX. HEALTH & SAFETY CODE Ann. Ch. 361; Comprehensive Municipal Solid Waste

Management, Resource Recovery, and Conservation Act. TEX. HEALTH & SAFETY CODE Ann. Ch 363; County Solid Waste Control Act. TEX. HEALTH & SAFETY CODE Ann. Ch 364; Texas Clean Air Act, TEX. HEALTH AND SAFETY CODE Ann. Ch.; and Hazardous Communication Act, TEXAS HEALTH AND SAFETY CODE Ann. Ch. 502; and such Governmental Requirements as may be from time to time amended or superseded and all of their implementing regulations, as may be amended.

1.27 HUD: The United States Department of Housing and Urban Development and its successor.

1.28 Low-Income Units. The units in the Project identified in the LURA that are to be held for occupancy by the Grantor and occupied in such a manner as to qualify such units as “low-income units” under Section 42(i)(3) of the Code and as further defined in the LURA.

1.29 LURA: Declaration of Land Use Restrictive Covenants/Land Use Restriction Agreement for Low-Income Housing Tax Credits using Exchange Program Funds made by and between Grantor and Beneficiary to be recorded in the real property records of the county where the Real Property is located, which agreement sets forth certain income requirements and occupancy and rent restrictions for the Project pursuant to Section 42(g) of the Code for a certain period of time set forth in the LURA, subject to certain exceptions set forth therein, and which is binding on the Grantor as Development Owner and Grantor’s successors in interest and encumbers the Mortgage Property with respect to the requirements therein, Chapter 2306 of the Texas Government Code and Section 42 of the Code The LURA shall comply with the provisions of Section 42(h)(6) of the Code.

1.30 Permitted Exceptions. The exceptions from coverage found in Schedule B of the mortgage policy of title insurance issued by _____ Title Insurance Company, GF # _____, issued to Beneficiary herein, including, without limitation, Option Agreement, Subordination Agreement, Recapture Mortgage and the LURA.

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

1.32 Program Requirements. The policy adopted by the Department under Board Resolution No. 09-047 on July 30, 2009 setting forth the policies, rules and procedures by which Beneficiary will implement the Exchange Program and allocation funds under Exchange Program to eligible applicants (“Exchange Program Policy”), and any and all requirements (including Governmental Requirements) for receiving and maintaining a Subaward of funds under Exchange Program as set forth in Sections 1404 and 1602 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (“Recovery Act”), the “*Application and Terms and Conditions: Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009*” published by Treasury in May 2009, and any updates, modifications or

successor guidelines thereto (“Guidelines”), Sections 2306.6736 and 2306.6737 of the Texas Government Code, and any other rules, regulations, guidelines or notices published by HUD or the Internal Revenue Service (“IRS”) from time to time with respect to the Exchange Program that are applicable to the Mortgaged Property.

1.33 Prohibited Person. Any person or entity that (i) is specifically named or listed in, or otherwise subject to, any Anti-Terrorism Laws, (ii) is “owned or controlled” by, or acting for or on behalf of any person or entity specifically named or listed in, or otherwise subject to, any Anti-Terrorism Laws, (iii) Beneficiary is prohibited from dealing with, or engaging in any transaction with, pursuant to an Anti-Terrorism Laws, or (iv) is affiliated with any person or entity described in clauses (i) – (iii) of this definition. “Owned and controlled” and variations thereof mean a direct or indirect interest in the entity in question, including but not limited to voting or non-voting equity, partnership, joint venture and other arrangements, and specifically including but not limited to (1) all members of limited liability companies, (2) all shareholders owning ten percent (10%) or more of the outstanding shares of corporations, measured on an aggregate and/or class-by-class basis, (3) all general partners of limited partnerships and general partnerships, (4) all limited partners owning twenty-five percent (25%) or more of the outstanding limited partnership interests in limited partnerships, (5) all trustees and settlors of trusts, and (6) all beneficiaries owning twenty-five percent (25%) or more of the beneficial interests in trusts.

1.34 Property Management Agreement. The agreement between the Development Owner and the Property Manager providing for property management services to the Project, as amended and/or replaced from time to time.

1.35 Property Manager. Any person acting as property manager under the Property Management Agreement.

1.36 QAP. The “Qualified Allocation Plan and Rules with Amendments” (a) in effect for the State for the year in which the Tax Credits were awarded to the Development Owner as defined under the LURA with respect to the Project; or (b) determined by the Department to be applicable to the Project in accordance with the Board’s policies and rules.

1.37 Recapture Event. The meaning attributed thereto in Section 4.02 hereunder.

1.38 Required In-Service Date. The date by which at least one unit in each building in the Project must be Low-Income Units, and be ready and available for occupancy in accordance with

the state and local laws, which date shall not be later than _____.

1.39 Required Percentage. The minimum percentage of units in the Project that must be Low-Income Units, which shall be the greater of the Minimum Set-Aside as defined in the LURA and the Subaward Fraction.

1.40. Security Instruments. Any assignments, pledges and security agreements, assignment of property management agreement, assignment of construction documents, Option Agreement by and among the Department, the Grantor and the Developer pursuant to which the Department has been granted certain rights to acquire limited direct ownership as provided under the Subaward Agreement and the Option Agreement, the LURA, this Recapture Mortgage, the Intercreditor Agreement, the Subordination Agreement, if applicable, and any and all other documents, instruments, and writings whereby the Developer, Grantor, and/or any affiliate grants Beneficiary any rights, liens, charges, security interests, ownership interests, mortgages, pledges, hypothecations, or other rights, legally or beneficially, collaterally or directly, to provide for the protection of the Department against any failure to adhere to the Program Requirements.

1.41 Subaward Agreement. The Exchange Program Subaward Agreement dated _____, 20_____, by and between Department and Development Owner, as may be amended, awarding funds under the Exchange Program in the aggregate amount of \$ (“Subaward”) to Development Owner to assist in the financing of the construction of the Project in accordance with Program Requirements.

1.42 Subaward Fraction. The lesser of (i) the fraction obtained by dividing the amount of the Subaward, once fully disbursed, into the aggregate eligible basis of the Project, and (ii) the “applicable fraction” set forth in the LURA.

1.43 Tax Credits. The federal low-income housing tax credits under Section 42(h) of the Code (including credits made available through housing credit ceiling provided by Section 1400N(c) of the Code.

1.44 Tax Credit Award. Award by the Texas Department of Housing and Community Affairs (“Department”) of Tax Credits in the amount of _____ pursuant to an allocation or determination of Tax Credits with respect to the Project issued by the Department on _____ and such additional action and/or documentation which the Department may take and provide pursuant to Section 42(h)(1) of the Code and Treasury Regulations in order to make an “allocation” to buildings in the Project for purposes of the Code.

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

1.46 Treasury. The United States Department of the Treasury, including the United States of America acting through the Treasury.

(OPTIONAL DEFINITIONS)

1.47 First Note: The promissory note dated _____ in the original principal sum of \$ _____ executed by _____ payable to the order of _____ (“First Lien Lender”).

1.48 Second Note (if applicable): The promissory note dated _____ in the original principal sum of \$ _____ executed by _____ payable to the order of _____ (“Second Lien Lender”).

1.49 Third Note (if applicable): The promissory note dated _____ in the original principal sum of \$ _____ executed by _____ payable to the order of _____ (“Third Lien Lender”).

1.50 First Mortgage: The deed of trust of even date with the First Note from _____ to _____, Trustee, which is of record at Volume _____, Page _____, _____ Records of _____ County, Texas, and all other documents securing the First Note.

1.51 Second Mortgage (if applicable): The deed of trust of even date with the First Note from _____ to _____, Trustee, which is of record at Volume _____, Page _____, _____ Records of _____ County, Texas, and all other documents securing the Second Note.

1.52 Third Mortgage (if applicable): The deed of trust of even date with the First Note from _____ to _____, Trustee, which is of record at Volume _____, Page _____, _____ Records of _____ County, Texas, and all other documents securing the Second Note.

1.53 Prior Deed of Trust (if applicable): The deed of trust dated _____, executed by Grantor to _____, Trustee for Beneficiary, recorded in Volume _____, Page _____, Records of _____, Texas, said Prior Deed of Trust having been given to secure the indebtedness of that one certain promissory note of even date therewith in the original principal sum of \$ _____, executed by Grantor to the order of Beneficiary (“Prior Note”).

1.54 Subordination Agreement: The Subordination Agreement dated _____, by and between Beneficiary, Grantor, First Lien Lender, Second Lien Lender and Third Lien Lender (if applicable) which will be filed in _____ County, Texas.

ARTICLE II **Conveyance in Trust**

2.01 Grant. Grantor, for and in consideration of the contractual obligations evidenced by the Subaward Agreement and LURA, has granted, assigned, and conveyed, and by these presents does grant, assign and convey the Mortgaged Property, in trust unto the Trustee, his successors and assigns, to have and to hold the Mortgaged Property, unto Trustee, his successors and assigns, forever. To the extent permitted by law, the Personal Property shall be deemed to be a part of and affixed to the Real Property. In the event the estate of the Grantor in and to any of the Mortgaged Property is a leasehold estate, this conveyance shall include and the lien and security interest and assignment created hereby shall encumber and extend to all other, further or additional title, estates, interest or rights which may exist now or at any time be acquired by Grantor in or to the property demised under the lease creating such leasehold estate and including Grantor's rights, if any, to purchase the property demised under such lease and, if fee simple title to any of such property shall ever become vested in Grantor, such fee simple interest shall be encumbered by this Recapture Mortgage in the same manner as if Grantor had fee simple title to such property as of the date of execution hereof. Grantor hereby binds itself, its successors and assigns, to warrant and forever defend the Mortgaged Property unto Trustee, his successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

2.02 Security. This conveyance is made in trust, however, to secure and enforce the payment of the Recapture Amount upon an Event of Recapture and the obligations of Grantor (and/or the Development Owner under the LURA, if different from Grantor) under the LURA, Subaward Agreement and other Security Instruments. If Grantor shall perform the covenants and agreements of the LURA and the covenants and agreements herein contained during the Compliance Period as defined in the LURA, then, and only then, this conveyance shall become null and void and shall be released at Grantor's expense; otherwise it shall remain in full force and effect. No release of this conveyance, or of the lien or security interest or assignment created and evidenced hereby, shall be valid unless executed by Beneficiary.

