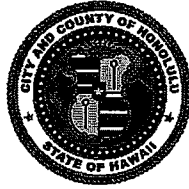


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DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR



DAWN TAKEUCHI APUNA
DIRECTOR

JIRO A. SUMADA
DEPUTY DIRECTOR

April 26, 2023

The Honorable Tommy Waters
Chair and Presiding Officer
and Members
Honolulu City Council
530 S. King Street, Room 202
Honolulu, Hawaii 96813

Dear Chair Waters and Councilmembers:

SUBJECT: Resolution 23-65 – Authorizing the Issuance, Sale, and Delivery of
Multifamily Housing Revenue Bonds

As a follow-up to our letter dated April 20, 2023 (D-264), attached are the Approval of Trust Indenture, Loan Agreement, and Regulatory Agreement and Declaration of Restrictive Covenants documents for your review.

Should you have any questions or require additional information, please feel free to contact me at (808) 768-8000.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dawn Takeuchi Apuna", is written over a horizontal line.

Dawn Takeuchi Apuna
Director

Attachments

cc: Department of Budget and Fiscal Services

APPROVED:

A handwritten signature in black ink, appearing to read "Michael D. Formby", is written over a horizontal line.

Michael D. Formby
Managing Director

DEPT. COM. 291

TRUST INDENTURE

Between

CITY AND COUNTY OF HONOLULU,
as Issuer

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee

Dated as of [May] 1, 2023

City and County of Honolulu
Multifamily Housing Revenue Bonds
(Maunakea Tower Apartments)
Series 2023

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TRUST INDENTURE

THIS TRUST INDENTURE (as amended, modified or supplemented from time to time, this “Indenture”) is entered into as of [May] 1, 2023, by and between CITY AND COUNTY OF HONOLULU, a political subdivision and a body corporate and politic organized and existing under the Constitution and laws of the State of Hawaii (together with its successors and assigns, the “Issuer”), and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association authorized to exercise corporate trust powers in the State of Hawaii, and authorized to accept and execute trusts of the character herein set out, as Trustee (together with its successors and assigns, the “Trustee”).

RECITALS

Certain of the terms and words used in these Recitals, and in the following Granting Clauses and Agreements, are defined in Section 1.01 of this Indenture.

WHEREAS, the Issuer is authorized under the provisions of Chapter 49, Hawaii Revised Statutes, as amended, as made applicable by Hawaii Revised Statutes Sections 46 15.1 and 46-15.2 (collectively, the “Act”), to issue revenue bonds to finance its program of providing loans to finance multifamily rental housing projects; and

WHEREAS, the Issuer has determined to issue and sell its Multifamily Housing Revenue Bonds (Maunakea Tower Apartments) Series 2023 in the original aggregate principal amount of \$[PAR AMOUNT] (the “Bonds”), for the purpose of financing the cost of the acquisition, rehabilitation, installation and equipping of a multifamily rental housing development, consisting of one (1) condominium unit within the Beretania North Condominium Project known as Maunakea Tower Apartments, which includes approximately 379 residential dwelling units and related personal property and equipment owned by Borrower, located in Honolulu, Hawaii (the “Project”), all pursuant to this Indenture and the Loan Agreement dated as of [May] 1, 2023, (as amended, modified or supplemented from time to time, the “Bond Loan Agreement”), between the Issuer and Komohale Maunakea Venture LP, a Hawaii limited partnership (together with its permitted successors and assigns, the “Borrower”); and

WHEREAS, the Issuer is authorized to enter into this Indenture and to do or cause to be done all the acts and things herein provided or required to be done to finance the Costs of the Project by the issuance of the Bonds, all as hereinafter provided; and

WHEREAS, all acts, conditions and things required to happen, exist, and be performed precedent to and in the issuance of the Bonds and the execution and delivery of this Indenture have happened, exist and have been performed in order to make the Bonds, when issued, delivered and authenticated, valid obligations of the Issuer in accordance with the terms thereof and hereof, and in order to make this Indenture a valid, binding and legal trust agreement for the security of the Bonds in accordance with its terms; and

WHEREAS, in order to assure compliance with Sections 103 and 142 through 150 of the Code, the Issuer and the Borrower have entered into the Tax Certificate and the Issuer, Borrower and Trustee have entered into the Regulatory Agreement, each of which sets forth various certifications, representations, and covenants relating to the Federal Tax Status of the Bonds; and

WHEREAS, the Trustee has accepted the trusts created by this Indenture and has accepted its obligations hereunder, and in evidence thereof, this Indenture has been executed and delivered thereby.

Accordingly, the Issuer and the Trustee agree as follows for the benefit of each other and for the benefit of the Holders of the Bonds:

GRANTING CLAUSES AND AGREEMENTS

NOW, THEREFORE, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of any or all of the Bonds issued and sold by the Issuer from time to time under this Indenture by those who shall hold the same from time to time, and of the sum of one dollar, lawful money of the United States of America, duly paid to the Issuer by the Trustee at or before the execution and delivery of these presents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to secure the payment of the principal of and interest on the Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds and the payment and performance of all other of the obligations of the Issuer, the Issuer does hereby grant, bargain, sell, convey, pledge and assign, without recourse, unto the Trustee and unto its successors in trust forever, and grants to the Trustee and to its successors in trust, a security interest in, the following (such property being herein referred to as the “Trust Estate”):

(a) All right, title and interest of the Issuer in and to all Revenues, derived or to be derived by the Issuer or the Trustee for the account of the Issuer under the terms of this Indenture and the Bond Loan Agreement (other than the Unassigned Rights of the Issuer), together with all other Revenues received by the Trustee for the account of the Issuer arising out of or on account of the Trust Estate;

(b) All right, title and interest of the Issuer in and to the Note (other than the Unassigned Rights of the Issuer) including all payments and proceeds with respect thereto or replacement thereof;

(c) Any fund or account created under this Indenture except for the Cost of Issuance Fund, the Expense Fund and the Rebate Fund;

(d) All right, title and interest of the Issuer in and to, and remedies under, the Bond Loan Agreement (other than the Unassigned Rights of the Issuer); and

(e) All funds, moneys and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Bonds by the Issuer or by anyone on its behalf or with its written consent to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof;

PROVIDED, HOWEVER, that there shall be excluded from the granting clauses of this Indenture all the Unassigned Rights of the Issuer, including all amounts paid or collected by the

Issuer in connection therewith, all amounts on deposit in the Cost of Issuance Fund and the Expense Fund and all amounts on deposit in the Rebate Fund, which amounts on deposit in the Rebate Fund shall be held for the sole benefit of the United States of America;

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee and its successors in trust forever.

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth, for the equal and proportionate benefit, security and protection of all Holders from time to time of the Bonds issued under and secured by this Indenture without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the other Bonds.

PROVIDED, HOWEVER, that if the Issuer shall well and truly pay, or cause to be paid, the principal of the Bonds issued hereunder, and interest due or to become due thereon, at the times and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, and shall cause the payments to be made into the Collateral Fund as required under Article IV hereof or by depositing with the Trustee the entire amount due or to become due thereon, and shall well and truly keep, perform and observe all of the covenants and conditions pursuant to the terms of this Indenture and all other of the obligations of the Issuer to be kept, performed and observed by it, the Rebate Requirement shall be paid in full and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payment, as further provided in Section 9.01 hereof, and the termination of the Bond Loan Agreement, this Indenture and the rights hereby granted shall cease, terminate and be void; otherwise, this Indenture shall remain in full force and effect.

AND IT IS EXPRESSLY DECLARED that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all such property, moneys, revenues and receipts hereby pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer has agreed and covenanted and does hereby agree and covenant with the Trustee and with the respective Holders from time to time of the Bonds, or any part thereof, as follows:

ARTICLE I

DEFINITIONS AND CONSTRUCTION

Section 1.01. Definitions. Certain terms used in this Indenture are defined in the Bond Loan Agreement and when and if used herein, such terms shall have the meanings given to them by the Bond Loan Agreement unless the context clearly indicates otherwise. In addition, when used in this Indenture, the following terms shall have the meanings given to them in this Section 1.01 unless the context clearly indicates otherwise:

“Account” means an account within any Fund created pursuant to Article IV hereof.

“Act” has the meaning assigned in the Recitals hereto.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” when used with respect to any specified Person means the power to direct the policies of such Person, directly or indirectly, whether through the power to appoint and remove its directors, the ownership of voting securities, by contract, or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Assumption Agreement” has the meaning set forth in Section 6.01(k)(iii) of the Bond Loan Agreement.

“Bond” or “Bonds” means the City and County of Honolulu Multifamily Housing Revenue Bonds (Maunakea Tower Apartments) Series 2023 issued, authenticated and delivered under this Indenture, which are identified as such in Section 2.01(a) hereof.

“Bond Counsel” means nationally recognized bond counsel selected by the Issuer and initially means Hawkins Delafield & Wood LLP.

“Bond Documents” means, with respect to the Bonds, this Indenture, the Bond Loan Agreement, the Bond Purchase Agreement, the Regulatory Agreement, the Continuing Disclosure Agreement, the Tax Certificate, the Lender Disbursement Agreement and any and all documents executed in connection with the Bonds.

“Bond Fund” means the Bond Fund created in Section 4.01 of this Indenture.

“Bondholder” or “Holder of the Bonds” or “Holder” or “Owner of the Bonds” or “Owner” when used with respect to any Bond, means the Person or Persons in whose name such Bond is registered as the owner thereof on the books of the Issuer maintained at the Trust Office of the Trustee for that purpose.

“Bond Loan Agreement” or “Agreement” means the Loan Agreement, dated as of [May] 1, 2023, between the Issuer and the Borrower, and any and all amendments or supplements thereto, pursuant to which the Loan is being made to the Borrower.

“Bond Purchase Agreement” means the Bond Purchase Agreement, dated [SALE DATE], among the Issuer, the Borrower and the Underwriter.

“Bond Registrar” has the meaning assigned to it in Section 2.01(f) hereof.

“Book Entry Form” or “Book Entry System” means a form or system, as applicable, under which (i) the ownership of beneficial interests in the Bonds may be transferred only through a book entry and (ii) physical bond certificates in fully registered form are registered only in the name of a Securities Depository or its nominee as holder, with the physical bond certificates “immobilized” in the custody of the Securities Depository.

“Borrower” means Komohale Maunakea Venture LP, a Hawaii limited partnership, and its successors and assigns.

“Borrower Documents” means the Bond Loan Agreement, the Note, the Tax Certificate, the Regulatory Agreement, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement and any and all documents, agreements or instruments executed by the Borrower in connection with the Loan evidenced by the Bond Loan Agreement.

“Borrower Obligations” means the obligations of the Borrower under the Bond Loan Agreement, the Note and the other Borrower Documents to (a) pay the principal of, and interest on the Note, when and as the same shall become due and payable (whether at the stated maturity thereof, on any payment date or by acceleration of maturity or otherwise), (b) pay all other amounts required by the Bond Loan Agreement, the Note, and the other Borrower Documents to be paid by the Borrower to the Issuer and the Trustee, as and when the same shall become due and payable, and (c) timely perform, observe and comply with all of the terms, covenants, conditions, stipulations, and agreements, express or implied, which the Borrower is required by the Bond Loan Agreement, the Note, the Regulatory Agreement, and any of the other Borrower Documents, to perform or observe.

“Borrower Representative” means a person at the time designated and authorized to act on behalf of the Borrower by a written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person and signed on behalf of the Borrower by one of its officers, which certificate may designate an alternate or alternates.

“Business Day” or “business day” means a day, other than a Saturday or Sunday, on which (a) banks located in New York, New York or in the city in which the Trust Office of the Trustee is located, are not required or authorized by law or executive order to close for business and (b) the New York Stock Exchange is not closed.

“Capitalized Interest Account” means the Account by that name created in the Bond Fund pursuant to Section 4.01(a).

“Capitalized Interest Deposit” means the deposit of \$[0.00] from Preference Proof Moneys to the Capitalized Interest Account of the Bond Fund on the Closing Date, as provided in Section 4.02 hereof.

“Cash Flow Projection” means a cash flow projection prepared by an Independent firm of certified public accountants, a financial advisory firm, a law firm or other Independent third party qualified and experienced in the preparation of cash flow projections for structured finance transactions similar to the Bonds, designated by the Borrower and acceptable to the Rating Agency, establishing, to the satisfaction of the Rating Agency, the sufficiency of (a) the amount on deposit in the Project Fund and the Collateral Fund, (b) projected investment income to accrue on amounts on deposit in the Project Fund and Collateral Fund during the applicable period and (c) any additional Preference Proof Moneys delivered to the Trustee by or on behalf of the Borrower to pay principal of and interest on the Bonds when due and payable, including, but not limited to, any cash flow projection prepared in connection with (i) the initial issuance and delivery of the Bonds, (ii) a proposed optional redemption of the Bonds, as provided in Section 3.01(c) hereof, (iii) a proposed remarketing of the Bonds, as provided in Section 3.06(a) hereof; (iv) the release of Preference Proof Moneys from the Capitalized Interest Account of the Bond Fund, as

provided in Section 4.05 hereof; and (v) the purchase, sale or exchange of Permitted Investments as provided in Section 7.01 hereof.

“Closing Date” means the date of delivery of the Bonds in exchange for the purchase price thereof.

“Closing Memorandum” means the closing memorandum prepared by the Underwriter and executed by the Borrower and/or the Issuer in connection with the issuance of the Bonds.

“Code” means the Internal Revenue Code of 1986, as amended, and, with respect to a specific section thereof, such reference shall be deemed to include (a) the Regulations promulgated under such section, (b) any successor provision of similar import hereafter enacted, (c) any corresponding provision of any subsequent Internal Revenue Code and (d) the regulations promulgated under the provisions described in (b) and (c).

“Collateral Fund” means the Collateral Fund created pursuant to Section 4.01(e) of this Indenture.

“Completion Certificate” means a certificate submitted by the Borrower Representative to the Issuer and the Trustee as provided in Section 3.05 of the Bond Loan Agreement.

“Completion Date” means the date upon which the Completion Certificate is delivered by the Borrower to the Issuer and the Trustee, which shall be no later than [December 1, 2025].

“Construction Contract” means that certain construction contract executed between the Contractor and the Borrower relating to the rehabilitation of the Project, as that contract may be amended from time to time.

“Construction Draw Date” means the date on which a disbursement from the Project Fund shall be made solely to pay Costs of the Project.

“Continuing Disclosure Agreement” means the Continuing Disclosure Agreement, dated as of [May] 1, 2023, between the Borrower and the Dissemination Agent.

“Contractor” means the entity identified as the general contractor under the Construction Contract.

“Costs of Issuance” means all fees, costs and expenses incurred in connection with the issuance of the Bonds and the extension of the Loan that are payable from amounts deposited in the Cost of Issuance Fund.

“Cost of Issuance Deposit” means [\$0.00].

“Cost of Issuance Fund” means the Cost of Issuance Fund created pursuant to Section 4.01(f) hereof.

“Costs of the Project” with respect to the Project shall be deemed to include all items permitted to be financed under the provisions of the Code and the Act.

“Default” means any Default under the Bond Loan Agreement as specified in and defined by Section 7.01 thereof.

“Dissemination Agent” means U.S. Bank Trust Company, National Association, a national banking association organized and existing under the laws of the United States of America and its permitted successors and assigns as Dissemination Agent under the Continuing Disclosure Agreement.

“Dissemination Agent Fee” means a portion of the Trustee’s Fee payable to U.S. Bank Trust Company, National Association, in its capacity as Dissemination Agent pursuant to the Continuing Disclosure Agreement.

“Documents” means and shall include (without limitation), with respect to the Bonds, this Indenture, the Bond Documents, the Borrower Documents, and any and all other documents which the Issuer, the Borrower or any other party or parties or their representatives, have executed and delivered, or may hereafter execute and deliver, to evidence or secure the Bonds and the Borrower Obligations, or any part thereof, or in connection therewith, and any and all supplements thereto.