ARTICLE III
Grantor's Covenants and Representations

Grantor hereby covenants, warrants and represents to and agrees with Beneficiary and with Trustee as follows:

3.01 Payment and Performance. Grantor will:

(a) pay, if and when due, all of the Recapture Amount secured hereby, when the same shall become due upon an Event of Recapture, in accordance with the terms herein, and of the Subaward Agreement and LURA or any other instrument evidencing, securing, or pertaining to such contractual obligation owed and to be performed by Grantor or evidencing any renewal or extension of such contractual obligation owed and to be performed by Grantor, or any part thereof; and

(b) punctually and properly perform all of Grantor's covenants, obligations, and liabilities under any other security agreement, mortgage, deed of trust, collateral pledge agreement, contract, assignment, land use restriction agreement or any other instrument or agreement of any kind now or hereafter existing as security for, executed in connection with, or related to the Subaward, Recapture Amount or other contractual obligation owed and to be performed by Grantor secured hereby and under the LURA, or any part thereof, throughout the Compliance Period and Extended Use Period as said terms are defined in the LURA, including, but not limited to the following:

(i) Grantor will comply with all of the Program Requirements applicable to the Project;

(ii) Grantor will comply with all of the requirements of Section 42 of the Code and Texas Government Code Chapter 2306 to the extent necessary to receive and maintain the Subaward;

(iii) Grantor maintains the Required;

(iv) Grantor will comply with the income and rent restrictions and maintain the “applicable fraction” as set forth in the LURA throughout the term of the LURA; and

(v) The Project will become a “qualified low-income housing project” (as defined in Section 42(g)(1) of the Code) and will constitute “residential rental property” within the meaning of Section 1.103-8(b)(4) of the Treasury Regulations.

3.02 Title and Right to Convey. Grantor (i) has in its own right good and indefeasible title in fee simple or a long term ground lease for a period of not less than forty-five (45) years, , except as otherwise provided herein, to the Mortgaged Property which is free from encumbrance superior to the contractual obligation owed and to be performed by Grantor hereby secured, except as otherwise provided herein, and (ii) has full right to make this conveyance.

3.03 Insurance. For the term of the LURA, Grantor shall obtain and maintain at Grantor's sole expense, in amounts sufficient to assure the ongoing ability of the Grantor to perform its duties under the terms and conditions established by the LURA or the full repayment of the Subaward including, but not limited to: (1) all-risk insurance with respect to all insurable Mortgaged Property, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such hazards as are presently included in so-called "all-risk" coverage and against such other insurable hazards as Beneficiary may reasonably require, in an amount not less than the Subaward, or if available and requested by Beneficiary 100% of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent Grantor and Beneficiary from becoming a coinsurer, such insurance to be in Builder's Risk (non-reporting) form during and with respect to any construction on the Real Property; (2) if and to the extent any portion of the Project is in a special flood hazard area, a flood insurance policy in an amount equal to the lesser of the Subaward or the maximum amount available; (3) commercial general liability insurance, on an "occurrence" basis, against claims for bodily injury, death or property damage occurring on or about the Project, to afford protection in a "single limit" of not less than \$1,000,000 in the event of bodily injury to, or death of, any number of persons or of damage to property arising out of one occurrence, for the benefit of Grantor and Beneficiary as named insured; and (4) such other insurance on the Mortgaged Property as may from time to time be reasonably required by Beneficiary, if available, (including but not limited to rent loss or boiler and machinery insurance) and against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height, type, construction, location, use and occupancy of buildings and improvements. All insurance policies shall be issued and maintained by insurers, in amounts, with deductibles, and in form reasonably satisfactory to Beneficiary, and shall require not less than thirty (30) days' prior written notice to Beneficiary of any cancellation or change of coverage. In the event of cancellation for failure to pay premiums, the insurance carrier should agree to provide 10 day notice to Beneficiary. Grantor hereby provides the right for Beneficiary to directly contact its insurance carrier about the coverage and policies in place without imposing any obligation or liability on the Beneficiary. Beneficiary shall be listed as an additional insured on any and all policies purchased on the Project. In the event of an insured event occurring, the first priority is to maintain the Project in its original condition to perform all functions required under the LURA.

3.04 Event of Bankruptcy. Grantor, Developer or any person liable for the contractual obligation secured hereby, or any part thereof, including any guarantor of or surety for the performance of any contractual obligation hereunder and under the LURA, has NOT (i) filed a voluntary petition in bankruptcy; (ii) made an assignment for the benefit of any creditor; (iii) suffered an order for relief in bankruptcy to be entered against it and such order continued unstayed and in effect for a period of ninety (90) consecutive days; (iv) admitted in writing its inability to pay its debts generally as they became or will become due; (v) applied for or consented to the appointment of a receiver, trustee, or liquidator of Grantor or of any such guarantor or surety or of all or a substantial part of its assets; (vi) took advantage of or sought any relief under any bankruptcy, reorganization, debtor's relief or other insolvency law now or hereafter existing; (vii) filed an answer admitting the material allegations of, or consenting to, or defaulting in, a petition against Grantor or any such guarantor or surety, in any bankruptcy,

reorganization, or other insolvency proceedings; or (viii) instituted or voluntarily was or became a party to any other judicial proceedings intended to effect a discharge of the debts of Grantor or of any guarantor or surety, in whole or in part, or to effect a postponement of the maturity or the collection thereof, or that may affect a suspension of any of the rights or powers of Beneficiary granted in the Subaward Agreement, this Recapture Mortgage or in any other instrument evidencing or securing the Recapture Amount secured hereby.

3.05 No Event of Default. Grantor covenants that no Event of Default or defaults by the Grantor or any affiliate thereof under any contractual relationship with the Project has occurred or is continuing (nor has there occurred any continuing event which, with the giving of notice or the passage of time or both, would constitute such a default in any material respect) or under any of the mortgage loan documents for the Project or other documents or instruments governing the Project, use, occupancy and operation of the Project

3.06 Option Agreement. Grantor shall execute and deliver the Option Agreement in the form provided by Beneficiary.

3.07 Trustee's Title and Future Laws. If, while this trust is in force, the title of Trustee to, or the interest of Beneficiary in, the Mortgaged Property or any part thereof, shall be endangered or shall be attacked directly or indirectly, Grantor authorizes Beneficiary, at Grantor's expense, to take all necessary and proper steps for the defense of such title or interest, including the employment of counsel, the prosecution or defense of litigation, and the compromise or discharge of claims made against such title or interest. If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Recapture Mortgage, or upon any rights, titles, liens, or security interests created hereby, or upon the Subaward Agreement, or any part thereof, Grantor shall immediately pay all such taxes. In the alternative, Grantor may, in the event of the enactment of such a law, and must, if it is unlawful for Grantor to pay such taxes, prepay the Recapture Amount in full within sixty (60) days after demand therefor by Beneficiary. Grantor shall at any time and from time to time, furnish promptly, upon request, a written statement or affidavit, in such form as may be required by Beneficiary, stating the unpaid balance of the Recapture Amount, and that there are no offsets or defenses against full payment of the Recapture Amount due upon Event of Recapture and performance of the terms hereof, or if there are any such offsets and defenses, specifying them.

3.08 Repayment to Beneficiary. If, at the time of Cost Certification, Beneficiary shall determine that (i) the amount of the Subaward is more than the amount necessary for the financial feasibility of the Project and its viability as a qualified low-income housing project throughout the Compliance Period, or (ii) the total amount of the Subaward exceeds 85% of the aggregate eligible basis of the Project as determined by Beneficiary in accordance with Section 42 of the Code (the "Excess Amount"), Beneficiary shall provide the Grantor with written notice thereof and Grantor shall pay, in immediately available funds within thirty (30) Business Days from the date of such notice, an amount equal to the Excess Amount. In addition to the foregoing, Beneficiary may take any other remedial action it deems necessary or advisable to fulfill its program obligations to Treasury or otherwise carryout the principal purposes of the Exchange Program. Grantor may appeal the determination and repayment of such Excess Amount

3.09 Condition of Property. Upon completion of certain renovations, additions and improvements to the Project, Grantor will keep every part of the Mortgaged Property in good condition and presenting a good appearance, making promptly all repairs, renewals and replacements necessary to such end, and doing promptly all else necessary to such end. Grantor will discharge all claims for labor performed and material furnished therefor, and will not suffer any lien of mechanics or materialmen to attach to any part of the Mortgaged Property. Grantor will guard every part of the Mortgaged Property from removal, destruction and damage, and will not do or suffer to be done any act whereby the value of any part of the Mortgaged Property may be lessened.

3.10 Successors. If the ownership, control or management of the Mortgaged Property or any part thereof becomes vested in a person other than Grantor, or in the event of a change of ownership of more than ten percent (10%) of the total aggregate ownership interests in the Grantor as project owner Development Owner or the [managing member][general partner], as applicable, Grantor agrees that Beneficiary may, without notice to Grantor, deal with such successor or successors in interest with reference to this Recapture Mortgage and to the contractual obligation owed and to be performed by Grantor hereby secured in the same manner as with Grantor without in any way vitiating or discharging Grantor's liability hereunder or upon the contractual obligation owed and to be performed by Grantor hereby secured. No sale of the Mortgaged Property, and no forbearance on the part of Beneficiary, and no extension of the time for the payment of the Recapture Amount hereby secured, given by Beneficiary, shall operate to release, discharge, modify, change or affect the original liability of Grantor or the liability of any guarantors or sureties of Grantor, either in whole or in part.

3.11 Maintenance and Reserve Account.

(a) Commencing on the Construction Completion Date, Grantor shall establish a reserve account in a manner and with an entity approved by Beneficiary for capital replacements in accordance with the Subaward Agreement, Section 3.09 herein, and Sections 2306.185 and 2306.186 of the Texas Government Code and implementing regulations. Grantor covenants that deposits to the reserve account and the repairs and maintenance of the Mortgaged Property required hereunder fulfill and comply with the requirements of Section 2306.186 of the Texas Government Code and the implementing regulations, 10 TEX. ADMIN. CODE §§ 1.36 and 1.37. Withdrawals from such reserve shall be utilized solely to fund capital repairs and improvements deemed necessary by the Grantor. Any withdrawal of funds from the replacement reserve which would cause the aggregate withdrawals in any one calendar quarter to exceed \$10,000 shall be subject to the prior written consent of the Asset Manager. If Grantor fails to maintain reserve accounts required under Sections 2306.185 and 2306.186 of the Texas Government Code, Beneficiary shall take whatever action at law or in equity to collect a penalty equal to \$200 times the number of Units in the Project, and to enforce performance and observance of any obligation, agreement, covenant, representation or warranty of the Grantor under this Recapture Mortgage or any other Security Instrument.

(b) Grantor shall establish a reserve account in a manner and with an entity approved by Beneficiary for operating deficits in an amount equivalent to six months of stabilized

operational expenses and debt service payments. Such funds must be funded with the lesser of fifty percent (50%) of the gross rental income during lease-up or the net operating cash during lease-up. This reserve shall be maintained as a segregated account in the name of the Grantor as Development Owner. Withdrawals from such reserve account shall be allowed as approved by Beneficiary to fund cash deficits prior to stabilization. Once six months of continuous stabilized occupancy (90% physical) has been achieved withdrawals from this fund may be made by the Grantor without consent of Beneficiary.

(c) In the event that any net cash flow is generated by the Project in any given fiscal year during the Compliance Period or the Extended Use Period, as said terms are defined in the LURA, then after assuring that the reserves required by subsections (a) and (b) above are fully funded, the participation percentage of such net cash flow shall be placed in a special reserve account to assist residents to provide assistance with expenses associated with their tenancy. Resident expenses that may be paid from such special reserve account include application costs, security deposits or utilities for any unit leased to residents with incomes at or below 50% of the area median family income, or other purposes as approved by Beneficiary. Beneficiary shall have prior approval rights for any disbursement of funds from such account, which approval shall not be unreasonably withheld. The level of special reserve account participation is outlined as follows:

Special Reserve Account Participation Percentage (based on additional 30% AMGI units):

| <u>Selection:</u> | <u>Net Cash Flow Contribution Percentage:</u> |
|---------------------------------------|---|
| Base - 0% of 30% AMGI units | 20% |
| 10% - additional 30% AMGI units | 15% |
| 20% - additional 30% AMGI units | 10% |

d) The reserve accounts required hereunder, except in subsection (a) above, shall not be funded with funds under the Subaward Agreement or any other Exchange Program funds.

3.12 Compliance with Governmental Requirements. Grantor covenants that the Mortgaged Property and the improvements now or hereafter erected thereupon and the intended use thereof by Grantor comply with all Governmental Requirements, including, without limitation, all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, applicable health and Environmental Laws and Regulations and all other ordinances, orders or requirements issued by any state, federal or municipal authorities having or claiming jurisdiction over the Mortgaged Property and will continue to comply with Governmental Requirements throughout the Compliance Period and the Extended Use Period, as said terms are defined in the LURA. Grantor further covenants that Grantor has not received any notice and has no knowledge of any violation with respect to the Project of any law, rule, regulation, order or decree of any governmental authority having jurisdiction which would have a material adverse effect on the Project or the construction, use or occupancy thereof, except for violations which have been cured or can be cured within any applicable cure period, and are in the process of being cured, and notices or citations which have been

3.13 Money Laundering; Anti-Terrorism Laws.

(a) [_____ and _____ are the sole shareholders of Grantor]
[_____ is the sole general partner of Grantor] [and _____ and _____ are all of the limited partners of Grantor] and Grantor and its [shareholders] [partners] will furnish all of the funds for the purchase of the Mortgaged Property, other than funds supplied by Beneficiary , and such funds will not be from sources that are described in the anti-money laundering laws in 18 U.S.C.A. §§ 1956 and 1957 as funds or property derived from “specified unlawful activity.” Grantor shall have complied or will comply with requirements for instituting an anti-money laundering compliance program required under 31 USC § 5318(h) and have instituted or will institute policies and procedures and use commercially reasonable due diligence to identify and report “Suspicious Transactions” to relevant U. S. Government officials. “Suspicious Transactions” that may require reporting include, but are not limited to, (i) individual or related transactions in which a third-party provides payment in U.S. or foreign currency in excess of \$10,000 that may require reporting under 31 USC § 5331 and 26 USC § 6050I; (ii) any transaction where the Grantor or any affiliate of Grantor, suspects, or has reason to know that the transaction (A) is for an illegal purpose, including but not limited to money laundering; (B) is otherwise an attempt to disguise funds derived from illegal activity or evade reporting requirements under U.S. law; or (C) is suspicious because the transaction appears to serve no business or lawful purpose

(b) None of Grantor, and constituent party (nor any person or entity owning directly or indirectly an interest in Grantor, and constituent party, nor any person or entity owning directly or indirectly holds a substantial (ten percent (10%) or more) equity interest in Grantor or any of Grantor’s constituent parties, if applicable) (i) is a Prohibited Person, or (ii) has violated any Anti-Terrorism Laws. No Prohibited Person holds or owns any interest of any nature whatsoever in Grantor, any constituent party or guarantor, if applicable, as applicable, and none of the funds of Grantor, any constituent party or guarantor, if applicable, have been derived from any activity in violation of Anti-Terrorism Laws.

3.14 No Foreign Person. Neither Grantor (nor Development Owner under the LURA), nor guarantor, if applicable, is a “foreign person” within the meaning of §1445(f) (3) of the Tax Code.

3.15 Payment of Labor and Materials; Subcontracts. Grantor will promptly pay all bills for labor, materials, and specifically fabricated materials incurred in connection with the Mortgaged Property and never permit to exist in respect of the Mortgaged Property or any part thereof any lien or security interest, even though inferior to the liens and security interest, hereof, for any such bill, and in any event never permit to be created or exist in respect of the Mortgaged Property or any part thereof any other or additional lien or security interest on a parity with, superior, or inferior to any of the liens or security interest hereof, except for the Permitted Exceptions. To the maximum extent possible, subcontracts funded under the Subaward Agreement shall be awarded as fixed-price contracts through the use of competitive procedures. Grantor shall post a summary of any contract awarded with such funds that is not fixed-price and

not awarded using competitive procedures on the federal website established pursuant to Section 1526 of the Recovery Act.

3.16 Sources and Uses of Funds.

(a) Without limiting the requirements of Section 3.13 hereof, Grantor has taken, and shall continue to take until each and all of the obligations are satisfied in full, or upon an Event of Recapture, the Recapture Amount that has become due and payable is fully repaid, such measures as are required by any and all Anti-Terrorism Laws to assure that the funds invested in Grantor and/or used to make payments on the Recapture Amount secured hereby or the contractual obligation owed and to be performed by Grantor secured hereby are waived or derived from (i) transactions and sources that do not violate any Anti-Terrorism Laws, nor to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction from which they originated; and (ii) permissible sources under Anti-Terrorism Laws or, to the extent such funds originate outside the United States, under the laws of the jurisdiction from which they originated.

(b) Without limiting the requirements of Section 3.12 hereof, Grantor has taken, and shall continue to take until the Recapture Amount that has become due and payable is fully repaid and each and all of the obligations are satisfied in full, such measures as are required by the Byrd amendment to the fiscal 1990 appropriations measures for the United States Department of the Interior (P. L. 101-121) and any guidelines and rules issued by any federal entity in connection therewith, if applicable, to assure that no federal appropriated funds have been paid or will be paid, by or on behalf of Grantor, (i) to any person influencing or attempting to influence, or (ii) 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 Subaward under the Exchange Program.

(c) If Beneficiary reasonably believes that Grantor, if applicable, any constituent party, or any affiliate of any such parties may have breached any of the representations, warranties or covenants set forth in this Recapture Mortgage or the other Security Instruments relating to any Anti-Terrorism Laws, any violations of the Byrd amendment referenced in Sections 3.16(b) above and 3.17 hereof, or the identity of any person or entity as a Prohibited Person or person influencing or attempting to influence the federal persons referenced in Sections 3.16(b) above and 3.17 hereof, then, Beneficiary shall have the right, with or without notice to Grantor, to (1) notify the appropriate governmental authority and to take such action as such governmental authority or applicable Anti-Terrorism Laws and Byrd amendment may direct; (2) withhold disbursements of the Subaward and segregate the assets constituting the Subaward or any of Grantor's funds or assets deposited with or otherwise controlled by Beneficiary pursuant to the Security Instruments; (3) decline any payment (or deposit such payment with an appropriate United States governmental authority or court) or decline any prepayment or consent request; and/or (4) declare an Event of Default or Event of Recapture and immediately demand the applicable Recapture Amount in connection therewith, Grantor agrees that none of Grantor, if applicable, nor any constituent party will assert any claim (and hereby waives, for itself and on behalf of its affiliates, successors, assigns, representatives or agents for

any form of damages as a result of any of the foregoing actions, regardless of whether or not Beneficiary 's reasonable belief is ultimately demonstrated to be accurate.

(d) Grantor hereby certifies, as a condition to receiving funds from Beneficiary under the Subawards Agreement in accordance with Executive Order RP72, that the Exchange Program funds will be used in accordance with State and federal laws. Grantor shall track all funds under the Subaward Agreement and their projected statuses separately from all other funds and comply with State and federal reporting requirements in accordance with Executive Order RP72.

(e) Grantor, in consideration for receiving the Subaward, shall use the proceeds thereof to pay Eligible Costs incurred by Grantor in connection with the construction of the Project and the funding of the Subaward is expressly conditioned upon Grantor complying with all of the Program Requirements and the terms hereunder and under the Subaward Agreement.

(f) Grantor acknowledges that the sources of funds available to Grantor are sufficient to enable Grantor to complete construction of the Project in accordance with the Plans and Specifications.

3.17 Byrd Amendment: Prohibition for Influencing Federal Entities. Grantor covenants that, to the best of Grantor's knowledge, Grantor has complied with all restrictions, certifications and disclosure requirements contained in the Byrd amendment to the fiscal 1990 appropriations measures for the United States Department of the Interior (P.L. 101-121) and with any guidelines and rules issued by any federal entity in connection therewith, if applicable. Grantor further covenants that no federal appropriated funds have been paid or will be paid, by or on behalf of the Grantor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and/or the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

3.18 Construction & Land Use Covenants. Grantor unconditionally covenants and warrants that:

(a) Grantor shall cause the Construction Completion Date to occur within twenty-four (24) months from the date of this Recapture Mortgage, but in no event later than the Required In-Service Date and shall pay all costs to complete construction of the Project in accordance with the Plans and Specifications when and as incurred.

(b) Construction of the Project will commence prior _____ and the Construction Completion Date will occur within (24) twenty-four months from the date of this Recapture Mortgage, but in no event later than the Required In-Service Date.

(c) Grantor will operate the Project in accordance with the terms of the LURA so that it will meet (and an appropriate election has been or will be made with respect to) the

Minimum Set-Aside Test as defined in the LURA as of the dates established by Section 42(g)(3) of the Code and at all times thereafter through the end of the Compliance Period and the Extended Use Period.

(d) All utilities are, or will be, available to the Project, including sanitary and storm sewers, water, gas (if applicable) and electricity.

(e) Grantor will follow applicable Program Requirements and Section 42 of the Code with respect to obtaining annual reports from tenants of Low-Income Units of the Project concerning their incomes and family sizes in accordance with Section 7.11 herein. Except to the extent permitted by Section 42(g)(2)(E) of the Code, the gross rents (as adjusted in accordance with Section 42(g)(2)(B) of the Code) charged for each of the Low-Income Units will not, at any time during the Compliance Period and the Extended Use Period as defined in the LURA, exceed 30% of the income limitation applicable to the tenants of each such unit.

(f) None of the Low-Income Units will be occupied entirely by “students” (as defined in the Code).

(g) All services provided to tenants will be consistent with the LURA and, will be optional if not free to the residents (i.e., payment for the service will not be required as a condition of occupancy) and there will be no charges for services that are not optional (i.e., mandatory services) will be provided, or if so provided, the charges for any such services shall be included in determining compliance with the applicable rent restriction under the LURA.

(h) The units will be rented on a non-transient basis except in accordance with the Code and Revenue Procedure 2007-54.

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

3.19 Prohibited Use of Funds. Grantor covenants that Grantor shall not use any of the funds made available under the Subawards Agreement for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool, as outlined in Section 1604 of the Recovery Act.

3.20 Non-procurement, Debarment and Suspension. In addition to following any applicable State or local procurement laws, Grantor shall timely provide Beneficiary with an electronic version of any notice of procurement opportunity for posting on the Department’s website in accordance with Department policy. Grantor shall post any notice of procurement and job opportunities related to this Recapture Mortgage and Subaward Agreement on the Department’s website on the workintexas.com website.