“Event of Default” or “Default” means, when used in this Indenture, those events of default or defaults specified in Section 10.01 hereof and, when used in the Bond Loan Agreement, those events of default or defaults specified in Section 7.01 thereof.

“Expense Fund” means the fund by that name created and established pursuant to Section 4.01(d) of this Indenture.

“FHA” means the Federal Housing Administration.

“Favorable Opinion of Bond Counsel” means, with respect to any action, or omission of an action, the taking or omission of which requires such an opinion, an unqualified written opinion of Bond Counsel to the effect that such action or omission does not adversely affect the excludability from gross income for federal income tax purposes of interest payable on the Bonds under existing law (subject to the inclusion of any exceptions contained in the opinion of Bond Counsel delivered upon the original issuance of the Bonds or other customary exceptions acceptable to the recipient thereof).

“Federal Tax Status” means, as to the Bonds, the status of the interest on the Bonds as excludable from gross income for federal income tax purposes (except on any Bond during any period during which it is held by a “substantial user” or “related person” to such a substantial user within the meaning of Section 147(a) of the Code).

“Fund” means any fund created pursuant to Article IV hereof.

“Funding Agreement” means the Funding Agreement dated as of [May] 1, 2023, by and among the Borrower, the Lender and the Trustee, as amended, supplemented or restated from time to time.

“General Partner” means Komohale Maunakea Manager LLC, a Delaware limited liability company, as general partner of the Borrower.

“GNMA” means the Government National Mortgage Association.

“Governing Body” of the Issuer means the City Council of the Issuer or any body succeeding to the functions thereof.

“Government Obligations” means non-callable, non-redeemable direct obligations issued by the United States of America including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America, including, when available, SLGS.

“Governmental Authority” means any federal, state or local governmental or quasi-governmental entity, including, without limitation, any agency, department, commission, board, bureau, administration, service, or other instrumentality of any governmental entity.

“Governmental Requirements” means all laws, ordinances, orders, rules or regulations of all Governmental Authorities applicable to the Project, the Issuer, the Borrower or any of the Borrower’s assets or other properties, including without limitation, laws, ordinances, orders, rules and regulations relating to securities or other public disclosures, zoning, licenses, permits, subdivision, building, safety, health, and fire protection and all environmental laws.

“Hazardous Materials” means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls (“PCBS”) and compounds containing them; lead and lead based paint; asbestos or asbestos containing materials in any form that is or could become friable; underground or above ground storage tanks, whether empty or containing any substance; any substance the presence of which at the Project is prohibited by any federal, state or local authority; any substance that requires special handling under any Hazardous Materials Law; and any other material or substance now or in the future defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” or “pollutant” within the meaning of any Hazardous Materials Law, but does not include any such substance that is a customary and ordinary household, cleaning, office, swimming pool or landscape maintenance product used on the Project by the Borrower or any tenant or agent of the Borrower, or customary construction materials used during the course of rehabilitation and equipping of the Project by the Borrower or the Contractor, provided such use is in accordance with applicable Hazardous Material Laws.

“Hazardous Materials Law” means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials and apply to Borrower or to the Project. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, and their state analogs, including laws of the State.

“Highest Rating Category” means, with respect to a Permitted Investment, that the Permitted Investment is rated by a Rating Agency in the highest rating given by that Rating Agency for that Rating Category, provided that such rating shall include but not be below Aaa or Aaa/VMIG-1 if rated by Moody’s or A-1+ or AA+ if rated by S&P.

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

“HUD Regulatory Agreement” means the Regulatory Agreement for Multifamily Projects between the Borrower and HUD, as amended or supplemented from time to time.

“Indenture” means this Trust Indenture dated as of [May] 1, 2023, between the Issuer and the Trustee, and any and all Supplements hereto, authorizing the issuance of the Bonds.

“Independent” means a Person that has no specific financial interest direct or indirect in the Borrower or any Affiliate of the Borrower and in the case of an individual is not a director, trustee, officer, partner, member or employee of the Borrower or any Affiliate of the Borrower and in the case of an entity, does not have a partner, director, trustee, officer, member or employee who is a director, trustee, partner, member, officer or employee of any partner or member of the Borrower or any Affiliate of the Borrower.

“Interest Payment Date” means each June 1 and December 1, beginning December 1, 2023.

“Investor Limited Partner” means collectively, PNC Bank, National Association, a national banking association, and Columbia Housing SLP Corporation, an Oregon corporation, and their permitted successors and assigns in their capacity as the investor limited partner and special limited partner of the Borrower.

“Issuer” means the City and County of Honolulu, and its successors and assigns.

“Issuer Documents” means the Bond Loan Agreement, this Indenture, the Regulatory Agreement, the Bond Purchase Agreement, the Tax Certificate and any and all documents, agreements or instruments executed by the Issuer in connection with the Loan evidenced by the Bond Loan Agreement.

“Issuer Indemnified Party” or “Issuer Indemnified Parties” has the meaning set forth in Section 6.02 of the Bond Loan Agreement.

“Issuer’s Administrative Fee” means, collectively, the annual administration fees and compliance monitoring fees described in Section 3 of the Regulatory Agreement.

“Lender” means PNC Bank, N.A., and its successors and assigns.

“Lender Borrower Note” means the \$[] Note (Multistate) dated as of [May] 1, 2023, from the Borrower to the Lender to evidence its indebtedness under the Lender Loan and endorsed by HUD.

“Lender Collateral Deposit” shall have the meaning given to such term in Section 4.03 hereof.

“Lender Disbursement Agreement” means the Construction Loan Disbursement Agreement, dated as of [May] 1, 2023, among the Lender, the Borrower and Title Company.

“Lender Loan” means the loan made by the Lender to the Borrower in the original principal amount not to exceed \$_____ pursuant to the Lender Disbursement Agreement, as evidenced by the Lender Borrower Note and secured by the Lender Mortgage.

“Lender Loan Documents” means the documents related to the Lender Loan, including the Lender Disbursement Agreement, the Lender Borrower Note, the Lender Mortgage, the HUD Regulatory Agreement and any and all other documents, agreements, or instruments which evidence or secure the indebtedness evidenced by the Lender Loan.

“Lender Mortgage” means the first lien priority Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement dated [May] 1, 2023, from Borrower for the benefit of the Lender to secure the repayment of the Lender Borrower Note.

“Loan” means the loan in the principal amount of \$[PAR AMOUNT] made by the Issuer to the Borrower evidenced by the Note, described in the Bond Loan Agreement and made in connection with the issuance of the Bonds.

“Loan Documents” shall mean the Bond Loan Agreement and the Note.

“Mandatory Tender Date” means (i) [December 1, 2025], and (ii) if the Bonds are remarketed pursuant to Article III for a period that does not extend to the Maturity Date, the day immediately following such period.

“Maturity Date” means [December 1, 2026].

“Moody’s” means Moody’s Investors Service, Inc., a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer with the approval of the Borrower.

“Note” means the Promissory Note, dated the Closing Date, from the Borrower to the Issuer in substantially the form attached as EXHIBIT B to the Bond Loan Agreement, and any amendments, supplements or modifications thereto, which Note has been assigned by the Issuer to the Trustee.

“Notice Address” means, unless otherwise designated pursuant to Section 13.06 hereof:

(a) As to the Issuer:

City and County of Honolulu
Department of Planning & Permitting
650 S. King Street, 7th Floor
Honolulu, Hawaii 96813
Attention: Director
Telephone: (808) 768-8001

As to the Borrower:

Komohale Maunakea Venture LP
c/o Stanford Carr Development LLC
1100 Alakea Street, 27th Floor
Honolulu, Hawaii 96813
Attention: Stanford Carr
Telephone: (808) 547-2225
E-mail: scarr@stanfordcarr.com

and:

Komohale Maunakea Venture LP
c/o Standard Communities
31899 Del Obispo Street, Suite 150
San Juan Capistrano, CA 92675
Attn: Bradley C. Martinson, Esq.
Telephone: (949) 301-9383
E-mail: bmartinson@standard-companies.com

With a copy to:

Dentons US LLP
1001 Bishop Street, Suite 1800
Honolulu, Hawaii 96813
Attention: William Yuen, Esq.
Telephone: (808) 441-6214
E-mail: William.yuen@dentons.com

and to:

Rutan & Tucker, LLP
18575 Jamboree Road, 9th Floor
Irvine, CA 92612
Attention: Andrew Lamming, Esq.
Telephone: (714) 641-3489
E-mail: alamming@rutan.com

(b) As to the Rating Agency:

Moody's Investors Service, Inc.
7 World Trade Center
250 Greenwich Street, 16th Floor
New York, New York 10007
Attention: Public Finance Group – Housing Team
E-mail: Housing@moodys.com

(c) As to the Trustee:

U.S. Bank Trust Company, National Association
1420 Fifth Avenue, 7th Floor
Seattle, Washington 98101
Attention: Global Corporate Trust
Telephone: (206) 344-4687
E-mail: thomas.zrust@usbank.com

(d) As to the Investor Limited Partner:

PNC Bank, National Association
c/o PNC Real Estate
121 S.W. Morrison Street, Suite 1300
Portland, Oregon 97204
Attention: Asset Manager

With a copy to:

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attention: Shane Deaver
Telephone: (402) 231-8792
E-mail: shane.deaver@kutakrock.com

(e) As to the Lender:

PNC Bank, N.A.
575 Market Street, 28th Floor
San Francisco, California 94105
Attention: Kathy Ratliff
Telephone: (415) 733-1520
Email: Kathy.ratliff@pnc.com

With a copy to:

Levy, Levy & Levy
1299 Fourth Street, Suite 400
San Rafael, California 94901
Attention: Christina Howard, Esq.
Telephone: (415) 461-4900
Email: choward@levylevy.com

(f) As to the Underwriter/Remarketing Agent:

Citigroup Global Markets Inc.
Two Embarcadero Center, 17th Floor
San Francisco, California 94111
Attention: Bryan Barker
Telephone: (415) 627-6484
Email: bryan.barker@citi.com

“Official Statement” means the Official Statement dated [SALE DATE], relating to the Bonds.

“Opinion of Counsel” means an opinion from an attorney or firm of attorneys, acceptable to the Issuer and the Trustee with experience in the matters to be covered in the opinion.

“Optional Redemption Date” means any date the Bonds are redeemed pursuant to Section 3.01(a) hereof.

“Outstanding,” “outstanding” or “Bonds Outstanding” when used with respect to the Bonds means any Bonds theretofore authenticated and delivered under this Indenture, except:

(a) Bonds theretofore canceled by the Trustee or theretofore delivered to the Trustee for cancellation;

(b) Bonds for the payment of which moneys or obligations shall have been theretofore deposited with the Trustee or other escrow agent in accordance with Article IX; or

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under this Indenture,

provided, however, that in determining whether the holders of the requisite principal amount of Outstanding Bonds are present at a meeting of Holders of Bonds for quorum purposes or have consented to or voted in favor of any request, demand, authorization, direction, notice, consent, waiver, amendment or modification hereunder, Bonds held for the account of the Issuer, the Borrower, any of their respective subsidiaries or any of their respective Affiliates shall be disregarded and deemed not to be Outstanding, except that in determining whether the Trustee shall be protected in making such a determination or relying upon any such quorum, consent or vote, only Bonds which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded.

“Partnership Agreement” means the Amended and Restated Agreement of Limited Partnership of the Borrower, dated as of [May] 1, 2023, as may be amended and supplemented from time to time.

“Paying Agent” means the Trustee in its capacity as paying agent for the Bonds.

“Permitted Investments” means (i) Government Obligations, and (ii) shares or units in any money market mutual fund rated “Aaa-mf” by Moody’s (or the equivalent Highest Rating

Category given by the Rating Agency for that Rating Category), including mutual funds of the Trustee or its affiliates or for which the Trustee or an affiliate thereof serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefor that are registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists primarily of Government Obligations. Ratings of Permitted Investments shall be determined at the time of purchase of such Permitted Investments and without regard to ratings subcategories, and the Trustee shall have no responsibility to monitor the ratings of Permitted Investments upon or after the initial purchase of such Permitted Investments.

“Person” shall include an individual, association, unincorporated organization, corporation, partnership, limited liability company, joint venture, or government or agency or political subdivision thereof.

“Plans and Specifications” means the plans and specifications and/or the scope of work for the Project, together with such amendments thereto as are made from time to time in accordance with Section 5.07 of the Bond Loan Agreement.

“Preference Proof Moneys” means (i) moneys drawn on a letter of credit, (ii) proceeds of the Bonds plus any additional amount paid by the Underwriter to the Trustee in excess of the offering price, (iii) proceeds of a Lender Collateral Deposit, or (iv) moneys in connection with which the Trustee shall have been delivered an opinion of bankruptcy counsel acceptable to it to the effect that the use of such moneys would not be avoidable as a preference under Section 547 of the United States Bankruptcy Code or give rise to a stay under Section 362(a) of the United States Bankruptcy Code. “Preference Proof Moneys” shall also include investment earnings derived from any of the foregoing.

“Project” means the condominium unit within the Beretania North Condominium Project containing a multifamily rental housing development known as Maunakea Tower Apartments, which will consist of approximately 379 apartment units and related facilities owned by Borrower located in Honolulu, Hawaii.

“Project Fund” means the Project Fund created in Section 4.01(b) hereof.

“Purchase in Lieu of Redemption Date” means the date set forth in Section 3.02 of this Indenture.

“Qualified Project Costs” has the meaning assigned to such term in the Tax Certificate.

“Qualified Project Period” has the meaning assigned to such term in the Regulatory Agreement.

“Rating Agency” means Moody’s, S&P or any other nationally recognized securities rating agency rating the Bonds, or such rating agency’s successors or assigns, and initially means Moody’s so long as Moody’s is rating the Bonds.

“Rating Category” means one of the rating categories of the Rating Agency for the specific type and duration of the applicable Permitted Investment.

“Rating Confirmation” means a letter of confirmation from the Rating Agency to the effect that the proposed action would not result in a withdrawal, suspension or downgrade of the rating then in effect on the Bonds.

“Rebate Analyst” means _____, or any other rebate analyst selected by the Issuer and reasonably acceptable to the Borrower.

“Rebate Analyst Fee” means the fee payable by the Borrower to the Rebate Analyst upon delivery of its report in accordance with the Tax Certificate.

“Rebate Fund” means the Rebate Fund created in Section 4.01(c) hereof.

“Rebate Requirement” means the amount, if any, which is to be paid to the United States of America pursuant to Section 148(f) of the Code and Section 5.01 hereof or to reduce the yield on investments to the yield on the Bonds pursuant to Section 148 of the Code.

“Record Date” means the 15th day of the month preceding the date on which interest is due and payable.

“Regulations” means the applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

“Regulatory Agreement” means the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of [May] 1, 2023, among the Issuer, the Trustee and the Borrower, and any and all amendments or supplements thereto.

“Remarketing Agent” means initially Citigroup Global Markets Inc., and any successor Remarketing Agent that may be appointed by the Borrower.

“Remarketing Agreement” means the Remarketing Agreement, dated as of even date with this Indenture, between the Borrower and the Remarketing Agent.

“Remarketing Notice Parties” means the Borrower, the Issuer, the Trustee, the Remarketing Agent, the Investor Limited Partner and the Rating Agency.

“Remarketing Rate” means the interest rate or rates established pursuant to Section 3.05(b) hereof and borne by the Bonds then Outstanding from and including a Mandatory Tender Date to but not including the next Mandatory Tender Date or the Maturity Date, as applicable.

“Representation Letter” means the Blanket Letter of Representations from the Issuer to DTC, or any similar Letter of Representations at the time in use by DTC.

“Requisition” means (a) the request signed by the Borrower Representative to make a disbursement from the Project Fund on a Construction Draw Date in the manner provided pursuant to Section 6.02 hereof or (b) the request signed by the Borrower Representative to make a disbursement from the Cost of Issuance Fund in the manner provided pursuant to Section 4.04(b) hereof.