3.21 Requirement to Post Notice of Whistleblower Rights and Remedies. Any employer receiving funds under the Subaward Agreement shall post notice of the rights and remedies afforded whistleblowers under Section 1553 of the Recovery Act.

3.22 No Litigation. No litigation, demand, investigation, claim or proceeding against the Grantor or any other litigation or proceeding directly affecting the Project is pending or, to the best knowledge of the Grantor, threatened, before any court, administrative agency or other governmental authority that would, if adversely determined, have a material adverse effect on the Grantor or the construction, use and operation of the Project.

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

ARTICLE IV
Events of Default and Recapture

4.01 Events of Default. The following shall be events of default ("Events of Default") hereunder:

(a) _____ (initials) **THE SALE, LEASE (OTHER THAN BY RESIDENTIAL LEASES OR COMMERICLA LEASES IN THE ORDINARY COURSE OF BUSINESS), TRANSFER, ENCUMBER OR DISPOSITION OF THE MORTGAGED PROPERTY, OR ANY MATERIAL PART THEREOF, UNLESS REPLACED WITH SIMILAR ITEMS DUE TO NORMAL WEAR AND TEAR, WITHOUT THE PRIOR WRITTEN CONSENT OF BENEFICIARY. ANY SUCH TRANSFER SHALL BE SUBJECT TO THE SAME REQUIREMENTS SET FORTH IN THE QAP AND PROGRAM REQUIREMENTS. IT IS NOT AN EVENT OF DEFAULT TO TRANSEOR OR ASSIGN THE _____ [FIRST MORTGAGE], _____ [PRIOR DEED OF TRUST OR] ANY OTHER VALIDLY EXISTING MORTGAGE LIEN WITHOUT THE CONSENT OF BENEFICIARY UNLESS SUCH ASSIGNMENT OR TRANSFER ENCUMBERS THE MORTGAGED PROPERTY WITH ADDITIONAL DEBT.**

(b) Grantor's failure to promptly pay when due upon an Event of Recapture the Recapture Amount secured hereby, and such failure continues for a period of the first Business Day following thirty (30) calendar days after written notice of such failure is given by Beneficiary or Asset Manager to Grantor; or Grantor's failure to keep and perform any of the covenants or agreements contained herein or in the LURA or any of the other Security Instruments by the first Business Day following sixty (60) calendar days after written notice of such failure is given by Beneficiary to Grantor, provided however that if said default cannot reasonably be cured by the first Business Day following sixty (60) calendar dabs and the Grantor

commences a cure within twenty (20) Business Days and proceeds in good faith to effect such cure thereafter, the cure period with respect to such breach or default shall be extended to a date no later than the latest permissible date for correction of the applicable breach under the Program Requirements without cause an Event of Recapture.

(c) Beneficiary's discovery that any statement, representation or warranty in the Subaward Agreement, LURA, this Recapture Mortgage or the other Security Instruments, or in any other writing delivered to Beneficiary in connection with the contractual obligation owed and to be performed by Grantor secured hereby is false, misleading or erroneous in any material respect, and remains so for a period of the first Business Day following sixty (60) calendar days for non-monetary default, following written notice by Beneficiary to Grantor.

(d) If Grantor or any such guarantor or surety shall fail to have discharged any attachments, sequestration, or similar proceedings against any assets of Grantor or of any guarantor or surety which remains undischarged and unstayed for a period of ninety (90) consecutive days; or if the Mortgaged Property is placed under control or in the custody of any court, or if Grantor abandons any of the Mortgaged Property.

(e) A default or Event of Default occurs under any other documents executed as security for or in connection with the Recapture Amount or under any other documents evidencing contractual obligation owed and to be performed by Grantor to Beneficiary or any other agency of the State of Texas, and the same is not remedied within the applicable period for curing such default (if any).

(f) A default or Event of Default occurs under the LURA filed in the real estate records of the county in which the Mortgaged Property is situated, and same is not remedied within the applicable period for curing such default as provided therein.

(g) If Grantor, without Beneficiary's prior written consent, which consent shall not be unreasonably withheld, (i) designates a new Property Manager, (ii) designates a new General Contractor, (iii) designates a new Developer, (iv) permits any material change in ownership interest in Grantor, or (v) makes any assignment of, or material change to, the Construction Contracts, Development Agreement or the Property Management Agreement. Beneficiary shall have the right to approve any new General Partner or Property Manager selected by Grantor, [First Lien Lender][Prior Lender], and/or any other partners of the Grantor, which approval shall not be unreasonably withheld.

(h) Grantor's failure to promptly pay when due the recapture amount under Section 4.03 that is due in connection with an Event of Recapture under Section 4.02 and such failure to repay continues for a period of ten (10) Business Days after written notice of such failure is given by Beneficiary or Treasury to Grantor, unless a later date is specified in such notice.

(i) Commencement of foreclosure proceedings with respect to any mortgage on the Mortgaged Property, which have not been withdrawn or dismissed by the first Business Day following thirty (30) calendar days after the date of such commencement or the commencement of any judicial proceedings.

(j) Gross negligence, fraud, willful misconduct, misappropriation of funds, or felonious activity by the Grantor or any affiliate of the Grantor, providing services to or in connection with the Project.

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

(l) Cost Certification as defined in the LURA does not occur within sixty (60) days from the Construction Completion Date.

(m) The Construction Completion Date has been delayed by more than sixty (60) calendar days, and such is not due to Force Majeure as defined herein, and Grantor has failed to submit an acceptable action plan regarding changes to the Plans and Specifications in accordance to the Subaward Agreement.

(n) Grantor's failure to timely pay when due the Excess Amount in accordance with Section 3.08 hereof that is due in connection with the advancing of an amount of funds under the Subaward Agreement more than the amount necessary for the financial feasibility of the Project and its viability as a qualified low-income housing development.

4.02 Events of Recapture. The following at any time during the Compliance Period as defined in the LURA shall be events of recapture ("Events of Recapture") hereunder:

(a) Grantor's failure to timely have a basis in the Project that is no less than ten percent (10%) of its "reasonably expected basis in such project" as the Required In-service Date for purposes of Section 42(h)(1)(E)(ii) of the Code.

(b) Beneficiary sends notice to the IRS in accordance with the current rules for Tax Credit properties under 10 TAC Chapter 60 that the Project is no longer participating in the program.

(c) The Project is not completed by the Required In-service Date and/or each building in the Project which is required to contain Low-Income Units is not placed in service by the Required In-Service Date.

(d) The Project ceases to be a "qualified low-income housing project" (as defined in Section 42(g) (1) of the Code).

(e) 100% of the funds under the Exchange Program available or advanced to Grantor have not been expended by the later of either, December 31, 2011, or a date approved by the Treasury.

(f) The funds under the Subaward Agreement have been determined by Beneficiary or Treasury to have been expended for costs other than Eligible Costs and have not been timely repaid.

(g) The percentage of Low-Income Units in the Project falls below the Minimum Set-Aside as defined in the LURA.

(h) Grantor's repeated or prolonged failure to timely provide any required statement, audits or reports under Section 7.11 herein.

4.03 Remedies.

(a) Upon the occurrence of any Event of Recapture, Beneficiary, at its sole option, the applicable portion of the Subaward disbursed to Grantor shall be subject to "recapture" in the amounts set forth below ("Recapture Amount") and Beneficiary may declare the Recapture Amount secured hereby immediately due and payable and/or may pursue any rights and remedies it may have hereunder or at law or in equity.

(b) If an Event of Default shall have occurred and be continuing, Beneficiary may require repayment of any amount of the Subaward previously disbursed to Grantor under the terms of the Subaward Agreement.

(c) Upon the occurrence of an Event of Default that remains uncured or the Project becomes in "material non-compliance" as such term is defined in 10 TAC Chapter 60, Beneficiary may require the removal or withdrawal of the General Partner or Managing Member, as applicable and however designated, of the Grantor and/or the Property Manager of the Project and provide for Beneficiary or its designee, to act in its stead, pending appointment of a replacement General Partner under the organizational documents of the Grantor, with consultation with [Prior Lender] [First Lien Lender]. Beneficiary shall, in any partnership agreement or limited liability company management agreement, be allowed to (i) replace, in consultation with the other partners, the General Partner, (ii) approve the selection of a new General Partner and to (iii) have an option to purchase of up to 20% of the partnership interests in the event of the sale of the Project as this option shall be evidenced in writing in a separate Option Agreement provided by Beneficiary.

(d) Upon the occurrence of an Event of Default that remains uncured, Beneficiary may deny the Grantor and its affiliates the right to participate in programs of the Department or impose penalties in accordance with the Department's rules and regulations under Title 10 of the Texas Administrative Code.

(e) Upon the occurrence of an Event of Recapture described in Sections 4.02(b), (d) or (g) above, the applicable portion of the funds under the Subaward Agreement disbursed to Grantor shall be subject to "recapture" in an amount equal to the full amount of the Subaward, less 6.67% for each full calendar year of the Compliance Period in which an Event of Recapture has not occurred; provided however, that if Grantor restores (a) the percentage of Low-Income

Units to the Required Percentage and/or (b) the Project as a “qualified low-income housing project,” as applicable, the Event of Recapture and any Recapture Amount shall be waived by Beneficiary with respect to subsequent years in the Compliance Period in which the Project is in compliance, provided that such waiver is permitted under the Program Requirements.

(f) If an Event of Recapture under Sections 4.02(a) or (c) occurs, the Grantor will pay to Beneficiary upon demand the Recapture Amount equal to the amount of the Subaward actually disbursed.

(g) Upon the happening of an Event of Default as set forth in Section 4.01(n) hereof, Beneficiary may take any other remedial action it deems necessary or advisable to fulfill its program obligations to Treasury or otherwise carry out the principal purposes of the Exchange Program. Grantor may appeal the determination and repayment of an Excess Amount in accordance with the appeal process outlined in 10 TAC Section 1.7.

(h) Upon the happening of an Event of Recapture as set forth in Section 4.02(h) hereof, Grantor will pay to Beneficiary upon demand the an amount equal to \$100 per day for each day after the due date that any required report under Section 7.11 is submitted. Failure to deliver the Quarterly Financial Status Reports when due pursuant to Section 7.11 herein may also result in the suspension of any disbursements of funds under the Exchange Program.

(i) If an Event of Recapture as set forth in Sections 4.02(e) and (f) above occurs and is not timely cured as provided herein, Grantor will pay to Beneficiary upon demand an amount equal to the amount of the Subaward, not to have been expended by December 31, 2011 or to have been expended for costs other than Eligible Costs in violation of Program Requirements, as applicable.

(j) If an Event of Recapture occurs, the Recapture Amount shall include any interest or penalties that accrue in accordance with the Program Requirements.

(k) If an Event Recapture Event occurs, in addition to the Recapture Amount, Grantor shall pay to Beneficiary upon demand an amount equal to the reasonable out-of-pocket costs and fees reasonably incurred by Beneficiary in connection with the Event of Recapture.

(l) Upon the happening of an Event of Default, Beneficiary may temporarily suspend or cease making payments of the Subaward pending correction of the Event of Default by Grantor.

(m) Upon the happening of an Event of Default, Beneficiary may require that the Developer, Property Manager, General Contractor or any other person providing services to the Grantor be replaced by another contractor chosen by Grantor and acceptable to Beneficiary.

(n) Upon the happening of an Event of Default, Beneficiary may draw upon and apply and escrows and/or reserve accounts in accordance with their terms.

(o) Beneficiary may defer enforcement of remedies upon the occurrence of an Event of Default for such period as it determines appropriate, if it determines that the [Prior Lender] [First Lien Lender], Developer, Grantor and/or any affiliate thereof, is taking appropriate measures to correct the circumstances giving rise to the Event of Default.

(p) Treasury shall be deemed a third-party beneficiary of this Article IV.

(q) Beneficiary hereby agrees that any cure made by the Developer or [Prior Lender] [First Lien Lender] shall be deemed to be a cure by the Grantor and shall be accepted or rejected on the same basis as if made by the Grantor.

(r) Failure of Beneficiary to provide Grantor, Developer or [Prior Lender] [First Lien Lender] written notice in accordance with Section 7.15 of any Event of Default or Event of Recapture as herein required, shall not relieve Grantor of any obligation hereunder or prevent the declaration or occurrence of an Event of Default or Event of Recapture, nor shall it serve to relieve the Grantor of any of the consequences thereof.

4.04 Enforcement; Enforcement and Remedies of Other Parties; Specific Performance.

(a) The Recapture Amount shall be due and payable to the General Fund of Treasury and shall be deemed a debt owned to the Treasury, enforceable against any assets of the Grantor by Treasury.

(b) Unless another date is specifically fixed by law, the amount due shall be reduced to judgment and filed in the real property records of the county in which the Project is located and shall continue in force until the Recapture Amount is paid to Beneficiary in full.

(c) Beneficiary may defer the enforcement of remedies upon the occurrence of an Event of Recapture until the end of the Compliance Period as defined under the LURA, if it determines that the [Prior Lender][First Lien Lender] is taking appropriate measures to correct the circumstances giving rise to an Event of Recapture.

(d) Grantor acknowledges that the primary purpose for requiring compliance with the provisions of the Subaward Agreement is to ensure compliance with Section 42 of the Code and the Program Requirements, and by reason thereof, and in consideration for receiving the Subaward, Grantor hereby agrees and consents that, in the event of any Event of Default hereunder and, in addition to all other remedies provided or by law or in equity, Beneficiary, the State of the United States of America shall be entitled to enforce specific performance by Grantor and its successors and assigns of its obligations under this Recapture Mortgage and Subaward Agreement in any tribunal in the State of Texas for any and all breaches of such obligations or material representations made by Grantor at any time.

ARTICLE V **Nonjudicial and Judicial Foreclosure and Sale**

5.01 Trustee's Sale. Upon an Event of Recapture or Event of Default _____

_____ {and subject to the [Prior Deed of Trust] [First Mortgage]}, Grantor authorizes and empowers the Trustee, at the request of Beneficiary, at any time during the continuance of any default including an Event of Recapture, to foreclose this lien in accordance with Chapter 51 of the Texas Property Code. Trustee will: (1) cause notice of the foreclosure sale to be given as provided in the Texas Property Code as then in effect; (2) sell all or any portion of the Mortgaged Property "AS IS", to the highest bidder, for cash or for credit against the Recapture Amount secured hereby if Beneficiary is the highest bidder, subject to the Prior Deed of Trust and to the Other Exceptions to Conveyance and Warranty and without representation or warranty, express or implied, by Trustee; (3) receive the proceeds thereof and shall apply the same as follows: (i) first, pay the reasonable expense of executing this trust including a reasonable Trustee's fee or commission, (ii) second, pay, so far as may be possible, the Recapture Amount secured hereby, and (iii) third, pay the residue, if any, to the person or persons legally entitled thereto; (4) be indemnified, held harmless, and defended by Beneficiary against all costs, expenses, and liabilities incurred by Trustee for acting in the execution or enforcement of the trust created by this Recapture Mortgage, which includes all court and other costs, including attorney's fees, incurred by Trustee in defense of any action or proceeding taken against Trustee in that capacity.

5.02 Successor Trustee. If the Trustee shall die or become disqualified from acting in the execution of this trust, or shall fail or refuse to execute the same when requested by Beneficiary to do so; or if, for any reason, Beneficiary shall prefer to appoint a substitute Trustee to act instead of the Trustee named herein, Beneficiary shall have full power to appoint, by written instrument, a substitute Trustee, and, if necessary, several substitute Trustees in succession, who shall succeed to all the estate, rights, powers, and duties of the original Trustee named herein. Such appointment may be executed by any authorized agent of Beneficiary; and if Beneficiary is a corporation and such appointment is executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. In the event of an assignment of the interests of Beneficiary under this Recapture Mortgage, all rights and remedies granted to Beneficiary in this Recapture Mortgage shall inure to the benefit of, and may be exercised by, the assignee.

5.03 Acts and Statements of Trustee. Grantor hereby agrees, in its behalf and in behalf of its heirs, executors, administrators, successors, personal representatives and assigns, that any and all statements of fact or other recitals made in any deed of conveyance given by the Trustee, with respect to the identity of Beneficiary, or with respect to the occurrence or existence of any default or recapture event or with respect to the Recapture Amount secured hereby becoming due and payable, or with respect to the request to sell, the notice of sale, the giving of notice to all debtors legally entitled thereto, the time, place, terms, and manner of sale, and receipt, distribution, and application of the money realized therefrom, or with respect to the due and proper appointment of a substitute Trustee, and, without being limited by the foregoing, with respect to any other act or thing having been duly done by the Beneficiary or by the Trustee hereunder, shall be taken by all courts of law and equity as prima facie evidence that the statements or recitals state facts and are without further question to be so accepted, and Grantor

hereby ratifies and confirms every act that Trustee or any substitute Trustee hereunder may lawfully do in the premises by virtue hereof.

5.04 Disaffirmance by Purchaser. The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted, or rental, lease or other contract made, in violation of any provision of this Recapture Mortgage, and may take immediate possession of the Mortgaged Property free from, and despite the terms of, such grant of easement and rental or lease contract.

5.05 Beneficiary May Bid. Beneficiary shall have the right to become the purchaser at all sales to enforce this trust, being the highest bidder, and to have the amount of which such property is sold credited on the Recapture Amount secured hereby which is then owing.

ARTICLE VI **Hazardous Materials**

6.01 Definitions. For the purpose of this Recapture Mortgage, Grantor, Beneficiary and Trustee agree that, unless the context otherwise specifies or requires, the following terms shall have the meaning herein specified:

(a) **Hazardous Materials:** Any substance the presence of which on the Mortgaged Property is regulated by any Governmental Requirements (as hereinafter defined), including but not limited to: (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CERCLA" or "SuperFund"), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos; (iv) polychlorinated biphenyls; (v) any petroleum-based products; and (vi) underground storage tanks, whether empty, filled or partially filled with any substance.

(b) **Hazardous Materials Contamination:** The contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, over or under the Mortgaged Property by Hazardous Materials, or the contamination of the improvements, facilities, soil, ground-water, air or other elements on, over or under any other property as a result of Hazardous Materials at any time (whether before or after the date of this Recapture Mortgage) emanating from the Mortgaged Property.

6.02 Representations and Warranties. Grantor hereby represents and warrants that:

(a) No Hazardous Materials are located on the Mortgaged Property or have been released into the environment, or deposited, discharged, placed or disposed of at, on, under or near the Mortgaged Property, or transported to or from the Mortgaged Property. No portion of the Mortgaged Property is being used or, to the best of Grantor's knowledge, has been used at any previous time, for the disposal, storage, treatment, processing, manufacturing or other handling of Hazardous Materials nor is any part of the Mortgaged Property affected by any Hazardous Materials Contamination.

(b) To the best of Grantor's knowledge (i) no Hazardous Materials are located on property adjoining the Mortgaged Property; (ii) no property adjoining the Mortgaged Property has ever been used at any previous time for the disposal, storage, treatment, processing, manufacturing or other handling of Hazardous Materials; and (iii) no property adjoining the Mortgaged Property is affected by Hazardous Materials Contamination.

(c) No asbestos or asbestos-containing materials have been installed, used, incorporated into, or disposed of on the Mortgaged Property.

(d) No polychlorinated biphenyls or materials containing polychlorinated biphenyls are located on or in the Mortgaged Property, in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or any other device or form.

(e) No underground storage tanks are located on the Mortgaged Property or, to the best of Grantor's knowledge, were previously located on the Mortgaged Property and subsequently removed or filled.

(f) No investigation, administrative order, consent order, agreement, litigation or settlement with respect to Hazardous Materials or Hazardous Materials Contamination is proposed, threatened, anticipated or in existence with respect to the Mortgaged Property. The Mortgaged Property and its existing and prior uses comply and at all times have complied with any applicable Governmental Requirements relating to environmental matters or Hazardous Materials. There is no condition on the Mortgaged Property which is in violation of any applicable Governmental Requirements relating to Hazardous Materials, and Grantor has received no communication from or on behalf of any governmental authority that any such condition exists. The Mortgaged Property is not currently on, and to the best of Grantor's knowledge, has never been on, any federal, state or local "Superfund" or "Superlien" list.

(g) Except for studies, audits, and reports pertaining to the Mortgaged Property which have been made available to Beneficiary, there have been no environmental investigations, studies, audits, tests, reviews or other analyses conducted by or which are in the possession of or available to Grantor in relation to the Mortgaged Property.

(h) All representations and warranties contained in this Section 6.02 shall survive the consummation of the transactions contemplated by this Recapture Mortgage.

6.03 Covenants. Grantor agrees: (a) that Grantor shall not receive, store, dispose or release any Hazardous Materials on or to the Mortgaged Property or transport any Hazardous Materials to or from the Mortgaged Property or permit the existence of any Hazardous Materials Contamination; (b) to give written notice to Beneficiary immediately upon Grantor's acquiring knowledge of the presence of any Hazardous Materials on the Mortgaged Property or of the transport of any Hazardous Materials to or from the Mortgaged Property or of the existence of any Hazardous Materials Contamination, with a full description thereof; (c) promptly, at Grantor's sole cost and expense, to comply with any Governmental Requirements requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials

Contamination and provide Beneficiary with satisfactory evidence of such compliance; (d) to provide Beneficiary, within thirty (30) days after demand by Beneficiary, with financial assurance evidencing to Beneficiary's satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any assessments which may be established on the Mortgaged Property as a result thereof; and (e) to insure that all leases, licenses, and agreements of any kind now or hereafter executed which permit any party to occupy, possess, or use in any way the Mortgaged Property or any part thereof, whether written or oral, include an express prohibition on the disposal or discharge of any Hazardous Materials at or affecting the Mortgaged Property, and a provision that failure to comply with such prohibition shall expressly constitute a default under any such agreement.