“Resolution” means the resolution adopted by the Issuer on [May __, 2023], duly authorizing and directing the issuance, sale and delivery of the Bonds.

“Responsible Officer” means, when used with respect to the Trustee, any vice president, assistant vice president, senior associate, associate or other officer of the Trustee within the Trust Office (or any successor corporate trust office) customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred at the Trust Office because of such person’s knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Indenture.

“Revenues” means, all payments paid or payable to the Trustee in accordance with the Bond Loan Agreement, the Loan and the Note and all investment earnings derived or to be derived on any moneys or investments held by the Trustee hereunder, but excluding (a) amounts paid as fees, reimbursement for expenses or for indemnification of any Issuer Indemnified Party and the Trustee, (b) amounts paid to or collected by the Issuer in connection with any Unassigned Rights of the Issuer and (c) any Rebate Requirement.

“S&P” means S&P Global Ratings, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer with the approval of the Borrower.

“Securities Depository” means The Depository Trust Company, its successors and assigns, or any other securities depository for the Bonds designated by the Issuer or the Borrower to the Trustee in writing.

“SLGS” means United States Treasuries – Time Deposit State and Local Government Series.

“Special Funds” means, collectively, the Bond Fund, the Project Fund and the Collateral Fund, and any accounts therein, all as created in Section 4.01 of this Indenture.

“State” means the State of Hawaii.

“Supplement” or “Supplements” means any and all extensions, renewals, modifications, amendments, supplements and substitutions to this Indenture.

“Tax Certificate” means the Tax Certificate, dated [May] __, 2023, made and executed by the Issuer and the Borrower, and any and all amendments or supplements thereto.

“Term of Agreement” means the term of the Bond Loan Agreement as specified in Section 9.01 of the Bond Loan Agreement.

“Title Company” means Old Republic Title & Escrow of Hawaii, Ltd.

“Trust Estate” has the meaning given such term in the Granting Clauses of this Indenture.

“Trust Office” means the designated corporate trust office of the Trustee at which at any time its corporate trust business shall be administered, located at the address set forth in the definition of “Notice Address” or such other office designated by the Trustee from time to time, or such other offices as may be specified in writing to the Issuer by the Trustee, or the designated corporate trust office of any successor Trustee or such other office designated by the successor Trustee from time to time, or such other offices as may be specified in writing to the Issuer by the successor Trustee.

“Trustee” means U.S. Bank Trust Company, National Association, a national banking association duly organized and existing under the laws of the United States of America and authorized to exercise corporate trust powers in the State, and its successor or successors in the trust created by this Indenture.

“Trustee’s Fee” means the ongoing compensation and fees and expenses payable to the Trustee as follows: (a) the acceptance fee of the Trustee of \$_____ payable on the Closing Date; (b) the annual administration fees and expenses of the Trustee, as Trustee, Bond Registrar and Paying Agent of \$_____ per year for the ordinary services of the Trustee rendered under this Indenture during each twelve-month period, payable annually in advance beginning on the Closing Date and thereafter on each anniversary of the Closing Date; (c) the fees, expenses and charges of the Trustee for extraordinary services rendered by it and extraordinary fees or expenses incurred by it under this Indenture as and when the same become due, including counsel fees or expenses (including in house counsel fees or expenses and fees or expenses prior to litigation, at trial, in insolvency proceedings or for appellate proceedings); provided, further, that the Trustee shall not be required to undertake any such extraordinary services unless provision for payment of extraordinary fees or expenses satisfactory to the Trustee shall have been made; (d) for purposes of the Bond Loan Agreement, indemnification of the Trustee by the Borrower; and (e) the annual Dissemination Agent Fee under the Continuing Disclosure Agreement of \$____ per year, payable annually in advance on the Closing Date and thereafter on each anniversary of the Closing Date.

“Trustee Indemnified Party” or “Trustee Indemnified Parties” has the meaning set forth in Section 6.02 of the Bond Loan Agreement.

“Unassigned Rights of the Issuer” and “Unassigned Rights” means the rights of the Issuer consisting of: (a) all rights which the Issuer Indemnified Parties may have under this Indenture, the Bond Loan Agreement and other Documents to indemnification by the Borrower and by any other Persons and to payments for expenses incurred by the Issuer itself, or its officers, directors, officials, agents or employees; (b) the right of the Issuer to give and receive notices, reports or other information, make determinations and grant approvals hereunder and under the Documents; (c) the right of the Issuer to give and withhold consents and approvals hereunder and under the Documents; (d) the right of the Issuer to give and receive its fees and expenses pursuant to the Bond Loan Agreement and the Regulatory Agreement, including but not limited to all rights of the Issuer to receive the Issuer’s Administrative Fee; (e) all rights of the Issuer not otherwise assigned to the Trustee to enforce the representations, warranties, covenants and agreements of the Borrower pertaining in any manner or way, directly or indirectly, to the requirements of the Act or any requirements imposed by the Issuer with respect to the Project, or necessary to assure that interest on the Bonds is excluded from gross income for federal income tax purposes, as are set forth in any of the Documents or in any other certificate or agreement executed by the Borrower;

(f) all rights of the Issuer in connection with any amendment to or modification of the Documents; and (g) all enforcement remedies with respect to the foregoing.

“Underwriter” means Citigroup Global Markets Inc.

Section 1.02. Rules of Construction. The words “hereof,” “herein,” “hereunder,” “hereto,” and other words of similar import refer to this Indenture in its entirety.

The terms “agree” and “agreements” contained herein are intended to include and mean “covenant” and “covenants.”

References to Articles, Sections, and other subdivisions of this Indenture are to the designated Articles, Sections, and other subdivisions of this Indenture.

The headings of this Indenture are for convenience only and shall not define or limit the provisions hereof.

All references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well.

Any reference to particular sections or subsections of the Code and applicable income tax regulations shall include any successor provisions of law or regulations, to the extent the same shall apply to the Bonds.

Any reference to a Bond or to the Bonds shall include each portion in the minimum authorized denomination of any registered bond having a denomination greater than the minimum authorized denomination.

ARTICLE II

CREATION OF BONDS; DETAILS OF THE BONDS

Section 2.01. Authorization and Terms of Bonds.

(a) Authorization of Bonds. The Issuer hereby authorizes for issuance under this Indenture, bonds in the original aggregate principal amount of \$[PAR AMOUNT] which shall be designated the “*City and County of Honolulu Multifamily Housing Revenue Bonds (Maunakea Tower Apartments) Series 2023*” to be issued as hereinafter provided.

(b) Registered Form; Numbering. The Bonds shall be issuable only as fully registered Bonds in authorized denominations, substantially in the form, appropriately completed, attached hereto as EXHIBIT A and made a part hereof. The Bonds shall be lettered “R” and shall be numbered separately from “1” consecutively upward.

(c) Date, Denominations, Interest Rate and Maturity. The Bonds shall be dated [May] __, 2023, shall be issued in denominations of \$5,000 each or integral multiples thereof, shall bear interest from the Closing Date to the initial Mandatory Tender Date at the rate of [RATE]% per

annum and thereafter at the Remarketing Rate or Rates determined as provided in Section 3.05(b) hereof, payable semiannually on each Interest Payment Date, and shall mature on the Maturity Date.

(d) Book Entry Form. Initially, the Bonds shall be in Book Entry Form by issuing a single bond in the amount of \$[PAR AMOUNT], registered in the name of Cede & Co., as nominee for DTC. In the event DTC discontinues its service with respect to the Bonds and the Book Entry System is terminated, replacement Bonds shall be issued in authorized denominations.

(e) Dates from Which Interest Payable. The Bonds shall bear interest from the Interest Payment Date next preceding the date on which it is authenticated, unless authenticated on an Interest Payment Date, in which case it shall bear interest from such Interest Payment Date, or, unless authenticated prior to the first Interest Payment Date, in which case it shall bear interest from the Closing Date; provided, however, if at the time of authentication of any Bond, the Issuer is in default with respect to the payment of interest thereon, such Bond shall bear interest from the date to which interest shall have been paid. Interest payable on the Bonds shall be calculated on the basis of a 360 day year of twelve 30 day months.

(f) Medium and Place of Payment. Principal of and interest on the Bonds shall be payable in lawful money of the United States of America which, at the respective times of payment, is legal tender for the payment of public and private debts, but only from the Revenues and any other monies made available to the Issuer for such purpose. Principal of the Bonds shall be payable at the Trust Office of the Trustee upon presentation and surrender of the Bonds as the same become due, and upon the request of any registered Owner of Bonds on the applicable Record Date having an aggregate principal amount of \$1,000,000 or more, such principal shall be paid by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such Owner in writing to the Trustee. Interest on the Bonds shall be payable to the registered Owners of the Bonds by check or draft mailed to such Owners at their addresses as they appear on registration books kept by the Trustee as Bond Registrar (the “Bond Registrar”), or, upon the request of any registered Owner of Bonds having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the domestic bank and account number specified by such Owner in writing to the Trustee at least three (3) Business Days prior to the applicable payment date.

(g) Form of Bonds. The definitive Bonds, which may be printed, typewritten, photocopied, or otherwise reproduced, including the Trustee’s certificate of authentication to be endorsed thereon, shall be substantially in the form as set forth in EXHIBIT A attached hereto with such appropriate variations, omissions and insertions as permitted or required by this Indenture.

(h) Payments or Actions to be taken on Saturdays, Sundays and Holidays. In any case where the date of any action required hereunder to be taken or the date of maturity of interest on or principal of the Bonds, shall not be a Business Day, then payment of interest or principal or the taking of such action need not be made or taken on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date such action was to be taken.

Section 2.02. Source of Payment of Bonds. The Issuer covenants that it will promptly pay the principal of and the interest on the Bonds only out of (a) the Revenues pledged for the payment thereof under this Indenture, (b) the amounts held in any Fund or Account created under this Indenture, other than amounts held in the Cost of Issuance Fund, the Rebate Fund or the Expense Fund, and (c) from any other moneys held pursuant to the Trust Estate. Nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of the Issuer. All the Bonds to be issued hereunder shall be equally and ratably secured, to the extent provided herein, by this Indenture.

Section 2.03. Execution of Bonds. The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the [Director of Department of Planning and Permitting of the City and County of Honolulu], and countersigned by the manual or facsimile signature of the Mayor of the City and County of Honolulu, and the seal of the City and County of Honolulu shall be affixed thereto or imprinted thereon. Any facsimile signatures shall have the same force and effect as if the appropriate officers had personally signed each of said Bonds. In case one or any of the officers who shall have signed or attested the Bonds or whose reproduced facsimile signature appears thereon shall cease to be such officer or officers before the Bonds so signed and attested shall have been actually issued and delivered, the Bonds may be issued and delivered as though the person who signed or attested or whose reproduced facsimile signature appears on the Bonds had not ceased to be such officer. Neither the members, directors, officers or agents of the Issuer nor any person executing the Bonds shall be liable personally or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 2.04. Certificate of Authentication. Only such Bonds as shall have endorsed thereon a certificate of authentication substantially in the form set forth in the form of the Bond herein provided and duly executed by the Trustee shall be entitled to any right or benefit under this Indenture. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if manually signed by an authorized officer of the Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder. At the time of authentication of any Bond, the Trustee shall insert therein the date from which interest on such Bond shall be payable as provided in Section 2.01(e) hereof.

Section 2.05. Authentication and Delivery of Bonds. Upon the execution and delivery of this Indenture, and satisfaction of the conditions established by the Issuer in the Resolution and in the Bond Purchase Agreement for delivery of the Bonds, the Issuer shall execute the Bonds and deliver them to the Trustee. Thereupon, the Trustee shall authenticate the Bonds and hold them on behalf of the Securities Depository pending closing therewith. Prior to the Closing Date with the Securities Depository, the Trustee shall have received the following:

(a) A copy, certified by an authorized officer of the Issuer, of the Resolution adopted by the Issuer relating to the Bonds, authorizing the execution, delivery and performance of this Indenture and the Bond Loan Agreement;

- (b) A specimen copy of the Bonds;
- (c) A copy of a fully executed counterpart of this Indenture;
- (d) Copies of fully executed counterparts of the Bond Loan Agreement, the Regulatory Agreement, the Tax Certificate, the Continuing Disclosure Agreement and the original, fully executed Note;
- (e) A copy of the completed Internal Revenue Service Form 8038 to be filed by or on behalf of the Issuer pursuant to Section 149(e) of the Code; provided, that the Trustee is not responsible for filing the Form 8038 with the Internal Revenue Service;
- (f) An opinion of Bond Counsel to the effect that the interest on the Bonds is excludable from gross income for federal income tax purposes;
- (g) A request and authorization signed by an authorized officer of the Issuer authorizing the Trustee to authenticate and to deliver the Bonds to the purchaser or purchasers therein identified upon payment to the Trustee for the account of the Issuer of the amount specified in such request and authorization;
- (h) Written evidence from the Rating Agency confirming that the Bonds have been assigned a rating of ["Aaa/VMIG 1"];
- (i) The Capitalized Interest Deposit, for deposit to the Capitalized Interest Account of the Bond Fund; and
- (j) Copies of all initial financing statements to be filed by the Borrower upon issuance of the Bonds.

The proceeds from the sale of the Bonds shall be paid over directly to the Trustee and deposited to the credit of the Project Fund, as provided in Article VI hereof.

Section 2.06. Temporary Bonds. Until Bonds in definitive form are ready for delivery, the Issuer may execute, and upon its request in writing, the Trustee shall authenticate and deliver in lieu of any thereof, and subject to the same provisions, limitations and conditions, one or more printed, typewritten or photocopied Bonds in temporary form, substantially of the tenor of the Bonds herein described, and with appropriate omissions, variations and insertions. Such Bond or Bonds in temporary form shall be delivered in denominations authorized by this Indenture, may be numbered using the prefix "T" before any number thereon as authorized by this Indenture, and may bear a legend thereon setting forth the terms for the exchange thereof for Bonds in definitive form. Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the benefit of this Indenture. The Issuer shall, without unreasonable delay (unless the Holders of the Bonds issued in temporary form agree otherwise), prepare, execute and deliver to the Trustee, and thereupon, upon the presentation and surrender of the Bond or Bonds in temporary form, the Trustee shall authenticate and deliver, in exchange therefor, a Bond in a definitive authorized form in authorized denominations, of the same maturity or maturities, bearing the same interest rate or rates and for the same aggregate principal amount as the Bond in temporary form

surrendered. Such exchange shall be made by the Issuer at the Borrower's expense and without making any charge to the Holders of the Bonds therefor.

Section 2.07. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate a new Bond of like date, maturity, interest rate and denomination as that of the Bond mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond there shall be first furnished to the Issuer and the Trustee evidence of such loss, theft or destruction satisfactory to the Issuer and the Trustee, together with indemnity satisfactory to them. The Trustee may, with the consent of the Holder, provide to the Holder a typewritten (or similarly reproduced) Bond certificate in lieu of a printed Bond certificate. In the event any such Bond shall have matured, instead of issuing a duplicate Bond the Trustee may pay the same without surrender thereof. The Issuer and the Trustee may charge the Holder of such Bond their expenses and fees, if any, in connection with the preparation, execution and authentication of a replacement Bond.

Section 2.08. Registration, Negotiability, Transfer and Exchange of Bonds. All of the Bonds issued under this Indenture shall be negotiable, subject to the provisions for registration and transfer contained in this Indenture and in the Bonds. So long as any of the Bonds shall remain Outstanding, the Issuer shall maintain and keep at the Trust Office of the Trustee, books for the registration and transfer of Bonds; and, upon presentation thereof for such purpose at such office, the Trustee shall register or cause to be registered therein, and permit to be transferred thereon, under such reasonable regulations as the Issuer or the Trustee may prescribe, any Bond entitled to registration or transfer.

Each Bond shall be transferable only upon the books of the Issuer maintained for such purpose by the Trustee, at the written request of the registered Owner thereof or his attorney duly authorized in writing, upon presentation and surrender thereof, together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered Owner or his attorney duly authorized in writing. Upon the surrender for transfer of any Bond, the Issuer shall issue, and the Trustee shall authenticate, in the name of the transferee, in authorized denominations, a new Bond or Bonds without coupons of the same aggregate principal amount, series, maturity and interest rate as the surrendered Bond.