6.04 Liens. Grantor shall not cause or suffer any liens to be recorded against the Mortgaged Property as a consequence of, or in any way related to, the presence, remediation or disposal of Hazardous Materials in or about the Mortgaged Property, including any so-called state, federal or local "Superfund" lien relating to such matters.

6.05 Site Assessments. Beneficiary (by its officers, employees and agents) at any time and from time to time, either prior to or after the occurrence of an Event of Default, may contract for the services of persons (the "Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Mortgaged Property for the purpose of determining whether there exists on the Mortgaged Property any environmental condition which could result in any liability, cost or expense to the Development Owner, occupier or operator of such Mortgaged Property arising under any Governmental Requirements relating to Hazardous Materials. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Grantor which do not impede the performance of the Site Assessment. The Site Reviewers are hereby authorized to enter upon the Mortgaged Property for such purposes. The Site Reviewers are further authorized to perform both above and below-ground testing for environmental damage or the presence of Hazardous Materials or Hazardous Materials Contamination on the Mortgaged Property and such other tests on the Mortgaged Property as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Grantor will supply to the Site Reviewers such historical and operational information regarding the Mortgaged Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Beneficiary shall make the results of such Site Assessments fully available to Grantor, which (prior to an Event of Default) may at its election participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers. The cost of performing such Site Assessments shall be paid by Grantor upon demand of Beneficiary and any such obligations shall be contractual obligation owed and to be performed by Grantor secured by this Recapture Mortgage.

6.06 INDEMNIFICATION GRANTOR SHALL AT ALL TIMES RETAIN ANY AND ALL LIABILITIES ARISING FROM THE PRESENCE, HANDLING, TREATMENT, STORAGE, TRANSPORTATION, REMOVAL OR DISPOSAL OF HAZARDOUS MATERIALS ON THE MORTGAGED PROPERTY. REGARDLESS OF WHETHER

ANY SITE ASSESSMENTS ARE CONDUCTED HEREUNDER, AND REGARDLESS OF WHETHER ANY EVENT OF DEFAULT (AS DEFINED IN SECTION 4.01 OF THIS RECAPTURE MORTGAGE) OR EVENT OF RECAPTURE (AS DEFINED IN SECTION 4.02 OF THIS RECAPTURE MORTGAGE) SHALL HAVE OCCURRED AND BE CONTINUING OR ANY REMEDIES IN RESPECT TO THE MORTGAGED PROPERTY ARE EXERCISED BY BENEFICIARY, GRANTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS BENEFICIARY AND TRUSTEE (AND ANY SUCCESSOR TO THE TRUSTEE) FROM AND AGAINST ANY AND ALL LIABILITIES (INCLUDING STRICT LIABILITY), SUITS, ACTIONS, CLAIMS, DEMANDS, PENALTIES, DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, CONSEQUENTIAL DAMAGES, INTEREST, PENALTIES, FINES AND MONETARY SANCTIONS), LOSSES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND REMEDIAL COSTS) (THE FOREGOING ARE HEREINAFTER COLLECTIVELY REFERRED TO AS "LIABILITIES") WHICH MAY NOW OR IN THE FUTURE (WHETHER BEFORE OR AFTER THE CULMINATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RECAPTURE MORTGAGE) BE INCURRED OR SUFFERED BY BENEFICIARY OR TRUSTEE (OR ANY SUCCESSOR TO THE TRUSTEE) BY REASON OF, RESULTING FROM, IN CONNECTION WITH, OR ARISING IN ANY MANNER WHATSOEVER OUT OF THE BREACH OF ANY WARRANTY OR COVENANT OR THE INACCURACY OF ANY REPRESENTATION OF GRANTOR CONTAINED OR REFERRED TO IN THIS ARTICLE VI OR IN ANY SUBAWARD AGREEMENT AND LURA MADE AND ENTERED INTO BETWEEN GRANTOR AND BENEFICIARY RELATING TO THE MORTGAGED PROPERTY OR WHICH MAY BE ASSERTED AS A DIRECT OR INDIRECT RESULT OF THE PRESENCE ON OR UNDER, OR ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, DISCHARGE, EMISSION OR RELEASE FROM THE MORTGAGED PROPERTY OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION OR ARISE OUT OF OR RESULT FROM THE ENVIRONMENTAL CONDITION OF THE MORTGAGED PROPERTY OR THE APPLICABILITY OF ANY GOVERNMENTAL REQUIREMENTS RELATING TO HAZARDOUS MATERIALS, REGARDLESS OF WHETHER OR NOT CAUSED BY OR WITHIN THE CONTROL OF GRANTOR, BENEFICIARY OR TRUSTEE (OR ANY SUCCESSOR TO THE TRUSTEE).

SUCH LIABILITIES SHALL INCLUDE, WITHOUT LIMITATION: (I) INJURY OR DEATH TO ANY PERSON; (II) DAMAGE TO OR LOSS OF THE USE OF ANY PROPERTY; (III) THE COST OF ANY DEMOLITION AND REBUILDING OF ANY IMPROVEMENTS NOW OR HEREAFTER SITUATED ON THE MORTGAGED PROPERTY OR ELSEWHERE, AND THE COST OF ANY REPAIR OR REMEDIATION OF ANY SUCH IMPROVEMENTS; (IV) THE COST OF ANY ACTIVITY REQUIRED BY ANY GOVERNMENTAL AUTHORITY; (V) ANY LAWSUIT BROUGHT OR THREATENED, GOOD FAITH SETTLEMENT REACHED, OR GOVERNMENTAL ORDER RELATING TO THE PRESENCE, DISPOSAL, RELEASE OR THREATENED RELEASE OF ANY HAZARDOUS MATERIALS, ON, FROM OR UNDER THE MORTGAGED PROPERTY; AND (VI) THE IMPOSITION OF ANY LIENS ON THE MORTGAGED PROPERTY ARISING FROM THE ACTIVITY

OF GRANTOR OR GRANTOR'S PREDECESSORS IN INTEREST ON THE MORTGAGED PROPERTY OR FROM THE EXISTENCE OF HAZARDOUS MATERIALS UPON THE MORTGAGED PROPERTY OR HAZARDOUS MATERIALS CONTAMINATION. THE COVENANTS, WARRANTIES, AGREEMENTS AND INDEMNIFICATIONS CONTAINED IN THIS ARTICLE VI SHALL SURVIVE THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RECAPTURE MORTGAGE.

6.07 Right of Entry. Beneficiary shall have the right but not the obligation, without in any way limiting Beneficiary's other rights and remedies under this Recapture Mortgage, to enter onto the Mortgaged Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination on or under the Mortgaged Property following receipt of any notice from any person or entity asserting the existence of any Hazardous Materials or Hazardous Materials Contamination pertaining to the Mortgaged Property, or any part thereof which, if true, could result in an order, notice, suit, imposition of a lien on the Mortgaged Property, or other action, and/or which, in Beneficiary's sole opinion, could jeopardize Beneficiary's security upon this Recapture Mortgage. All costs and expenses paid or incurred by Beneficiary in the exercise of any such rights shall be contractual obligation owed and to be performed by Grantor secured by this Recapture Mortgage and shall be payable by Grantor upon demand.

ARTICLE VII **Additional Provisions**

7.01 Rights of Beneficiary. If any of the Recapture Amount hereby secured shall become due and payable, Trustee or Beneficiary shall have the right and power to proceed by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder, judicial or nonjudicial, if applicable, or for the sale of the Mortgaged Property under the judgment or decree of any court or courts of competent jurisdiction or for the appointment of a receiver pending any foreclosure hereunder or the sale of the Mortgaged Property under the order of a court or courts of competent jurisdiction or under executory or other legal process, or for the enforcement of any other appropriate legal or equitable remedy. Grantor agrees, to the full extent that it lawfully may, that in case one or more of the Events of Default or Events of Recapture hereunder shall have occurred and shall not have been remedied, then, and in every such case, the Beneficiary shall have the right and power to enter into and upon and take possession of all or any part of the Mortgaged Property in the possession of the Grantor, its successors or assigns, or its or their agents or servants, and may exclude Grantor, its successors or assigns, and all persons claiming under Grantor, and its or their agents or servants, wholly or partly therefrom; and, holding the same, the Beneficiary may use, administer, manage, operate and control the Mortgaged Property and conduct the business thereof to the same extent as Grantor, its successors or assigns, might at the time do and may exercise all rights and powers of Grantor, in the name, place and stead of Grantor, or otherwise as the Beneficiary shall deem best; and in the exercise of any of the foregoing rights and powers Beneficiary shall not be liable to Grantor for any loss or damage thereby sustained. Grantor acknowledges Beneficiary's ability

to fund the Subaward is contingent upon Treasury's actual delivery to Beneficiary the funds under the Exchange Program in an amount sufficient for Beneficiary to pay the pending construction disbursements. If Beneficiary fails to receive adequate funds from Treasury under the Exchange Program, or if Beneficiary is on notice that delivery of said funds will be materially delayed, Beneficiary shall promptly notify Grantor in writing and shall not be liable for failure to make payments under the Subaward Agreement until such time as Beneficiary receives the applicable funds under the Exchange Program from Treasury.

7.02 The Lien. Any part of the Mortgaged Property may be released by the Beneficiary without affecting the lien, security interest and assignment hereof against the remainder. The lien, security interest and other rights granted hereby shall not affect or be affected by any other security taken for the same contractual obligation owed and to be performed by Grantor or any part thereof. The taking of additional security, or the extension or renewal of the contractual obligation owed and to be performed by Grantor secured hereby or any part thereof, shall not release or impair the lien, security interest and other rights granted hereby, or affect the liability of any endorser, guarantor or surety, or improve the right of any permitted junior lienholder; and this Recapture Mortgage, as well as any instrument given to secure any renewal or extension of the contractual obligation owed and to be performed by Grantor secured hereby, or any part thereof, shall be and remain a _____ [first] and prior lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the Recapture Amount that has become due and payable and secured hereby is completely paid.

7.03 Waiver. To the extent that Grantor may lawfully do so, Grantor agrees that Grantor shall not assert and hereby expressly waives, any right under any statute or rule of law pertaining to the marshalling of assets, the exemption of homestead, the administration of estates of decedents, or other matter whatever to defeat, reduce or affect the right of Beneficiary, under the terms of this Recapture Mortgage, to sell the Mortgaged Property for the collection of the Recapture Amount secured hereby (without any prior or different resort for collection) or the right of Beneficiary, under the terms of this Recapture Mortgage, to the payment of such Recapture Amount out of the proceeds of sale of the Mortgaged Property in preference to every other person and claimant whatever (only reasonable expenses of such sale being first deducted). No provision of this Recapture Mortgage or any other document securing or pertaining to the Recapture Amount shall be construed to impose on Beneficiary any duty to sell the Mortgaged Property or any other collateral for the collection of the Recapture Amount due and payable upon an Event of Recapture secured by this Recapture Mortgage or to pursue any other remedy in Beneficiary's power whatsoever. Grantor expressly waives and relinquishes any right or remedy which it may have or be able to assert by reason of the provisions of Chapter 34 of the Business and Commerce Code of the State of Texas, pertaining to the rights and remedies of sureties. To the full extent permitted by applicable law, Grantor waives any right to require Beneficiary to use diligence in collection of any Recapture Amount secured by this Recapture Mortgage, to proceed against or exhaust any security for the Recapture Amount, to mitigate Beneficiary's damages in connection with the Recapture Amount, or to pursue any other remedy in Beneficiary's power whatsoever.