The Issuer and the Trustee shall deem and treat the Person in whose name any Outstanding registered Bond shall be registered upon the books of the Issuer as the absolute Owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such registered Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

For every exchange or transfer of Bonds, whether temporary or definitive, the Issuer or the Trustee may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer which sum or sums shall be paid by the Person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. Notwithstanding any other provision of this

Indenture to the contrary, any fees or expenses of the Issuer or the Trustee incurred in connection therewith (except any applicable tax or other governmental charge) shall be paid by the Borrower as required by the Bond Loan Agreement. The Issuer shall not be obligated to make any such exchange or transfer of Bonds during the fifteen (15) days next preceding an Interest Payment Date.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Bond (including any transfers between or among Securities Depository participants or Beneficial Owners of interests in any Bond) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof. Neither the Trustee nor any agent shall have any responsibility or liability for any actions taken or not taken by the Securities Depository.

Section 2.09. Limited Obligation. The Bonds and the interest thereon are limited obligations of the Issuer, payable solely from the Revenues and the Trust Estate, which are hereby specifically assigned and pledged to such purposes in the manner and to the extent provided herein. Neither the United States of America, HUD, FHA, any other agency of the United States of America, GNMA, the State, nor any political subdivision thereof (except the Issuer, to the limited extent set forth in the first and last sentences of this Section) shall in any event be liable for the payment of the principal of, premium (if any) or interest on the Bonds or for the performance of any pledge, obligation or agreement of any kind whatsoever of the Issuer, and none of the Bonds or any of the Issuer's agreements or obligations shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever.

The covenants and agreements herein set forth to be performed by the Issuer shall be for the equal and proportionate benefit, security and protection of all holders of the Bonds without preference, priority or distinction as to payment or security or otherwise of any of the Bonds over any of the others for any reason or cause whatsoever except as expressly provided herein or in the Bonds, and all Bonds shall rank *pari passu* and shall be secured equally and ratably hereunder without discrimination or preference whatsoever.

No holder of a Bond shall be required to see that the moneys derived from such Bond are applied to the purpose or purposes for which the Bond is issued. The validity of the Bonds shall be neither dependent upon nor affected by the validity or regularity of any proceedings relating to the use and application of the proceeds of the Bonds. The Bonds shall contain a recital that they are issued pursuant to the Act, which recital shall be conclusive evidence of their validity and of the regularity of their issuance. No holder of any Bonds has the right to compel any exercise of the taxing power of the Issuer to pay the Bonds or the interest or the redemption premium, if any, thereon, and the Bonds shall not be construed to create any moral obligation on the part of the Issuer with respect to the payment of the Bonds.

No recourse shall be had for the payment of the principal of, or premium, if any, or interest on, any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement

contained in this Indenture, against the Issuer, any past, present or future member of its Governing Body, its officers, attorneys, accountants, financial advisors, agents or staff, or the officers, attorneys, accountants, financial advisors, agents or staff of any successor public entity, as such, either directly or through the Issuer or any successor public entity, under any rule of law or penalty or otherwise, and all such liability of the Issuer, any member of its Governing Body and its officers, attorneys, accountants, financial advisors, agents and staff is hereby, and by the acceptance of the Bonds, expressly waived and released as a condition of, and in consideration for, the execution of this Indenture and the issuance of any of the Bonds.

It is recognized that notwithstanding any other provision of this Indenture, neither the Borrower, the Trustee nor any Bondholder shall look to the Issuer for damages suffered by the Borrower, the Trustee or such Bondholder as a result of the failure of the Issuer to perform any covenant, undertaking or obligation under this Indenture, the Bond Loan Agreement, the Bonds, the Regulatory Agreement, any of the Loan Documents or any of the other documents referred to herein, or as a result of the incorrectness of any representation made by the Issuer in any of such documents, nor for any other reason. Although this Indenture recognizes that such documents shall not give rise to any pecuniary liability of the Issuer, nothing contained in this Indenture shall be construed to preclude in any way any action or proceeding (other than that element of any action or proceeding involving a claim for monetary damages against the Issuer) in any court or before any governmental body, agency or instrumentality or otherwise against the Issuer or any of its officers or employees to enforce the provisions of any of such documents which the Issuer is obligated to perform and the performance of which the Issuer has not assigned to the Trustee or any other Person.

Section 2.10. Cancellation and Disposition of Bonds. All Bonds that have been surrendered for payment, cancellation or for registration of transfer or exchange pursuant to Section 2.08 hereof shall be cancelled and disposed of by the Trustee in accordance with its then-customary procedures and shall not be reissued, and a counterpart of the certificate of disposal evidencing such disposition shall be furnished by the Trustee to the Issuer and, upon written request therefor, to the Borrower. Any Bonds so cancelled may be retained by the Trustee for such period of time as the Trustee may determine and shall be disposed of by the Trustee at the end of such period. Any Bond so cancelled shall thereafter no longer be considered Outstanding for any purpose of this Indenture or the Bond Loan Agreement.

Section 2.11. Book Entry System.

(a) (i) Except as provided in subparagraph (iii) of this Section 2.11(a), the registered owner of all of the Bonds shall be, and the Bonds shall be registered in the name of, Cede & Co. (“Cede”), as nominee of The Depository Trust Company (“DTC”). Payment of semi-annual interest for any Bonds shall be made by transfer of same day funds to the account of Cede on the Interest Payment Date at the address indicated for Cede in the registration books of the Issuer kept by the Trustee.

(ii) The Bonds shall be initially issued in the form of a separate single fully registered bond in the amount of each separately stated maturity of the Bonds. Upon initial issuance, the ownership of such Bonds shall be registered in the registry books of the Issuer kept by the Trustee in the name of Cede, as nominee of DTC. With respect to Bonds

registered in the registry books kept by the Trustee in the name of Cede, as nominee of DTC, the Issuer and the Trustee shall have no responsibility or obligation to any participant of DTC (a “Participant”) or to any Person for whom a Participant acquires an interest in the Bonds (a “Beneficial Owner”). Without limiting the immediately preceding sentence, the Issuer and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede or any Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Participant, any Beneficial Owner or any other Person, other than DTC, of any notice with respect to the Bonds or (iii) the payment to any Participant, any Beneficial Owner or any other Person, other than DTC, of any amount with respect to the principal of or interest on the Bonds. The Issuer and the Trustee may treat as and deem DTC to be the absolute owner of each Bond for the purpose of payment of the principal of and interest on such Bond, and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Trustee shall pay all principal of and interest on the Bonds only to or upon the order of DTC, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer’s obligations with respect to the principal of and interest on the Bonds to the extent of the sum or sums so paid. Payments of principal may be made without requiring the surrender of the Bonds, and the Issuer and Trustee shall not be liable for the failure of DTC or any successor thereto to properly indicate on the Bonds the payment of such principal. No Person other than DTC shall receive a Bond evidencing the obligation of the Issuer to make payments of principal of and interest on the Bonds pursuant to this Indenture. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede, and subject to the transfer provisions hereof, the word “Cede” in this Indenture shall refer to such new nominee of DTC.

(iii) (A) DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice to the Issuer and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is not a successor securities depository), Bond certificates will be delivered as described in this Indenture.

(B) The Issuer, in its sole discretion and without the consent of any other Person, may terminate the services of DTC with respect to the Bonds if the Issuer determines that: (i) DTC is unable to discharge its responsibilities with respect to the Bonds or (ii) a continuation of the requirement that all of the Outstanding Bonds be registered in the registration books kept by the Trustee in the name of Cede, as nominee of DTC, is not in the best interest of the Beneficial Owners of the Bonds. In the event that no substitute securities depository is found by the Issuer, or restricted registration is no longer in effect, Bond certificates will be delivered as described in this Indenture.

(C) Upon the termination of the services of DTC with respect to the Bonds pursuant to subparagraph (a)(iii)(B) of this Section 2.11, or upon the discontinuance or termination of the services of DTC with respect to the Bonds pursuant to subparagraph (a)(iii)(A) or subparagraph (a)(iii)(B) of this Section 2.11 after which no substitute securities depository willing to undertake the functions of

DTC hereunder can be found which, in the opinion of the Issuer, is willing and able to undertake such functions upon reasonable and customary terms, the Bonds shall no longer be restricted to being registered in the registration books kept by the Trustee in the name of Cede as nominee of DTC, but may be registered in whatever name or names Bondholders transferring or exchanging Bonds shall designate, in accordance with the provisions of this Indenture.

(b) Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of Cede, as nominee of DTC, all payments with respect to the principal of and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, to DTC as provided in the applicable Representation Letter of the Issuer addressed to DTC.

(c) In connection with any notice or other communication to be provided to Bondholders pursuant to this Indenture by the Issuer or the Trustee with respect to any consent or other action to be taken by the Bondholders, the Issuer or the Trustee, as the case may be, shall establish a special record date for such consent or other action and give DTC notice of such special record date not less than fifteen (15) calendar days in advance of such special record date to the extent possible.

Section 2.12. Non-Presentment of Bonds. Subject to the provisions of Section 11.20 hereof, in the event any Bonds shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, if funds sufficient to pay such Bonds shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, all liability of the Issuer to the Holder thereof for the payment of such Bond shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee, subject to applicable escheat laws, to hold such fund or funds, without liability for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on its part under this Indenture or on, or with respect to, such Bond. Any such Bonds shall cease to bear interest on the specified maturity and such Bonds or portions thereof shall no longer be protected by or subject to the benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture.

Section 2.13. CUSIP Numbers. The Issuer in issuing the Bonds may use CUSIP numbers (if then generally in use), and, if so, the Trustee shall use CUSIP numbers in notices of redemption as a convenience to Holders; provided that the Trustee shall have no liability for any defect in the CUSIP numbers as they appear on any Bond, notice or elsewhere, and, provided further that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Bonds or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Bonds, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuer will promptly notify the Trustee in writing of any change in the CUSIP numbers.

ARTICLE III

REDEMPTION OF BONDS

Section 3.01. Redemption of Bonds.

(a) [Prior to the initial Mandatory Tender Date, the Bonds are not subject to optional redemption. After the initial Mandatory Tender Date,] The Bonds are subject to optional redemption prior to maturity from Preference Proof Moneys, at the direction of a Borrower Representative (with delivery of a Cash Flow Projection, if required pursuant to Section 3.01(c) below), in whole or in part, at a redemption price equal to the principal amount of the Bonds to be redeemed, plus accrued interest, but without premium, to the date fixed for redemption, [(i) prior to the initial Mandatory Tender Date, on any Business Day on or after [December 1, 2024], and (ii) after the initial Mandatory Tender Date,] on any Business Day that is on or after the date that is halfway between the most recent Mandatory Tender Date and the next Mandatory Tender Date or the Maturity Date, as applicable.

(b) [Other than as set forth in Section 3.01(a) above, the Bonds are not subject to redemption prior to the Maturity Date.]

(c) If, to pay the redemption price, the Trustee is required to sell or otherwise dispose of Permitted Investments shown in the most recent Cash Flow Projection delivered to the Rating Agency before the maturity or mandatory tender date of such Permitted Investments, then a new Cash Flow Projection shall be provided to the Trustee (with a copy to the Rating Agency) with the direction described in Section 3.01(a) above, and the Trustee shall utilize the amounts and take the actions set forth in such Cash Flow Projection to pay the redemption price of the Bonds called for redemption.

(d) In the event of a redemption in part, the particular Bonds to be redeemed shall be selected by the Trustee by lot in such manner as the Trustee shall deem fair and appropriate, provided that if a Book Entry System is then in effect, the Securities Depository shall select the interests of the beneficial owners of the Bonds to be redeemed.

Section 3.02. Purchase in Lieu of Redemption.

(a) Any Bonds called for optional redemption under Section 3.01(a) of this Indenture may be purchased by the Borrower or by any other party designated in writing by the Borrower, on the date upon which such Bonds were to have been redeemed (the “Purchase in Lieu of Redemption Date”), at a purchase price equal to the redemption price thereof. The Borrower shall give 5 days’ advance written notice before the designated Purchase in Lieu of Redemption Date to the Trustee for which an election to purchase pursuant to this Section 3.02 is being made. Bonds to be purchased pursuant to this Section 3.02 which are not delivered to the Trustee on the Purchase in Lieu of Redemption Date shall be deemed to have been so purchased, and the purchaser of such Bonds shall be the Owner of such Bonds for all purposes under this Indenture, and interest accruing on such Bonds on and after the Purchase in Lieu of Redemption Date shall be payable solely to the purchaser of the Bonds or any assignee(s) of its interest in such Bonds.

(b) The purchase of Bonds in accordance with this Section 3.02 is not intended, and shall not be deemed to constitute, a redemption of such Bonds nor an extinguishment of the debt evidenced thereby.

(c) The notice provided for in Section 3.03 hereof shall be given by the Trustee regardless of whether the Borrower intends to purchase the Bonds in lieu of redemption; however, the notice may include a statement(s) that the Bonds may be purchased in lieu of redemption, and related information as may be required or necessary to comply with the requirements and policies of DTC.

Section 3.03. Notices of Redemption.

(a) All or a portion of the Bonds shall be called for optional redemption pursuant to Section 3.01 hereof by the Trustee as herein provided upon receipt by the Trustee and the Issuer, at least 30 days prior to the redemption date (unless a shorter notice shall be satisfactory to the Trustee), of written notice of a Borrower Representative specifying the principal amount of the Bonds to be called for redemption and the redemption date. In the case of every redemption, the Trustee shall cause notice of such redemption to be given by mailing by first class mail postage prepaid a copy of the redemption notice to the Bondholders designated for redemption in whole or in part, at their addresses as the same shall last appear upon the registration records, in each case not more than 30 nor less than 20 days prior to the redemption date, provided, however, that failure to receive such notice, or any defect therein, shall not affect the validity of any proceedings for the redemption of such Bonds. So long as the Bonds are in Book Entry Form, notice of redemption will be given by the Trustee only to DTC or its successor. Redemption is conditioned upon the Trustee having sufficient moneys on deposit in the Special Funds, on or prior to the redemption date, to redeem all of the Bonds called for redemption, and if the Trustee does not have sufficient funds for this purpose, no Bonds shall be redeemed. The Trustee shall furnish the Borrower, the Investor Limited Partner, the Issuer, the Remarketing Agent and the Rating Agency with a copy of each notice of redemption given with respect to any optional redemption under Section 3.01 hereof, as soon as practicable after the delivery of notice to the Bondholders.

(b) Each notice of redemption shall specify the date fixed for redemption, the redemption price, the CUSIP numbers of the Bonds to be redeemed, the place or places of payment, that payment will be made upon presentation and surrender of the Bonds to be redeemed, that interest accrued to the date fixed for redemption will be paid as specified in said notice, and that on and after said date interest thereon will cease to accrue. Each notice of redemption may also state that the redemption is conditioned on receipt of sufficient Preference Proof Moneys for such redemption by the Trustee on or prior to the redemption date; if sufficient moneys are not so received, the redemption of the Bonds for which notice was given shall not be made, and the Trustee promptly shall give notice of cancellation of such redemption in substantially the same manner as the original notice of redemption. If less than all the Outstanding Bonds are to be redeemed, the notice of redemption shall specify the numbers of the Bonds or portions thereof to be redeemed.

Section 3.04. Mandatory Tender.

(a) The Bonds are subject to mandatory tender in whole and not in part on each Mandatory Tender Date and shall be purchased at a price equal to 100 percent of the principal amount of such Bonds, plus accrued interest, if any, to such Mandatory Tender Date, and without premium. No later than 10:00 a.m., New York City time, on a Mandatory Tender Date, the Holders shall deliver the Bonds to the Trustee. The Trustee shall utilize the following sources of payments to pay the tender price of the Bonds not later than 1:30 p.m. New York City time on such Mandatory Tender Date, in the following priority: (i) amounts representing proceeds of remarketed Bonds received pursuant to Section 3.07(c) hereof, to pay the principal amount, plus accrued interest, of Bonds tendered for purchase, (ii) amounts on deposit in the Collateral Fund and the Project Fund, to pay the principal amount of Bonds tendered for purchase, (iii) amounts on deposit in the Bond Fund (including the Capitalized Interest Account therein) to pay the accrued interest, if any, on Bonds tendered for purchase, and (iv) any other Preference Proof Moneys available or made available for such purpose at the direction of the Borrower.

(b) If the conditions set forth in Section 3.06 hereof are not satisfied and/or the Trustee shall not have received remarketing proceeds on a Mandatory Tender Date equal to the principal amount of the Bonds Outstanding on such date, the Bonds shall be purchased in whole on such Mandatory Tender Date using amounts on deposit in the Collateral Fund, the Project Fund and the Bond Fund, and, immediately following such purchase, the Bonds shall be deemed redeemed on such Mandatory Tender Date and cancelled by the Trustee.

(c) Not less than 30 days before a Mandatory Tender Date, the Trustee shall give written notice of mandatory tender and remarketing to the Holders by first class mail, postage prepaid, at their respective addresses as they appear on registration books kept by the Trustee as Bond Registrar. The notice shall state the Mandatory Tender Date and that:

(1) all Outstanding Bonds are subject to mandatory tender for purchase on such Mandatory Tender Date and must be tendered for purchase on such Mandatory Tender Date;

(2) all Outstanding Bonds will be purchased on such Mandatory Tender Date at a price equal to the principal amount of the Outstanding Bonds plus interest accrued to such Mandatory Tender Date;

(3) Holders will not have the right to elect to retain their Bonds and any Bonds not tendered will nevertheless be deemed to have been tendered and will cease to bear interest from and after such Mandatory Tender Date; and

(4) the address of the designated corporate trust office of the Trustee at which Holders should deliver their Bonds for purchase on such Mandatory Tender Date.

If notice is given as stated in this section, failure of any Holder to receive such notice, or any defect in the notice, shall not affect the remarketing or the validity of the proceedings for the remarketing of the Bonds.

Section 3.05. Duties of Remarketing Agent.

The Remarketing Agent shall do the following in connection with the remarketing of the Bonds:

(a) If directed in writing by the Borrower, not less than ten (10) days before a Mandatory Tender Date, the Remarketing Agent shall offer for sale and use its best efforts to sell Bonds on such Mandatory Tender Date at a price equal to 100 percent of the principal amount of such Bonds plus accrued interest, if any.

(b) Establishment of Interest Rate in Connection with Remarketing of Bonds.

(1) Establishment of Interest Rate. From and after a Mandatory Tender Date until the next Mandatory Tender Date or the Maturity Date, as applicable, the Bonds shall bear interest at the Remarketing Rate determined pursuant to this subsection. Any Remarketing Rate determined by the Remarketing Agent and taking effect pursuant to this Indenture for a remarketing period established pursuant to Section 3.05(b)(2) below shall be conclusive and binding for the purposes of this Indenture upon the Trustee, the Issuer, the Borrower, and the Holders.

(2) Determination of Remarketing Rate. The Remarketing Agent shall determine the Remarketing Rate no later than five (5) Business Days prior to the applicable Mandatory Tender Date. The Remarketing Rate shall be the minimum rate of interest necessary, in the professional judgment of the Remarketing Agent, taking into consideration prevailing market conditions, to enable the Remarketing Agent to remarket all of the Bonds on such Mandatory Tender Date at par for the period which shall begin on the Mandatory Tender Date and end on a subsequent Mandatory Tender Date or the Maturity Date, as applicable, as determined by the Remarketing Agent in consultation with the Borrower.

(3) Notice. Immediately upon determining the Remarketing Rate, the Remarketing Agent shall give notice to the other Remarketing Notice Parties. In no event shall the Remarketing Agent give its notice later than the Business Day following the day on which the Remarketing Agent makes its determination of the Remarketing Rate.

Section 3.06. Conditions Precedent to Remarketing of Bonds and Notice.

(a) Conditions Precedent to Remarketing of Bonds. The remarketing of the Bonds on a Mandatory Tender Date is subject to the satisfaction of each of the following conditions precedent on or before such Mandatory Tender Date:

(1) The Trustee has received written notice from the Remarketing Agent that all of the Bonds have been remarketed and that the proceeds from the remarketing are expected to be available to the Trustee on such Mandatory Tender Date and deposited into the Bond Fund in an amount equal to the principal amount of the Bonds.

(2) The Trustee has received an updated Cash Flow Projection that has been provided to the Rating Agency and written notice from the Remarketing Agent that the

Remarketing Agent has received a Rating Confirmation to the effect that the then current rating assigned to the Bonds will continue to be effective on such Mandatory Tender Date.

(3) The Trustee has received a Favorable Opinion of Bond Counsel.

(4) The Trustee has received an amount necessary to cover negative arbitrage, if any, in connection with remarketed Bonds as determined by the Remarketing Agent, through the next Mandatory Tender Date or the Maturity Date, as applicable.

(b) Notice of Satisfaction of Conditions Precedent. If the conditions set out in subsection (a) are satisfied, the Trustee shall immediately give notice to the other Remarketing Notice Parties stating that (i) all conditions precedent to the remarketing of the Bonds have been satisfied and (ii) the remarketing and settlement of the Bonds is expected to occur on the applicable Mandatory Tender Date.

Section 3.07. Remarketing of Bonds.

(a) Delivery of Bonds by Holder for Purchase. Each Holder must deliver its Bonds to the Trustee for purchase not later than 10:00 a.m., New York City time, on each Mandatory Tender Date. Bonds received by the Trustee shall be held by the Trustee in trust for the tendering Holders pending receipt of funds for the payment of such Bonds.

(b) Untendered Bond. Any Bond that is not tendered on a Mandatory Tender Date (an “Untendered Bond”) will be deemed to have been tendered to the Trustee as of such Mandatory Tender Date, and, from and after such Mandatory Tender Date shall cease to bear interest and no longer will be considered to be outstanding. In the event of a failure by owners to deliver Bonds on a Mandatory Tender Date, such Holders will not be entitled to any payment (including any interest to accrue from and after such Mandatory Tender Date) other than the purchase price for such Untendered Bond, and any Untendered Bond will no longer be entitled to the benefits of this Indenture, except for the purpose of payment of the purchase price for such Untendered Bond.

(c) Delivery of Purchase Price of Remarketed Bonds. The Remarketing Agent shall give notice to the Remarketing Notice Parties no fewer than five (5) Business Days prior to the applicable Mandatory Tender Date specifying the principal amount and denominations of such Bonds, if any, for which it has found purchasers. The Remarketing Agent shall deliver to the Trustee, no later than 10:00 a.m., New York City time, on the applicable Mandatory Tender Date, in immediately available funds, remarketing proceeds to the extent the Bonds have been successfully remarketed. Upon remarketing, the Bonds shall remain in Book Entry Form. Moneys deposited with the Trustee for the purchase of Bonds shall be held in trust in the Bond Fund and shall be paid to the tendering Holder upon presentation of its Bonds at the designated office of the Trustee.

(d) Notice of Remarketing to Holders of Untendered Bonds. The Trustee shall promptly give notice by registered or certified first class mail, postage prepaid, to each Holder of Bonds whose Bonds are deemed to have been purchased stating that interest on such Bonds ceased to accrue on the date of purchase and that moneys representing the purchase price of such Bonds are available against delivery of such Bonds at the designated office of the Trustee.

Section 3.08. Concerning the Remarketing Agent.

The Remarketing Agent identified in Section 1.01 hereof shall serve as the Remarketing Agent for the Bonds. The Remarketing Agent shall provide to the Trustee its designated office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Borrower and the Trustee. In addition, the Remarketing Agent will agree particularly to:

- (a) keep such records relating to its computations of interest rates for the Bonds as shall be consistent with prudent industry practice and to make such records available for inspection by the Issuer, the Trustee, the Borrower and the Investor Limited Partner at all reasonable times; and
- (b) perform all of its functions and duties under this Indenture.

The Remarketing Agent shall be entitled to advice of legal counsel on any matter relating to the Remarketing Agent's obligations hereunder and shall be entitled to act upon the opinion of such counsel in the exercise of reasonable care in fulfilling such obligations.

The Remarketing Agent shall be entitled to appoint additional co-Remarketing Agents to assist in the performance of the Remarketing Agent's obligations under this Indenture, and any such appointment shall be effective without any action by the Issuer or the Borrower being necessary; provided that any such co-Remarketing Agent, shall have a capitalization of at least \$5,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$5,000,000, shall be in conformity with all standards and requirements of the Municipal Securities Rulemaking Board and the Securities and Exchange Commission, and shall be authorized by law to perform all the duties imposed upon it by this Indenture. The Remarketing Agent shall take responsibility for any co- Remarketing Agent it appoints.

Section 3.09. Qualification of Remarketing Agent.

The Remarketing Agent shall be a member in good standing of the Financial Industry Regulatory Authority having a capitalization of at least \$5,000,000 or shall have a line of credit with a commercial bank in the amount of at least \$5,000,000 and shall be authorized by law to perform all the duties imposed upon it by this Indenture. Subject to the terms of the Remarketing Agreement, the Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 30 days' notice of such resignation to the Issuer, the Borrower, the Investor Limited Partner and the Trustee. The Remarketing Agent may be removed at any time by the Borrower, with prior written notice to the Issuer and the Trustee, with at least 30 days' notice of such removal to the Remarketing Agent.

Upon any resignation or removal of the Remarketing Agent, the departing Remarketing Agent shall pay over, assign and deliver any money and Bonds held by it in such capacity to its successor. Upon the resignation or removal of the Remarketing Agent, the Borrower shall promptly appoint a successor Remarketing Agent, and shall provide notice to the Trustee and Issuer of such appointment.

The Trustee, within 30 days of the resignation or removal of the Remarketing Agent or the appointment of a successor Remarketing Agent, shall give notice thereof by registered or certified mail to the Rating Agency (if the Bonds are then rated) and to the Holders of the Bonds.

If a successor Remarketing Agent is not appointed by the Borrower and acting as Remarketing Agent at least ten (10) days before a Mandatory Tender Date, the Bonds will not be remarketed and will be paid and retired on such Mandatory Tender Date.

ARTICLE IV

REVENUES AND FUNDS

Section 4.01. Creation of Funds. The following trust funds are hereby created by the Issuer and ordered established and held separately with the Trustee to be used for the purposes as hereinafter provided in this Indenture:

(a) Bond Fund. “*City and County of Honolulu Multifamily Housing Revenue Bonds (Maunakea Tower Apartments) Series 2023 – Bond Fund*” (herein referred to as the “Bond Fund”), and within the Bond Fund, a “Capitalized Interest Account,” which Fund shall be administered as provided in Sections 4.02 and 4.05 hereof.

(b) Project Fund. “*City and County of Honolulu Multifamily Housing Revenue Bonds (Maunakea Tower Apartments) Series 2023 – Project Fund*” (herein referred to as the “Project Fund”), which Fund shall be administered in accordance with the provisions of Section 6.02 hereof.

(c) Rebate Fund. “*City and County of Honolulu Multifamily Housing Revenue Bonds (Maunakea Tower Apartments) Series 2023 – Rebate Fund*” (herein referred to as the “Rebate Fund”), which Fund shall be administered in accordance with the provisions of Section 5.01 hereof. Moneys held in the Rebate Fund are not held for the benefit of the Owners and are not part of the Trust Estate.

(d) Expense Fund. “*City and County of Honolulu Multifamily Housing Revenue Bonds (Maunakea Tower Apartments) Series 2023 – Expense Fund*” (herein referred to as the “Expense Fund”), which Fund shall be administered in accordance with the provisions of Section 4.07 hereof. Moneys held in the Expense Fund are not held for the benefit of the Owners and are not part of the Trust Estate.

(e) Collateral Fund. “*City and County of Honolulu Multifamily Housing Revenue Bonds (Maunakea Tower Apartments) Series 2023 – Collateral Fund*” (herein referred to as the “Collateral Fund”), which Fund shall be administered in accordance with the provisions of Section 4.03 hereof.

(f) Cost of Issuance Fund. “*City and County of Honolulu Multifamily Housing Revenue Bonds (Maunakea Tower Apartments) Series 2023 – Cost of Issuance Fund*” (herein referred to as the “Cost of Issuance Fund”), which Fund shall be administered in accordance with the provisions of Section 4.04 hereof. Moneys held in the Cost of Issuance Fund (other than

amounts derived from the proceeds of the Bonds) are not held for the benefit of the Owners and are not part of the Trust Estate.

Section 4.02. Deposits into the Bond Fund. On the Closing Date, upon receipt of the Capitalized Interest Deposit in accordance with Section 4.02 of the Bond Loan Agreement, the Trustee shall deposit the Capitalized Interest Deposit to the Project Fund, and thereafter transfer or allocate to the Capitalized Interest Account of the Bond Fund the amounts set forth in the Closing Memorandum. All Revenues received by the Trustee, except for funds deposited in the Bond Fund (including the Capitalized Interest Account therein), the Project Fund or the Collateral Fund on the Closing Date and any investment earnings thereon, shall be deposited, first, to the credit of the Expense Fund to the extent any fees, costs, or expenses described in Section 4.07 hereof are due and payable, and then to the Bond Fund. In accordance with the last sentence of Section 11.04, for so long as the Bonds are Outstanding hereunder, funds on deposit in the Project Fund, the Collateral Fund or the Bond Fund (including the Capitalized Interest Account therein) shall not be deposited in the Expense Fund or otherwise used to pay fees, costs or expenses described in Section 4.07 hereof.

In connection with the issuance of the Bonds, certain moneys may be deposited with the Trustee before the Closing Date pursuant to one or more letters of instruction from the provider or providers of such moneys. Such moneys will be held by the Trustee subject to the terms and conditions of this Indenture in addition to terms provided in such letter(s) of instruction.

Section 4.03. Use of Moneys in Collateral Fund. Upon receipt of amounts required to be paid by the Lender, for the benefit of the Borrower in respect to the repayment of the Loan, to the Trustee for deposit into the Collateral Fund pursuant to the Funding Agreement and this Indenture as a prerequisite to the advance of money in the Project Fund (each, a “Lender Collateral Deposit”) or other Preference Proof Moneys, the Trustee shall, in accordance with the Funding Agreement, deposit such amounts to the Collateral Fund. Together with amounts on deposit in the Project Fund and the Bond Fund (including the Capitalized Interest Account therein), amounts on deposit in the Collateral Fund, including any investment earnings thereon, shall be sufficient at all times to pay the principal of and interest on the Bonds to but not including the next Mandatory Tender Date or the Maturity Date, as applicable. On each date on which principal of or interest on the Bonds is due, the Trustee shall transfer a sufficient amount of funds from the Collateral Fund for deposit to the Bond Fund to enable the Trustee to make such payments as and when due.

Section 4.04. Use of Moneys in the Cost of Issuance Fund.

(a) Deposits into the Cost of Issuance Fund. On or before the Closing Date, the Borrower shall deliver the Cost of Issuance Deposit to the Trustee. On the Closing Date, the Trustee shall deposit or transfer, as applicable, the Cost of Issuance Deposit into the Cost of Issuance Fund as designated in the Closing Memorandum.

(b) Disbursements from the Cost of Issuance Fund. Except as otherwise provided in this Section 4.04, the amounts deposited in the Cost of Issuance Fund shall be expended for Costs of Issuance and for no other purpose. The Borrower shall deliver to the Trustee the Requisition in the form attached hereto as EXHIBIT C, executed by the Borrower, specifying in detail the amount that constitutes Costs of Issuance to be paid or reserved to be paid under this Section 4.04, the

respective firms or persons to whom such payments are to be made, and their respective payment instructions. The Trustee shall make the payments specified therein concurrently with or as soon as may be practicable after the delivery of the Bonds.