7.04 Subrogation. To the extent that proceeds of the Subaward Agreement are used to pay an outstanding lien, charge or encumbrance against or affecting the Mortgaged Property, such proceeds have been disbursed by Beneficiary at Grantor's request, and Beneficiary shall be subrogated to all rights, interests and liens owned or held by any owner or holder of such outstanding liens, charges and encumbrances, irrespective of whether such liens, charges or encumbrances are released of record.

7.06 Waiver and Invalidity. No waiver of any default on the part of Grantor or breach of any of the provisions of this Recapture Mortgage or of any other instrument executed in connection with the Recapture Amount secured hereby shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such rights and powers, and likewise no exercise or enforcement of any rights or powers hereunder shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. If any provision of this Recapture Mortgage is held to be illegal, invalid, or unenforceable under present or future laws effective while this Recapture Mortgage is in effect, the legality, validity, and enforceability of the remaining provisions of this Recapture Mortgage shall not be affected thereby, and in lieu of each such illegal, invalid, or unenforceable provision there shall be added automatically as a part of this Recapture Mortgage a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. If any of the liens, security interest or assignment of rents created by this Recapture Mortgage shall be invalid or unenforceable, the unsecured portion of the Recapture Amount secured hereby shall be completely paid prior to the payment of the remaining and secured portion of such Recapture Amount and all payments made on account of such Recapture Amount shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of such Recapture Amount.

7.07 Tenancy at Will. In the event of a trustee's sale hereunder and if at the time of such sale the Grantor occupies the portion of the Mortgaged Property so sold, or any part thereof, Grantor shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Mortgaged Property so occupied, such rental to be due and payable daily to the purchaser. An action of forcible detainer shall lie if the tenant holds over after a demand in writing for possession of such Mortgaged Property and premises; and this agreement and any trustee's deed shall constitute a lease and agreement under which the tenant's possession, each and all, arose and continued.

7.08 Security Agreement. With respect to any portion of the Mortgaged Property which constitutes personal property or fixtures governed by the Uniform Commercial Code of the State of Texas (hereinafter called the "Code"), this Recapture Mortgage shall constitute a security agreement between Grantor as the Debtor and Beneficiary as the Secured Party, and Grantor hereby grants to Beneficiary a security interest in such portion of the Mortgaged Property. Cumulative of all other rights of Beneficiary hereunder, Beneficiary shall have all of the rights conferred upon secured parties by the Code. Grantor will execute and deliver to Beneficiary all financing statements that may from time to time be required by Beneficiary to establish and

maintain the validity and priority of the security interest of Beneficiary, or any modification thereof, and all costs and expenses of any searches reasonably required by Beneficiary. Beneficiary may exercise any or all of the remedies of a secured party available to it under the Code with respect to such property, and it is expressly agreed that if upon default Beneficiary should proceed to dispose of such property in accordance with the provisions of the Code, the ten (10) days' notice by Beneficiary to Grantor shall be deemed to be reasonable notice under any provision of the Code requiring such notice; provided, however, that Beneficiary may at its option dispose of such property in accordance with Beneficiary's rights and remedies with respect to the Mortgaged Property pursuant to the provisions of this Recapture Mortgage, in lieu of proceeding under the Code.

7.09 Changes in Grantor's Identity. Grantor shall give ten (10) Business Days advance written notice, sent certified mail, return receipt requested, to Beneficiary of any proposed change in Grantor's name, address, identity, or corporate structure and will execute and deliver to Beneficiary, prior to or concurrently with the occurrence of any such change, all additional financing statements that Beneficiary may require to establish and maintain the validity and priority of Beneficiary's security interest with respect to any Mortgaged Property described or referred to herein.

7.10 Cost Certification. Grantor shall provide a full accounting of funds expended hereunder as part of Cost Certification on the earlier of January 13, 2012 or sixty (60) days of Construction Completion Date. In addition to the remedies available to Beneficiary under Section 4.03 herein Agreement with respect to an Event of Default, failure of Grantor to provide a full accounting in accordance with the QAP and the Department's Cost Certification Procedures Manual shall be sufficient reason for Beneficiary to make Grantor or its affiliates ineligible to apply for assistance under the Department's programs or subject to penalty in accordance with the Department's rules. Grantor, in providing such accounting, represents and warrants to and covenants with Beneficiary that the entirety of funds under the Exchange Program disbursed have been for items that are Eligible Costs and that if any funds under the Exchange Program were disbursed for items other than Eligible Costs, they will be returned in accordance with this Recapture Mortgage and the Subaward Agreement.

7.11 Annual Statements; Quarterly Statements; Audits; Performance and Compliance Reports.

(a) Grantor shall arrange for the preparation of prepared balance sheets and financial statements of funds under the Subaward Agreement made by a third party accountant in accordance with generally accepted auditing standards for each fiscal year, identifying any matters to which such accountant takes exception and stating, to the extent practicable, the effect of each such exception on such financial states (the "Accountant's Opinion"). Unless otherwise specifically authorized by Beneficiary in writing, Grantor shall deliver to Beneficiary or Asset Manager, by the first Business Day following thirty (30) calendar days after the completion of the audit but in no event later than the first Business Day following one hundred fifty (150) days after the end of each fiscal period, a copy of (i) the final financial statements (with the Accountant's Opinion), in form and content reasonably satisfactory to Beneficiary.

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

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

(ii) a monthly Section 42 compliance form in the form as prescribed in the Subaward Agreement

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

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

Thereafter, Grantor shall supply the Asset Manager, within ten (10) Business Days after the end of each fiscal quarter, a Section 42 compliance form in the form as prescribed in the Subaward Agreement.

(c) No later than six (6) months before initial occupancy of the dwelling units is scheduled to begin, Grantor shall supply the Asset Manager with a management and marketing plan (the "**Marketing Plan**") for the Project describing (i) the level of on-site staff to be employed at the Project, with a brief job description for each person, (ii) the type, frequency, media, approximate cost, and timetable, of advertising for the Project, (iii) a brief survey of properties in the vicinity which may be perceived as comparable, and their current rents, and (iv) a timetable of pre-opening marketing activities as well as expected lease-up. The Marketing Plan must be acceptable to the Asset Manager, which acceptance may not be unreasonably withheld

(d) An annual pro forma operating budget shall be prepared by Grantor and furnished to the Asset Manager within sixty (60) days prior to the beginning of each fiscal year. In addition, Grantor shall prepare and furnish to the Asset Manager an estimate of the profits and losses of Grantor for federal income tax purposes for the current fiscal year not later than September 30 of each year.

(e) Beneficiary and its duly authorized representatives (including its Asset manager) reserves the right to examine and audit funds received under the Subaward Agreement and performance rendered hereunder from time to time with reasonable prior notice during regular business hours provide that such examination shall not unreasonably disrupt or interfere with the Grantor's business or operations..

(f) No later than five (5) Business Days following the end of each calendar quarter, commencing with the date hereof, Grantor shall complete the "Quarterly Progress Report" in the form prescribed in the Subaward Agreement and submit such report to Beneficiary.

(g) Grantor shall timely submit to the Asset Manager any other compliance reports that the Beneficiary deems necessary to comply with Section 1602 of the Recovery Act and Program Requirements, as the same may be amended from time to time, upon reasonable notice that such report is required.

(h) Beginning with the first fiscal quarter after the Construction Completion Date, Grantor shall send to the Asset Manager no later than fifteen (15) Business Days following the close of each fiscal quarter the following information (which need not be audited): (i) a balance sheet as of the end of the applicable fiscal quarter, (ii) a statement of income for the applicable fiscal quarter, (iii) a statement of cash flow, (iv) a quarterly financial summary in a form as prescribed by the Subaward Agreement; (collectively, the “**Quarterly Financial Status Reports**”). Upon Grantor’s failure to timely submit the Quarterly Financial Status Report required herein, Grantor shall be obligated to pay to Beneficiary an amount equal to \$100 per day for each day after the due date that any required report is submitted.

(i) In the event that Grantor fails to submit to Beneficiary or its duly authorized representatives in a timely and satisfactory manner any report required hereunder, Grantor may, in its sole discretion, withhold any or all payments otherwise due or requested by the Grantor hereunder until such time as Grantor fully cures or performs any and all delinquent reporting obligations.

7.12 Applicable Law. All references in this Recapture Mortgage to the "law" or to "lawful rate" shall be construed to be the laws of the State of Texas and the United States, whichever is applicable. "Applicable law" as used herein means (a) the law pertaining to maximum rates of interest that is now in effect, and (b) any law that comes into effect at any time in the future allowing a higher maximum rate than the law now in effect.

7.13 Binding Effect. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto, and to any substitute Trustee. Whenever used, the singular number shall include the plural and the singular, and the use of any gender shall be applicable to all genders. The duties, covenants, conditions, obligations and warranties of Grantor in this Recapture Mortgage shall be joint and several obligations of Grantor and each Grantor if more than one, and Grantor's heirs, personal representatives, successors and assigns. Each party who executes this Recapture Mortgage (other than Beneficiary), and each subsequent owner of the Mortgaged Property, or any part thereof, covenants and agrees that it will perform, or cause to be performed, each condition, term, provision, and covenant of this Recapture Mortgage.

7.14 Right to Inspect. Beneficiary shall have at all times a right of access to and upon the Mortgaged Property for purposes of inspection and, at Beneficiary's option, for purposes of performing any obligations required of Grantor hereunder including any audits under Section 7.11. Beneficiary reserves the right to carry out regular and periodic field inspections to ensure compliance with the Exchange Program.

7.15 Notices. All notices, requests, consents, demands and other communications required or which any part desires to give hereunder shall be in writing. Notice will be deemed effective (1) one (1) Business Day after being delivered to a nationally recognized overnight delivery service, (2) on the day sent by telecopier or other facsimile transmission (answerback requested), (3) on the day personally delivered, or (4) five (5) Business Days after being deposited in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed to the party to whom directed at the addresses specified in Article I of this Recapture Mortgage (unless changed by notice in writing given by the particular party whose address is to be changed). A copy of all notices sent to Grantor will be sent to [Prior Lender] [First Lien Lender] c/o _____

_____, [ADDRESS], Attn: _____.

Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Provided, however, service of a notice required by Texas Property Code Section 51.002, as amended, shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt. This section shall not be construed in any way to affect or impair any waiver of notice or demand provided in the Subaward Agreement, LURA or any other instrument securing the Recapture Amount or to require giving of notice or demand to or upon any person in any situation or for any reason.