(c) Disposition of Remaining Amounts. Any moneys remaining in the Cost of Issuance Fund six (6) months after the Closing Date and not needed to pay still unpaid Costs of Issuance will be returned to the Borrower upon the written instruction to the Trustee from the Borrower, in accordance with Section 4.06 hereof. Upon final disbursement, the Trustee shall close the Cost of Issuance Fund.

Section 4.05. Use of Moneys on Deposit in the Bond Fund; Application of Loan Payments. The funds on deposit in the Bond Fund shall be used by the Trustee to pay principal of and interest on the Bonds on each date a payment of principal or interest is due to be made, whether by maturity, redemption or scheduled Interest Payment Date.

In the event that amounts on deposit in the Bond Fund on any Interest Payment Date or Mandatory Tender Date or such other Bond payment date are insufficient to make the payment of principal of or interest on the Bonds when due, the Trustee shall transfer funds in the following order to the Bond Fund and use such funds, together with amounts then on deposit in the Bond Fund, to make such payments when due:

- (a) first, from amounts on deposit in the Capitalized Interest Account of the Bond Fund;
- (b) second, from amounts on deposit in the Collateral Fund; and
- (c) third, from amounts on deposit in the Project Fund.

So long as there are any Outstanding Bonds, payments due under the Note and the Bond Loan Agreement shall be deemed made by the Trustee's transfer of funds on each Interest Payment Date from the Capitalized Interest Account of the Bond Fund or from the Collateral Fund to the Bond Fund, in an amount necessary to pay the interest on and principal (if any) of the Bonds.

Promptly following receipt by the Trustee of a Cash Flow Projection provided on behalf of the Borrower, the Trustee is hereby authorized to take the actions and release from the Capitalized Interest Account the amount of Preference Proof Moneys set forth in such Cash Flow Projection to or at the written direction of the Borrower.

Section 4.06. Payment to Borrower of Excess Moneys. Subject to the provisions of Section 13.10 hereof, any amounts remaining in the Cost of Issuance Fund after the payment in full of all Costs of Issuance shall be paid (upon written direction from the Borrower to the Trustee) to the Borrower in accordance with Section 4.04 hereof, and any amounts remaining in the Collateral Fund or the Bond Fund (except for amounts then held by the Trustee in the Bond Fund for payment of principal of, or interest on, any of the Bonds) after payment in full of the principal of and interest on the Bonds, payment of any and all fees and expenses due in accordance with this Indenture and the Bond Loan Agreement, and payment of all other costs associated with the discharge of the Bonds and receipt of the final rebate arbitrage report and payment of any rebate amount (if any), shall, upon written instruction to the Trustee from the Borrower (with a copy to

the Issuer), be paid to the Borrower upon the expiration or sooner termination of the term of the Bond Loan Agreement, except as provided in Section 13.10, below.

Section 4.07. Expense Fund. The Trustee shall deposit amounts received from the Borrower for the purpose of paying Trustee's Fees, the Issuer's Administrative Fee, the Rebate Analyst Fee and any other fees and expenses required under the Bond Loan Agreement into the Expense Fund. The Trustee shall pay such amounts to the proper Persons on the dates and in the amounts due. Amounts on deposit in the Expense Fund shall be withdrawn or maintained, as appropriate by the Trustee to pay (i) to the Issuer, the Issuer's Administrative Fee, (ii) to the Trustee, the Trustee's Fee, (iii) to the Rebate Analyst, the Rebate Analyst Fee, (iv) upon receipt, to the Trustee, any amounts due to the Trustee which have not been paid, other than amounts paid in accordance with clause (ii) hereof and (v) upon receipt, to the Issuer, the Issuer's Administrative Fee due and unpaid, other than amounts paid in accordance with clause (i) above.

Section 4.08. Allocation and Reallocation of Permitted Investments Deposited to the Collateral Fund and the Project Fund. On the Closing Date, the Trustee shall allocate ownership of the Permitted Investments acquired pursuant to Section 7.01 hereof and deposited for the benefit of the Project Fund and the Collateral Fund as follows: the Trustee shall (i) allocate to the Capitalized Interest Account the portion of the Permitted Investments set forth in the Closing Memorandum, (ii) allocate such portion of the remaining Permitted Investments to the Collateral Fund a percentage of such Permitted Investments equal to the amount of Preference Proof Moneys presented to the Trustee for deposit to the Collateral Fund on the Closing Date divided by the aggregate Outstanding principal amount of the Bonds and multiplied by 100 (the "Initial Collateral Fund Percentage"), and (iii) allocate the remainder (i.e., 100% minus the Initial Collateral Fund Percentage) of such Permitted Investments to the Project Fund. On each subsequent month when additional Preference Proof Moneys are presented to the Trustee for deposit to the Collateral Fund (each, a "Subsequent Allocation Date"), the dollar amount of such Preference Proof Moneys shall be added to all prior Preference Proof Moneys so deposited, and the percentage of such Permitted Investments allocated to the Collateral Fund shall be adjusted to that percentage equal to the aggregate Preference Proof Moneys so deposited through such date divided by the aggregate Outstanding principal amount of the Bonds and multiplied by 100 (the "Collateral Fund Percentage") and the remainder (i.e., 100% minus the Collateral Fund Percentage, referred to as the "Project Fund Percentage") shall be allocated to the Project Fund. On each Subsequent Allocation Date, the Trustee shall be deemed to have liquidated that portion of the Permitted Investments allocated to the Project Fund and purchased equivalent Permitted Investments to be allocated to the Collateral Fund.

ARTICLE V

REBATE FUND

Section 5.01. Rebate Fund. The Rebate Fund is created for the sole benefit of the United States of America and shall not be subject to the claim of any other Person, including without limitation, the Issuer or the Holders of the Bonds. The Rebate Fund is established for the purpose of complying with Section 148 of the Code. The money deposited in the Rebate Fund, together with all investments thereof and investment income therefrom, shall be held in trust and applied solely as provided in the Tax Certificate. The Rebate Fund is not a portion of the Trust Estate and

is not subject to any lien under this Indenture. Notwithstanding the foregoing, with respect to the Rebate Fund the Trustee is afforded all the rights, protections and immunities otherwise accorded to it hereunder. The Trustee shall cooperate with the Rebate Analyst in preparing its rebate report with respect to the Bonds. The Trustee shall not be responsible for calculating rebate amounts or for the adequacy or correctness of any rebate report. The Trustee shall be deemed conclusively to have complied with the provisions of this Indenture and any other agreements relating to the Bonds regarding calculation and payment of rebate if it follows the directions of the Rebate Analyst, or, if no Rebate Analyst is then in place, of the Issuer or the Borrower. If on or before the earlier of the first date on which no Bonds remain Outstanding or the Maturity Date, the Trustee has not received a report of the Rebate Analyst, it shall promptly notify the Issuer and the Borrower. If the rebate report indicates that a rebate or yield reduction payment is required to be made by the Borrower, the Trustee shall take reasonable steps to confirm that such payment has been made by the Borrower no later than ninety (90) days following the date on which no Bonds remain Outstanding, and if it is unable to confirm that such payment has been made, it shall promptly notify the Issuer in writing. The Trustee shall not otherwise have any independent duty to review or enforce the Issuer's, the Borrower's or any other Person's compliance with such rebate requirements. The Trustee may rely conclusively upon and shall be fully protected from all liability in relying upon the Rebate Analyst's, the Issuer's or the Borrower's opinions, calculations, determinations, directions, and certifications required by this Section. Except to the extent expressly herein provided, the Trustee shall in no instance be responsible or liable for the tax treatment of the Bonds, the Issuer's, the Borrower's or any other Person's compliance with the Code, or any other tax consequences in connection with the Bonds.

ARTICLE VI

CUSTODY AND APPLICATION OF BOND PROCEEDS

Section 6.01. Custody and Application of Project Fund. The proceeds received by the Trustee for such purpose upon the issuance and sale of the Bonds, including any original issue premium, if any, shall be deposited in the Project Fund in the amount set forth in the Closing Memorandum.

Section 6.02. Procedure for Making Disbursements from Project Fund. Disbursements from the Project Fund shall be made upon the receipt by the Trustee of the following and shall be used solely to pay Costs of the Project incurred in connection with the acquisition and rehabilitation of the Project: (1) a request or requests therefor executed by the Borrower, in the form of a Requisition in substantially the form attached as EXHIBIT B hereto accompanied by AIA Document G702 supplemented by AIA Document G703, (2) certification by a Borrower Representative that such Costs of the Project are Qualified Project Costs, (3) a request by the Lender accompanied by its approved FHA draw and (4) an amount equal to the requested disbursement has been received by the Trustee and deposited to the Collateral Fund in accordance with this Indenture. Together with amounts on deposit in the Project Fund and any other Preference Proof Moneys on deposit in the Capitalized Interest Account of the Bond Fund, amounts on deposit in the Bond Fund and the Collateral Fund, including any investment earnings thereon, shall be sufficient at all times to pay the principal of and interest on the Bonds as and when they become due to the next Mandatory Tender Date or the Maturity Date, as applicable.

Each Lender Loan Requisition shall be made in accordance with the Lender Loan Documents and FHA/HUD requirements. Upon approval of a Requisition by the Lender (each an “Approved Advance”) and, if required, HUD, the Lender shall, in accordance with the Funding Agreement, deliver to the Trustee an amount equal to the Approved Advance to be held by the Trustee and to be deposited into the Collateral Fund, together with its request for a disbursement from the Project Fund in an amount equal to the Approved Advance, which disbursement shall be used by the Lender to provide for the payment of Costs of the Project. In the case of the Lender, such disbursement shall be used by the Lender to fund an advance of the Lender Loan for payment of such Costs of the Project. In the event that for any reason the Trustee is not prepared to promptly disburse funds from the Project Fund, the Trustee shall not deposit the amount of the Approved Advance in the Collateral Fund, shall so inform the Lender and the Borrower and shall return such deposit to the Lender in accordance with the written instructions of the Lender

Notwithstanding any provision of the Agreement or any other provision of this Indenture to the contrary, the Trustee shall not disburse moneys from the Project Fund, other than to pay principal and/or interest payments on the Bonds in accordance with Section 4.05 hereof, unless and until the Trustee receives satisfactory evidence that a Lender Collateral Deposit in an amount equal to or greater than the requested disbursement amount has been deposited in the Collateral Fund. Prior to making any disbursement, the Trustee shall verify that upon making the disbursement, the aggregate amount to be held in (i) the Collateral Fund, (ii) the Capitalized Interest Account of the Bond Fund, (iii) the Project Fund and (iv) the Bond Fund, will be sufficient to pay principal of and interest on the Bonds as and when they become due to the next Mandatory Tender Date or the Maturity Date, as applicable. Upon satisfaction of the conditions precedent set forth in this Section 6.02, and notwithstanding anything in the Bond Documents to the contrary, once the Lender deposits a Lender Collateral Deposit and upon satisfaction of the conditions set forth in the first paragraph of Section 6.02 hereof, the Trustee is irrevocably and unconditionally obligated to disburse an equal amount of moneys from the Project Fund in accordance with approved Requisitions.

All disbursements from the Project Fund will be made to or at the direction of the Lender or shall be transferred to the Bond Fund.

The Trustee and the Issuer shall not in any event be responsible or liable to any Person for the disbursement of, or failure to disburse, moneys from the Project Fund, or any part thereof, and no contractor, subcontractor or material or equipment supplier shall have any right or claim against the Trustee or the Issuer under this Indenture. In this regard, disbursement of any original issue premium in the Project Fund will be subject to the prior deposit of a Lender Collateral Deposit or other Preference Proof Moneys into the Collateral Fund.

Section 6.03. Trustee May Rely on Requisitions and Certifications. In making any such disbursement from the Project Fund, the Trustee may rely on any Requisition delivered to it pursuant to Section 6.02 hereof, and the Trustee shall be relieved of all liability with respect to making such payments in accordance with any such Requisition. The Borrower shall determine in good faith whether an architect or engineer is required to execute any Requisition hereunder, and the Trustee shall in no instance be required to make such determination. For purposes of complying with the requirements of this Section, the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon the Requisition signed by the Borrower

Representative. The Trustee shall not be bound to make an investigation into the facts or matters stated in any such Requisition of the Borrower. The Trustee shall not be responsible for determining whether the funds on hand in the Project Fund are sufficient to complete the Project. The Trustee shall not be responsible to collect lien waivers.

Section 6.04. Completion of Project. The completion of the Project and the payment of all costs and expenses incident thereto shall be evidenced for the Project by the filing with the Trustee of (a) the Completion Certificate and (b) a certificate signed by the Borrower Representative stating that all obligations and Costs of the Project have been paid and discharged except for Costs of the Project not then due and payable or then in dispute as provided in the Bond Loan Agreement. Additionally, the Borrower has agreed pursuant to Section 3.06 of the Bond Loan Agreement that in the event that there are insufficient moneys available in the Project Fund to pay the Costs of the Project, the Borrower will complete the Project and pay the portion of the Costs of the Project in excess of the moneys available therefor in the Project Fund.

ARTICLE VII

INVESTMENT OF FUNDS AND ACCOUNTS

Section 7.01. Investment. On the Closing Date, a portion of the moneys on deposit in the Project Fund in the amount, if any, set forth in the Closing Memorandum will be held by the Trustee uninvested as cash until disbursed to the Borrower on the Closing Date in accordance with the Closing Memorandum. The balance of amounts on deposit in the Project Fund after any such disbursement shall be invested as set forth in the following paragraph.

In accordance with the Closing Memorandum, the Trustee, pursuant to a written direction from the Borrower (including a facsimile transmission), is hereby directed to purchase on the Closing Date Permitted Investments (such written direction to specify the particular investment in Permitted Investments to be made) maturing on or before the initial Mandatory Tender Date, with respect to the investment of certain amounts on deposit in the Special Funds, the principal and interest of which will be sufficient to pay principal and interest on the Bonds when due to the initial Mandatory Tender Date. All interest earned from the foregoing investments shall be deposited in the Bond Fund. Such funds shall remain on deposit, subject to reallocation pursuant to Section 4.08 hereof, until the initial Mandatory Tender Date, on which date they will be withdrawn to make payment on the Bonds. If any investments in the Special Funds must be liquidated prior to the Maturity Date, such investments shall be liquidated hereunder. Anything to the contrary contained herein notwithstanding, earnings received by the Trustee with respect to Permitted Investments purchased hereunder shall be invested in [fund name].

At no time shall the Borrower direct that any funds constituting Gross Proceeds (as defined in the Tax Certificate) of the Bonds be used in any manner as would constitute failure of compliance with Section 148 of the Code, all as set forth in the Tax Certificate. Following the Closing Date, at the written direction of the Borrower, the Trustee is permitted to purchase, sell or exchange Permitted Investments so long as the Trustee has received a Cash Flow Projection.

Subject to the provisions of the foregoing paragraph, as long as no Event of Default shall have occurred and be continuing, the Borrower shall have the right to designate the investments to

be sold and to otherwise direct the Trustee in writing in the sale or purchase of the Permitted Investments made with the moneys in the Special Funds, provided that the Trustee shall be entitled to conclusively assume the absence of any such Event of Default unless it has notice thereof.

Except as otherwise specified herein, amounts on deposit in the Special Funds shall be invested at all times in Permitted Investments. The investments described in each of the above paragraphs shall be made by the Trustee pursuant to the direction provided hereby and in accordance with the written direction of the Borrower to be provided on the Closing Date, which shall remain in effect until further written direction is provided by the Borrower. In the absence of written investment instructions from the Borrower, the Trustee shall invest the moneys held in the Special Funds in [fund name].

Amounts, if any, on deposit in the Cost of Issuance Fund, until disbursed or returned to the Borrower pursuant to Section 4.04(c) hereof, shall be invested at the written direction of the Borrower Representative. The Expense Fund shall be invested at the written direction of the Borrower Representative. In the absence of written investment instructions from the Borrower, the Trustee shall not be responsible or liable for keeping the moneys held in the Cost of Issuance Fund or the Expense Fund hereunder fully invested in Permitted Investments.

The Trustee shall not be liable for any losses, taxes, fees or other charges from, or the Bonds being considered “arbitrage bonds” as a result of, investments, reinvestments or liquidations made by the Trustee in accordance with the provisions of this Indenture. In the event of a loss on the sale of such investments permitted under this Section (after giving effect to any interest or other income thereon except to the extent theretofore paid to the Borrower), the Trustee shall have no responsibility in respect of such loss except that the Trustee shall notify the Issuer of the amount of such loss and the Borrower shall promptly pay, or cause such amount to be paid, to the Trustee in Preference Proof Moneys to be credited as part of the moneys originally invested.

Notwithstanding any provisions of this Indenture or the Bonds to the contrary, the Issuer shall be permitted to hold or direct prepayments, in full or in part, and repayments (other than regular amortizing payments), in full, of the Note to a custodian or trustee (including the Trustee) selected by the Issuer, in lieu of application to repay a like portion of the Bonds, so long as the Issuer simultaneously causes other funds to be applied to repay such portion of the Bonds. The preceding provisions shall apply only for purposes of preserving or “recycling” private activity bond volume cap in accordance with Section 146(i)(6) of the Code.

Section 7.02. Investment of Rebate Fund. Any moneys held as part of the Rebate Fund, and not immediately required for the purposes of the Rebate Fund, shall be invested or reinvested by the Trustee as set forth in the Tax Certificate; provided, however, that in the absence of investment instructions from the Borrower, the Trustee shall not be responsible or liable for keeping the moneys held as part of the Rebate Fund fully invested and shall hold such funds uninvested as cash.

Section 7.03. Accounting for Termination of Investments. Subject to Section 7.01 hereof, in the event the moneys in the Special Funds have been invested in Permitted Investments and such Permitted Investments at any time and for any reason fail to satisfy the requirements of Section 7.01 hereof, the Trustee shall, at the written direction of the Borrower and with the written

approval of the Rating Agency, terminate any such investments, and the proceeds of such termination shall be credited to the Collateral Fund, the Bond Fund (including the Capitalized Interest Account therein) or the Project Fund, as applicable.

Section 7.04. Trustee's Own Bond or Investment Department. The Trustee may make any and all investments permitted under Section 7.01 hereof through its own bond or investment department or that of any Affiliate and may charge its ordinary and customary fees for such trades, including cash sweep account fees. Although the Issuer and the Borrower each recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Issuer and the Borrower hereby agree that confirmations of Permitted Investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account hereunder if no activity occurred in such fund or account during such month. The Trustee shall provide such information as the Rating Agency may reasonably request to enable the Rating Agency to maintain the then-current rating assigned to the Bonds; provided; however, that the Trustee shall only be obligated to provide only such information as is specifically requested by the Rating Agency and only such information which is in its possession in its role as Trustee as further provided in Section 11.23.

Section 7.05. Moneys to be Held in Trust. Subject to Section 4.08 hereof, all moneys required to be deposited with or paid to the Trustee for account of the Collateral Fund, the Bond Fund or the Project Fund under any provision of this Indenture shall be held by the Trustee in trust, and shall, while held by the Trustee, constitute part of the Trust Estate and be subject to the lien and claim created by this Indenture. The Trustee, acting in its capacity as Trustee and not as sponsor, advisor or manager in connection with any investments hereunder, shall not be liable for any loss arising from investments made in accordance with this Article VII or the written direction of the Borrower, or for any loss resulting from the redemption or sale of any such investments as authorized by this Indenture. The parties acknowledge that the Trustee is not providing investment supervision, recommendations or advice.

ARTICLE VIII

GENERAL COVENANTS

Section 8.01. Payment of Bonds. Each and every covenant made in this Indenture, including all covenants made in the several sections of this Article VIII, is predicated upon the condition that any obligation for the payment of money incurred by the Issuer shall be payable solely (a) from Revenues, which are specifically assigned to secure the payment of the Bonds in the manner and to the extent specified in this Indenture, (b) from the moneys held in the funds and accounts created under this Indenture, except for amounts held in the Rebate Fund, the Cost of Issuance Fund and the Expense Fund and (c) from any other moneys held pursuant to the Trust Estate. Nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of the Issuer.

The Issuer covenants that it will cause to be paid, as provided herein, the principal of and interest on the Bonds from the Trust Estate at the place, on the date and in the manner provided herein and in the Bonds.

The Revenues due under the Note are to be remitted by the Borrower directly to the Trustee for the account of the Issuer and constitute a part of the Trust Estate and are subject to the lien and claim created by this Indenture. The moneys held by the Trustee in the Bond Fund (including the Capitalized Interest Account therein) and the Collateral Fund shall be used to make timely payment of the principal of and interest on the Bonds. Such amounts are to be sufficient in amount at all times to pay the principal of and interest on the Bonds to the Maturity Date. The entire amount of Revenues and the entire amount of moneys held in the Bond Fund (including the Capitalized Interest Account therein) and the Collateral Fund are assigned to secure the payment of the principal of and interest on the Bonds.

Section 8.02. Performance of Covenants. The Issuer covenants that it will faithfully perform at all times any and all applicable covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings pertaining thereto, subject, however to the limitations set forth in Section 2.09 hereof. The Issuer covenants that it is duly authorized pursuant to the laws of the State, including the Act, to issue the Bonds and to enter into this Indenture and to assign the Revenues and other assets purported to be assigned under this Indenture in the manner and to the extent provided in this Indenture. The Bonds and the provisions of this Indenture are and will be the legal, valid and binding limited obligations of the Issuer in accordance with their terms. So long as any of the Bonds shall be Outstanding, the Issuer shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence and to maintain its status as such.

Section 8.03. Role of the Issuer. The Issuer shall not be required to take any action not expressly provided for herein. In addition, the Issuer shall have no obligation to review, control or oversee the activities of the Trustee or any other Person in connection with this Indenture or the Bonds. Furthermore, the Issuer shall not be obligated to take any action which might in its reasonable judgment involve it in any expense or liability unless it shall have been furnished with assurance of payment or reimbursement for any expense and with reasonable indemnity for liability of the Issuer, its officers, officials and employees.

Section 8.04. Enforcement of Borrower Obligations. So long as any of the Bonds are Outstanding, the Issuer will cooperate with the Trustee in enforcing the obligations of the Borrower to pay, or cause to be paid, all the payments and other costs and charges payable pursuant to the Bond Loan Agreement and the Note. NOTHING CONTAINED IN THIS SECTION 8.04 OR IN ANY OTHER SECTION OF THIS INDENTURE SHALL BE DEEMED TO MODIFY THE PROVISIONS OF THE ACT AND SECTION 2.09 HEREOF OR REQUIRE THAT THE ISSUER EXPEND ANY OF ITS OWN FUNDS OR ASSETS TO ENFORCE THE OBLIGATIONS OF THE BORROWER UNDER THE DOCUMENTS.

Section 8.05. Further Assurances, Instruments and Actions. The Issuer will from time to time execute and deliver such further instruments, conveyances, assignments and transfers and take such further actions as may be reasonable and as may be required to better assure, convey, grant, assign or confirm the Trust Estate and all other rights, revenues or funds pledged, assigned or intended to be so pledged or assigned hereunder for the benefit of the owners of the Bonds; provided, however, that no such instruments or actions shall pledge the credit or taxing power of the State, the Issuer, or any other political subdivision of the State, or create or give rise to any monetary obligation or liability of the Issuer.

Section 8.06. Priority of Pledge. The Issuer covenants and agrees that it will not create any lien or claim upon the Revenues other than the liens and claims hereby created. Except for the assignment to the Trustee, the Issuer will not sell, lease or otherwise dispose of or encumber any of the Revenues, and will cooperate in causing to be discharged or satisfied any lien or charge on any part of the Trust Estate.

Section 8.07. Books and Documents Open to Inspection. The Trustee hereby covenants and agrees that all books and documents in its possession relating to the Bonds, the Project, and the moneys, revenues and receipts derived from the Project, if any, that shall at any time be in its possession, shall, within a reasonable time of a written request by the Issuer or the Borrower, be open to inspection during the Trustee's regular business hours by such accountants or other agents as the Issuer, the Trustee or the Borrower may from time to time designate.

Section 8.08. Borrower to Indemnify and Hold the Issuer and Trustee Harmless from Liability. The Borrower has agreed to indemnify and hold the Issuer Indemnified Parties and the Trustee Indemnified Parties harmless from and against liability arising out of claims as defined and as provided in Section 6.02 of the Bond Loan Agreement.

Section 8.09. Issuer Tax Covenants. The Issuer represents, covenants and agree that it will:

(a) comply with all applicable requirements of the Code that are necessary to preserve the Federal Tax Status of the Bonds, as further set forth in the Tax Certificate; and

(b) not take any action inconsistent with its expectations stated in the Tax Certificate and will comply with the covenants and requirements stated therein and incorporated by reference herein.

ARTICLE IX

DISCHARGE

Section 9.01. Discharge of Lien. If and when the Bonds secured hereby shall become due and payable in accordance with their terms as provided in this Indenture, or otherwise, and the whole amount of the principal and the interest so due and payable upon all of the Bonds, together with all other amounts payable hereunder by the Issuer and all fees and expenses of the Trustee and the Issuer, shall be paid, or provision shall have been made for the payment of the same, then the right, title and interest of the Trustee in and to the Trust Estate and all covenants, agreements and other obligations of the Issuer to the Bondholders shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, upon request of the Borrower, the Trustee shall turn over to the Borrower, so long as there shall have occurred no Event of Default which is uncured and continuing and after receipt of a rebate analyst report and, if necessary, funding for any rebate payment, any surplus in the Collateral Fund and all balances remaining in any other fund created under this Indenture and shall assign and transfer to the Borrower all other property then held by the Trustee under this Indenture and shall execute such documents as may be reasonably required by the Borrower.

If and when the Trustee shall hold sufficient moneys hereunder, as verified to the Trustee in writing by an Independent public accounting firm of national reputation or other firm similarly experienced in performing such computations, to provide for payment of the whole amount of the principal and interest due and payable and thereafter to become due and payable upon all the Bonds, together with all other amounts (exclusive of amounts in the Cost of Issuance Fund, the Rebate Fund or the Expense Fund) payable or which may thereafter become payable hereunder by the Issuer, notwithstanding that all the Bonds have not yet become due and payable and that consequently the right, title and interest of the Trustee in and to the Trust Estate shall not have ceased, terminated and become void pursuant to the foregoing provisions of this Section 9.01, the Trustee, on demand of the Borrower, shall deposit with or at the written direction of the Borrower, so long as there shall have occurred no Event of Default which is uncured and continuing, any surplus in the Collateral Fund in excess of the amount sufficient to pay the whole amount of the principal and interest due and payable and thereafter to become due and payable upon all Bonds together with all other amounts payable or which may thereafter become payable hereunder by the Issuer or the Borrower.

All Outstanding Bonds shall, prior to the Maturity Date, be deemed to have been paid within the meaning and with the effect described above if (a) there shall have been deposited with the Trustee (as verified to the Trustee in writing by an Independent public accounting firm of national reputation or other firm similarly experienced in performing such computations) either (i) moneys in an amount which shall be sufficient, or (ii) Government Obligations which are not subject to redemption prior to maturity, the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient, to pay when due the principal and interest due and to become due on such Bonds on the maturity date thereof, and (b) the Borrower shall have given the Trustee, in form satisfactory to it irrevocable instructions to give, as soon as practicable, a notice to the Holders of such Bonds and the Rating Agency that the deposit required by (a) above has been made with the Trustee and that such Bonds are deemed to have been paid in accordance with the provisions described in this Section and stating such maturity upon which moneys are to be available for the payment of the principal and interest on such Bonds.

Neither the securities nor moneys deposited with the Trustee pursuant to this Section 9.01 nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal and interest, on such Bonds; provided that any cash received from such principal or interest payments on such securities deposited with the Trustee, if not then needed for such purpose, may be reinvested in Government Obligations maturing at times and in amounts sufficient to pay when due the principal and interest to become due on such Bonds on and prior to such maturity dates thereof, as the case may be, and interest earned from such reinvestment shall be invested in [*name fund*], and be deposited into the Bond Fund.

The release of the obligations of the Issuer under this Section 9.01 shall be without prejudice to the right of the Trustee provided in Section 11.04 hereof to be paid compensation for all services rendered by it hereunder and all its fees, expenses, charges and other disbursements, including those of its attorneys, agents and employees, and shall not affect the obligations of the Borrower to make the payments required by the Bond Loan Agreement or the Note.

Notwithstanding the foregoing, any provisions of this Indenture which relate to the maturity of Bonds, interest payments and dates thereof, exchange, transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, non-presentment of Bonds, the holding of money in trust, the rebate of money to the United States in accordance with Section 5.01 hereof and the Tax Certificate, and the rights and duties of the Trustee in connection with all of the foregoing, or which by their terms survive payment and discharge of the Bonds, shall remain in effect and be binding upon the Trustee and the Holders notwithstanding the release and discharge of this Indenture. The provisions of this Article shall survive the release, discharge and satisfaction of this Indenture.

Notwithstanding anything herein to the contrary, the purchase of Government Obligations in accordance with Section 7.01 hereof, together with the Capitalized Interest Deposit, shall not cause a discharge of the Indenture under this Section 9.01. Further, the Borrower shall pay and indemnify the Trustee against any tax, fee or other charge imposed on the Trustee or assessed against the Trustee on account of the Government Obligations deposited pursuant to this Section 9.01 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of Outstanding Bonds.

ARTICLE X

DEFAULTS AND REMEDIES

Section 10.01. Events of Default and Acceleration. If any of the following events occur, it is hereby defined as and declared to be and constitute an “Event of Default”:

(a) any interest on any Bond is not paid on the date on which the same becomes due;
or

(b) the principal of any Bond is not paid on the date on which the same becomes due, whether at the stated maturity thereof, by acceleration or otherwise; or

(c) an Event of Default occurs under the Bond Loan Agreement; or

(d) the Issuer fails to duly and promptly perform, comply with, or observe any covenant, condition, agreement or provision (other than as specified in (a) or (b) of this Section 10.01) contained in the Bonds or in this Indenture on the part of the Issuer to be performed, and such failure shall continue for a period of ninety (90) days after written notice specifying such failure and requiring the same to be remedied shall have been given to the Issuer and the Borrower by the Trustee, which notice may be given by the Trustee in its discretion and shall be given at the written request of the Holders of not less than 100% in principal amount of the Bonds then Outstanding; provided, however, that if such default be such that it is correctable but cannot be corrected within ninety (90) days, it shall not be an Event of Default if the Issuer or the Borrower is taking appropriate corrective action to cure such failure and if such failure will not impair the security for the Loan or the Bonds.

If any Loan payment required under the Bond Loan Agreement to avoid a default under (a) or (b) of this Section 10.01 shall not have been received at the close of business on the last Business Day preceding the day on which payment must be made to avoid a default under such (a) or (b),

the Trustee shall use its best efforts to give telephonic notice of such default to the Borrower and the Investor Limited Partner, which telephonic notice shall be confirmed by electronic, telegraphic or written notice to the Borrower and the Investor Limited Partner. If any other default shall occur under the provisions of this Section 10.01, the Trustee shall, within five (5) days after having actual knowledge of such default, use its best efforts to give written notice of such default to the Issuer, the Borrower, the Investor Limited Partner, the Holders of the Bonds and the Rating Agency. A default or an Event of Default specified in (a) through (d) above shall occur even though the Trustee fails to give the notice required by this paragraph, the giving of such notice being intended solely to aid in the enforcement of the rights of Bondholders and not in limitation of such rights. The Trustee shall not be liable for the failure of Borrower, the Investor Limited Partner, the Holders of the Bonds and the Rating Agency to receive such notice.