7.16 Asset Management.

(a) Beneficiary shall be the initial Asset Manger of the Project, unless a third party Asset Manager has been appointed in writing by Beneficiary to perform its Asset Management duties hereunder upon written notice to Grantor.

(b) Grantor will be subject to Asset Management oversight, which may include the following:

(i) review the use of the proceeds of the Subaward to ensure such proceeds are being spent in accordance with the requirements of the Subaward Agreement and with Program Requirements;

(ii) review and report to Beneficiary no less than quarterly on the progress of construction of the Project, its compliance with the construction schedule, the Plans and Specifications, and the budget, and any change orders, changes to anticipated sources and uses, or other matters which, pursuant to the Subaward Agreement, in the judgment of the Asset Manager, may adversely affect the ability of Grantor to complete construction of the Project;

(iii) review all financial status reports, compliance monitoring reports, and other reports under Section 7.11 herein, and as required to be delivered pursuant to the Subaward Agreement;

(iv) consult with Grantor as to such measures as may be necessary or desirable to remedy any unfavorable compliance or financial circumstances concerning the Project.

(c) The Asset Manager may, and upon the direction of and following consultation with Beneficiary shall, take such of the following actions with respect to the Project as it and/or Beneficiary shall reasonably deem advisable:

(i) declare that an Event of Default has occurred hereunder, specifying the nature of said Event of Default;

(ii) exercise any of the remedies provided to Beneficiary hereunder with respect to an Event of Default;

(iii) recommend (1) that further disbursements of funds under the Exchange Program be delayed, suspended or terminated, (2) that the Developer, the Property Manager, the General Contractor or any other party providing services to the Grantor, (3) any appropriate measures to assure that the Construction Completion Date can each be achieved within the applicable time period and available resources, or (4) such measures as may be needed to address instances of noncompliance with Program Requirements, the LURA, the requirements of the Subaward Agreement, or the requirements hereunder; and

(iv) declare that an Event of Recapture has occurred or that circumstances exist which may give rise to an Event of Recapture, together with making such suggestions for remediation as the Asset Manager deems appropriate.

(d) Grantor hereby agrees to pay Beneficiary an annual fee (the "Asset Management Fee") reasonably adjusted from time to time by Beneficiary. The Asset Management Fee shall be an operating expense of Grantor and must be included in the annual pro forma operating budgets for the Project. The Asset Management Fee may be changed by Beneficiary on thirty (30) days' prior written notice if necessary to cover any projected or actual increase in costs to Beneficiary attributable to the performance of its asset management duties hereunder. The Asset Management Fee shall be payable annually commencing May 1, 2010 and due and payable every January 30th thereafter, or such other date as may be specified by Beneficiary. Upon receipt of an invoice for the amount of Asset Management Fees (which may be quarterly or annually), Grantor shall have until the first Business Day following thirty (30) calendar days to remit payment to Beneficiary.

7.17 Designated Grantor Contacts. Pursuant to State policy, Grantor shall have designated, in writing, one or more responsible and qualified individuals as points of contact with Beneficiary to maintain a flow of current information relating to the receipt, deployment, management and use of funds received under the Exchange Program. Such individuals shall be the Authorized Officers designated in the Subaward Agreement.

7.18 Subaward Agreement. It is understood and agreed that all or a portion of the funds to be disbursed under the Subaward Agreement are to be used in the ►[acquisition and] ►[rehabilitation] ►[construction] of the Project in accordance with the Disbursement Agreement and Subaward Agreement made by and between Grantor or the Development Owner under the LURA or other evidence of the contractual obligation owed and to be performed by Grantors secured hereby and Beneficiary, dated of even date herewith, which Subaward Agreement is

incorporated herein by reference to the same extent and effect as if fully set forth herein and made a part hereof. This Recapture Mortgage secures the payment of all sums due in the Event of Default or Event of Recapture under the LURA and the performance of all covenants required by Grantor (or the Development Owner of the LIURA if different from Grantor) under the Subaward Agreement and LURA, and upon the failure of Grantor (or the Development Owner of the LURA if different from Grantor) to keep and perform all the covenants, conditions and agreements of the Subaward Agreement and LURA, the Recapture Amount secured hereby shall, upon Event of Recapture at the option of Beneficiary, become due and payable, anything herein contained to the contrary notwithstanding. The Subaward may not be assigned, pledged, hypothecate, transferred, mortgaged or otherwise conveyed to any person or entity without the prior written consent of Beneficiary and Grantor as Development Owner.

7.19 Attorney in Fact. Grantor has irrevocably made, constituted and appointed, and by these presents does irrevocably make, constitute and appoint Beneficiary its true and lawful attorney, for it and in its name, place and stead in the Event of Default to contract for the sale of and convey all or any part of the Mortgaged Property, giving and granting unto Beneficiary full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in connection therewith, as fully, to all intents and purposes, as Grantor might or could do if personally present and also giving and granting unto Beneficiary full power to substitute one or more attorneys under it, in or concerning such matters. Grantor agrees that this power of attorney shall be effective upon an Event of Recapture in the payment of the Recapture Amount or under any instrument executed as security therefore, and Grantor agrees and represents to those dealing with Beneficiary, and its substitute or substitutes, that this power of attorney shall be effective upon Beneficiary's filing with the County Clerk of the county in which the Mortgaged Property is situated, an affidavit to the effect that an Event of Recapture has occurred under the terms of the Subaward Agreement, LURA or any instruments executed as security for the Recapture Amount and such persons may rely upon Beneficiary's representation with regard to the continuation of such default, Grantor agrees with all persons dealing with Beneficiary, its substitute and substitutes that this power of attorney shall remain effective for so long as there is an Event of Recapture under the terms of the Subaward Agreement, LURA or any instruments executed as security of the Recapture Amount, and further agrees with such persons that they may rely upon the representations of Beneficiary, its substitute and substitutes, with regard to the continuation of such default. **SUBJECT TO THE LIMITATIONS CONTAINED HEREIN, GRANTOR AGREES TO INDEMNIFY AND HOLD BENEFICIARY AND ITS SUBSTITUTES HARMLESS FROM ANY AND ALL LIABILITY ARISING OUT OF BENEFICIARY'S OR ITS SUBSTITUTES' ACTS PURSUANT TO THE AUTHORITY HEREIN GRANTED TO THE EXTENT ALLOWED BY LAW. THIS POWER OF ATTORNEY IS ONE COUPLED WITH AN INTEREST.**

7.20 Subordination to LURA. Notwithstanding anything to the contrary, Grantor and Beneficiary hereby acknowledge and agree that the lien and security interest created hereby are expressly subordinate to the LURA.

7.21 Covenants Running with the Land. All of the covenants, conditions, warranties, representations and other obligations made or undertaken by Grantor contained in this Recapture Mortgage and the other Security Instruments are intended by Grantor, Beneficiary, and Trustee

to be, and shall be construed as, covenants running with the Mortgaged Property until the lien of this Recapture Mortgage has been fully released by Beneficiary.

7.22 Foreclosure. If the Mortgaged Property becomes the subject of a nonjudicial or judicial foreclosure proceeding that results in the sale of part or all of the Mortgaged Property, all sums in excess of those paid to superior lien holders shall be paid to Beneficiary to apply to the payment of the Recapture Amount unless otherwise ordered by the court. If there are insufficient funds to pay the entire Recapture Amount due and payable and secured herein, Beneficiary may in its own discretion waive the payment of any or all of the outstanding Recapture Amount.

7.23 _____ (initial) Transfer of the Property or a Beneficial Interest in Grantor. **IF ALL OR ANY PART OF THE MORTGAGED PROPERTY OR ANY INTEREST IN IT IS SOLD OR TRANSFERRED (OR IF A BENEFICIAL INTEREST IN GRANTOR IS SOLD OR TRANSFERRED AND GRANTOR IS NOT A NATURAL PERSON) WITHOUT BENEFICIARY'S PRIOR WRITTEN CONSENT, BENEFICIARY MAY, AT ITS OPTION, REQUIRE IMMEDIATE PAYMENT IN FULL OF ALL SUMS SECURED BY THIS RECAPTURE MORTGAGE. HOWEVER, THIS OPTION SHALL NOT BE EXERCISED BY LENDER IF EXERCISE IS PROHIBITED BY FEDERAL LAW AS OF THE DATE OF THIS RECAPTURE MORTGAGE.**

7.24 Entire Agreement; Amendment. THIS RECAPTURE MORTGAGE AND THE OTHER SECURITY INSTRUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO. The provisions hereof and the other Security Instruments may be amended or waived only by an instrument in writing signed by Grantor and Beneficiary.

7.25 Force Majeure. Performance under the Subaward Agreement and the Disbursement Agreement interrupted by an event of Force Majeure will not constitute an Event of Default. Force Majeure means an event of catastrophic weather conditions or other extraordinary elements of nature or acts of God; or acts of war (declared or undeclared); acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; or quarantines, embargoes and other similar unusual actions of federal, provincial, local or foreign governmental authorities where the non-performing party is without fault in causing or failing to prevent the occurrence of such event, and such occurrence could not have been circumvented by reasonable precautions and could not have been prevented or circumvented through the use of commercially reasonable alternative sources, workaround plans or other means.

7.26 Subordinate Mortgage Lien. Notwithstanding any provision of this Recapture Mortgage to the contrary and subject to the Subordination Agreement, the lien and security interest created

hereby are expressly subordinate and inferior to the lien created by the First Mortgage which secures the First Note. Any default under the terms of the First Note or pursuant to any instruments securing same shall constitute default hereunder, under the terms of the Subaward Agreement, LURA and all instruments securing the Recapture Amount. In the event of such default, Beneficiary shall have the right (but not the obligation) to cure same in which event all monies disbursed and costs expended for such purpose shall be an obligation of Grantor secured hereby and payable on demand, together with interest thereon at the highest lawful rate Grantor could contract to pay to Beneficiary at the time of Beneficiary's disbursement or expenditure, or if there is no such highest lawful rate at the rate of ten percent (10%) per annum. Beneficiary's curing of such default shall not cure the default hereunder. Grantor shall: (i) not agree to allow any renewal, extension, modification or rearrangement of the First Note or the First Mortgage in a manner that materially and adversely affects the Subordinate Mortgage Lien without Beneficiary's prior written consent; (ii) not increase the indebtedness secured by the liens and security interest created by the First Mortgage in a manner that materially and adversely affects the Subordinate Mortgage Lien without Beneficiary's prior written consent; (iii) timely perform all of the covenants contained in the First Note and the First Mortgage; and (iv) promptly deliver to Beneficiary copies of all notices received by Grantor from the holder of the First Note and the First Mortgage.

EXECUTED this _____ day of _____, 20_____.

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS §
§
COUNTY OF _____ §

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

corporation, on behalf of said corporation.

Texas Department of Housing
and Community Affairs
Legal Services Division
P.O. Box 13941
Austin, Texas 78711-3941
(512) 475-3902

Texas Department of Housing
and Community Affairs
Legal Services Division
P.O. Box 13941
Austin, Texas 78711-3941

OR