If an Event of Default specified in (a) or (b) of this Section 10.01 shall occur and be continuing, the Trustee, may, and upon written request of the Holders of a majority in aggregate principal amount of the Bonds then Outstanding shall, declare the principal of all Bonds then Outstanding to be immediately due and payable by notice in writing to that effect delivered to the Issuer, the Borrower and the Rating Agency, and upon such declaration such principal, together with interest accrued thereon, shall become immediately due and payable at the place of payment provided in such notice, anything in this Indenture or in the Bonds to the contrary notwithstanding.

If an Event of Default specified in (c) or (d) of this Section 10.01 shall occur and be continuing, the Trustee, upon written request of the Holders of 100% in aggregate principal amount of the Bonds then Outstanding, shall declare the principal of all Bonds then Outstanding to be immediately due and payable by notice in writing to that effect delivered to the Issuer, the Borrower and the Rating Agency, and upon such declaration such principal, together with interest accrued thereon, shall become immediately due and payable at the place of payment provided therein, anything in this Indenture or in the Bonds to the contrary notwithstanding.

Anything herein to the contrary notwithstanding, the Investor Limited Partner shall have the right, but not the obligation, to cure any default hereunder on the same terms provided to the Borrower.

Section 10.02. Trustee to Enforce Rights of the Issuer. Only in accordance with the provisions of this Indenture, the Trustee, as the assignee of all the right, title and interest of the Issuer in and to each of the documents constituting a part of the Trust Estate (except the Unassigned Rights of the Issuer), may enforce the rights granted to the Issuer pursuant to such documents. In the enforcement of any rights or remedies under such documents, no provision of such documents shall require, and none shall be construed to require, that the Trustee post a bond or establish any surety of any kind as a condition precedent to exercising any such rights or remedies.

Section 10.03. Remedies. Upon the happening of any Event of Default and in addition to and not in limitation of any rights and remedies under Section 10.01 hereof, then and in every such case the Trustee in its discretion may, and upon the written request of the Holders of a majority in principal amount of the Bonds then Outstanding and receipt of satisfactory indemnity, shall:

(a) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Bondholders, and require the Issuer or the Borrower to carry out any agreements with

or for the benefit of the Bondholders and to perform its or their duties under the Act and the Documents including, but not limited to, foreclosing upon the security interest in or otherwise using funds on deposit in the Collateral Fund;

(b) bring suit upon the Bonds; or

(c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders.

The Trustee may seek remedies in equity without having to post a bond or other security.

Notwithstanding anything contained herein to the contrary, upon the occurrence and continuance of an Event of Default, before taking any action which may subject the Trustee to liability under any environmental law, statute, regulation or similar requirement relating to the environment, the Trustee may require that a satisfactory indemnity bond, indemnity or environmental impairment insurance be furnished for the payment or reimbursement of all fees or expenses to which it may be put and to protect it against all liability resulting from any claims, judgments, damages, losses, penalties, fines, fees, taxes, liabilities (including strict liability) and expenses which may result from such action.

Section 10.04. Termination of Proceedings. In case any proceeding taken by the Trustee on account of any default or Event of Default shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case, the Issuer, the Trustee, the Bondholders and the Borrower shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

Section 10.05. Right of Bondholders to Direct Proceedings. No Holder of any of the Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust hereunder, or any other remedy hereunder or on the Bonds, unless such Holder previously shall have given to the Trustee written notice of an Event of Default as hereinabove provided and unless also the Holders of a majority in aggregate principal amount of the Bonds then Outstanding shall have made written request of the Trustee to do so, after the right to exercise such powers or rights of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers hereinabove granted, or to institute such action, suit or proceeding in its or their name; nor unless there also shall have been offered to the Trustee security and satisfactory indemnity against the costs, fees, expenses and liabilities to be incurred therein or thereby, and the Trustee shall not have complied with such request within a reasonable time; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the trusts of this Indenture or for any other remedy hereunder; it being understood and intended that no one or more Holders of the Bonds hereby secured shall have any right in any manner whatever by its or their action or forbearance to affect, disturb or prejudice the security of this Indenture or other Holders of Bonds (it being understood that ascertaining whether or not such actions or forbearances are, or may be, unduly prejudicial to the security of this Indenture or such Holders (in which case such requested action or forbearance may be declined by the Trustee), the Trustee shall be entitled to rely upon the advice of counsel or other experts retained to address the

question and the fees or expenses of such counsel or other experts shall be reimbursed as provided in Section 11.03 hereof), or to enforce any right hereunder or under the Bonds, except in the manner herein provided and for the equal benefit of all Holders of Outstanding Bonds. For purposes of the foregoing sentence, the Trustee shall be deemed to have failed to act within a reasonable time if it fails to take action within sixty (60) days after receipt of written notice and compliance with the foregoing terms and conditions, whereupon, the Holders of a majority in aggregate principal amount of the Bonds may take such action in the place of the Trustee. Nothing in this Indenture contained shall, however, affect or impair the right of any Holder of Bonds to enforce the payment of the principal of and interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal of and interest, on each of the Bonds issued hereunder to the respective Holders of the Bonds at the time, place, from the source and in the manner herein and in such Bonds expressed. In the event the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of Holders of the Bonds, each representing less than a majority in aggregate principal amount of the Bonds outstanding, the Trustee, in its sole discretion, may, and shall be fully indemnified for refraining from acting in the absence of written direction, determine what action, if any, shall be taken, and the Trustee may, in its sole discretion, take other actions.

Section 10.06. Remedies Vested in Trustee. All rights of action under this Indenture or under any of the Bonds secured hereby which are enforceable by the Trustee may be enforced by it without the possession of any of the Bonds, or the production thereof at the trial or other proceedings relative thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the equal and ratable benefit of the Holders of the Bonds, subject to the provisions of this Indenture.

Section 10.07. Remedies Non Exclusive and Cumulative. No remedy herein conferred upon or reserved to the Trustee or to the Holders of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 10.08. Delays or Omissions by Trustee. No delay or omission of the Trustee or of any Holder of the Bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or any acquiescence therein; and every power and remedy given by this Article X to the Trustee and to the Holders of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient. Further, the Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by force majeure. The term “force majeure” as used herein shall mean, without limitation, the following: acts of God or nuclear or natural catastrophes; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or of any of their departments, agencies or officials, or of any civil or military authority; insurrections; riots; acts of war or terrorism; sabotage; labor disputes; strikes; work stoppages; civil or military disturbances; pandemics; epidemics; recognized public emergencies; quarantine restrictions; accidents; landslides; earthquakes; fires; storms; droughts; floods; explosions; interruptions; loss or malfunctions of utilities, computer (hardware or software) or communications service; or the

unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility not reasonably within the control of the Trustee.

Section 10.09. Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article X shall, after payment of all costs, fees and expenses of the Trustee and the Issuer, and the compensation due to the Trustee pursuant to Section 11.04 hereof, be deposited in the Collateral Fund and all moneys so deposited in the Collateral Fund during the continuance of an Event of Default (other than moneys for the payment of Bonds which have matured or otherwise become payable prior to such Event of Default or for the payment of interest due prior to such Event of Default, which moneys shall continue to be held for such payments) shall be applied as follows:

First – To the payment to the Persons entitled thereto of all installments of interest then due on the Bonds, in the direct order of the maturity of the installments of such interest and, if the amounts available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege;

Second – To the payment to the Persons entitled thereto of the unpaid principal, on any of the Bonds, which shall have become due (other than Bonds which have matured or otherwise become payable prior to such Event of Default and moneys for the payment of which are held in the Collateral Fund or otherwise held by the Trustee), with interest on such principal from the respective dates upon which the same became due and, if the amount available shall not be sufficient to pay in full the amount of principal, and the interest due on any particular date, then to the payment ratably, according to the amount of principal due on such date, to the Persons entitled thereto, without any discrimination or privilege; and

Third – To be held for the payment to the Persons entitled thereto as the same shall become due of the principal of and interest on the Bonds which may thereafter become due either at maturity and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with interest then due and owing thereon, payment shall be made ratably according to the amount of principal due on such date to the Persons entitled thereto without any discrimination or privilege; and

Fourth – The remainder, if any, shall be deposited in the Collateral Fund.

Whenever moneys are to be applied pursuant to the provisions of this Section 10.09, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made, and upon such date interest on the amounts or principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Section 10.10. Severability of Remedies. It is the purpose and intention of this Article X to provide rights and remedies to the Trustee and the Bondholders which may be lawfully granted under the provisions of the Act, but should any right or remedy herein granted be held to be unlawful, the Trustee and the Bondholders shall be entitled, as above set forth, to every other right and remedy provided in this Indenture and by law.

Section 10.11. No Interference or Impairment of Lender Loan. Notwithstanding anything herein to the contrary, none of the Issuer, the Trustee nor any other Person shall:

(a) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due and payable under, the Lender Loan; or

(b) interfere with or attempt to interfere with or influence the exercise by the Lender of any of its rights under the Lender Loan, including, without limitation, the Lender remedial rights under the Lender Loan upon the occurrence of an event of default by the Borrower under the Lender Loan.

The foregoing prohibitions and limitations shall not be construed to affect the Unassigned Rights of the Issuer or to limit the rights of the Issuer to enforce its rights against the Borrower under the indemnification provisions of this Indenture so long as it does not violate HUD Program Obligations (as defined in the HUD Regulatory Agreement).

Notwithstanding anything in this Indenture to the contrary, any right of the Issuer or the Trustee to take any action at law or in equity to enforce the obligations, covenants and agreements of the Borrower under this Indenture which includes any claim for indemnification, damages or any other monetary obligation sought to be enforced shall be subject and subordinate in all respects to the repayment in full of all amounts due under the Lender Loan Documents.

No subsequent owner of the Project shall be liable or obligated for the breach or default of any obligation of any prior Borrower unless specifically assumed in writing by a subsequent Borrower, including, but not limited to, any payment or indemnification obligation. Such obligations shall be personal to the Person who was the Borrower at the time the default or breach was alleged to have occurred and such Person shall remain liable for any and all damages occasioned by the default or breach even after such Person ceases to be the Borrower with regard to the Project.

Promptly upon determining that an Event of Default under this Indenture has occurred, the Issuer or the Trustee shall, by notice in writing to the Lender, inform the Lender that such Event of Default has occurred, the nature of such Event of Default and that such Event of Default has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable; notwithstanding the occurrence of such Event of Default, neither the Issuer nor the Trustee shall have, and each of them acknowledge that they shall not have, any right to cause or direct acceleration of the Lender Loan or to foreclose on the Lender Mortgage.

ARTICLE XI

CONCERNING THE TRUSTEE

Section 11.01. Acceptance of Trusts. The Trustee hereby accepts the duties and obligations as Trustee as expressly provided under this Indenture, these duties shall be deemed purely ministerial in nature prior to the occurrence and continuance of an Event of Default, the Trustee shall not be liable except for the performance of such duties, and no implied covenants or obligations shall be read into this Indenture against the Trustee.

Section 11.02. Trustee Not Responsible for Recitals, Statements and Representations. The recitals contained herein and in the Bonds (other than the certificate of authentication on such Bonds) shall be taken as the statements of the Issuer and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the value or condition of the Trust Estate or any part thereof, or as to the title of the Issuer thereto or as to the adequacy, sufficiency or perfection of the security afforded thereby or hereby; as to the validity or genuineness of any securities at any time pledged and deposited with the Trustee hereunder; as to the validity or sufficiency of this Indenture, the other Bond Documents or of the Bonds; or as to the correctness or sufficiency of any statement made in connection with the offer or sale of the Bonds. Except as otherwise expressly provided herein, any representations or warranties by the Issuer in this Indenture or in the Bonds contained shall be taken and construed as made by and on the part of the Issuer, and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

The Trustee shall have no responsibility for any information in any Official Statement or other disclosure material distributed with respect to the Bonds, and the Trustee shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

The Trustee shall not be responsible or accountable for the use or application by the Borrower of any of the Bonds or the proceeds thereof or for the use or application of any money paid over by the Trustee in accordance with the provisions of this Indenture or for the use and application of money received by any paying agent.

Section 11.03. Action by Trustee Through and in Reliance Upon Others. The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, receivers or employees. The Trustee shall be entitled to advice of counsel of its selection concerning all matters of trust and its duties hereunder, and the written advice or opinion of such counsel shall be full and complete authorization and protection for any action taken, suffered or omitted by it in good faith and in accordance with such advice or opinion. The Trustee may in all cases pay such reasonable compensation, fees and expenses to all such attorneys, agents, receivers and employees as may be reasonably employed in connection with the trusts hereof, all of which shall be paid by the Borrower. The Trustee shall not be liable for any acts, omissions, misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder or for any other losses, damages, or expenses incurred in connection with the trust, except only for such losses, damages, or expenses which have directly resulted from the Trustee's negligence or willful misconduct.

Except for fraud and willful misconduct, no personal recourse may be taken, directly or indirectly, against any officer, director, employee or agent of the Trustee with respect to the obligations of the Trustee under this Indenture or any certificate or other writing delivered in connection therewith. The Trustee's rights, privileges, benefits, immunities and protections from liability, including, without limitation, its right to indemnification in connection with the performance of its duties and functions under this Indenture, shall extend to the Trustee in each of its capacities hereunder and its officers, directors, agents, custodians, employees or other persons employed to act hereunder.

The Trustee's immunities and protections from liability and its right to payment of compensation and indemnification in connection with performance of its duties and functions under this Indenture shall survive the Trustee's resignation or removal and the final payment of the Bonds.

Section 11.04. Fees and Expenses of Trustee. The Trustee shall be entitled to payment and/or reimbursement of such fees or expenses as the Trustee and the Borrower shall agree upon in writing from time to time, and to payment and/or reimbursement of reasonable fees or expenses, for its services rendered hereunder and as Dissemination Agent, and all advances, disbursements, counsel fees or expenses and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services. All fees, costs and expenses of Trustee (including attorneys' fees, costs and expenses) incurred in connection with any amendment, modification or supplement hereto shall be payable by the Borrower. When the Trustee incurs fees or expenses or renders services after the occurrence of an Event of Default, such fees or expenses and the compensation for such services are intended to constitute fees or expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law. For so long as the Bonds are outstanding hereunder, in no event will monies on deposit in the Project Fund, the Collateral Fund, and the Bond Fund (including the Capitalized Interest Account therein) be used for the payment and/or reimbursement of such Trustee fees.

Section 11.05. Trustee's Obligations to Take or Have Notice of Default. The Trustee shall not be required to take notice, or to be deemed to have notice, of any default under this Indenture other than an Event of Default under Section 10.01(a) or Section 10.01(b) hereof, unless a Responsible Officer of the Trustee is specifically notified in writing of such default by the Issuer or by the Holders of at least 25% in aggregate principal amount of the Bonds then Outstanding. The Trustee may, however, at any time, in its discretion, require of the Issuer information and advice as to the performance of any of the covenants, conditions and agreements contained herein.

Neither the Trustee nor any of its directors, officers, employees, agents or affiliates shall have any duty to monitor the performance or any action of the Issuer, the Borrower, or any of their directors, members, officers, agents, affiliates or employee, nor shall it have any liability or responsibility in connection with the malfeasance or nonfeasance by such party.

Section 11.06. Duties of Trustee. If an Event of Default has occurred and is continuing, the Trustee shall exercise its rights and powers and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(a) Except during the continuance of an Event of Default,

(1) The Trustee need perform only those duties that are specifically set forth in this Indenture and no others and no implied covenants or obligations will be read into this Indenture against the Trustee, and

(2) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine those certificates and opinions only to determine whether they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(b) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that

(1) This paragraph does not limit the effect of Section 11.03 or 11.06(a) hereof,

(2) The Trustee shall not be liable for any action taken or error of judgment made in good faith by a Responsible Officer of the Trustee, unless it is proved that the Trustee was grossly negligent in ascertaining the pertinent facts,

(3) The Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it in accordance with this Indenture and

(4) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers.

(c) The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity satisfactory to it in its sole and absolute discretion against any loss, liability, fee or expense which may be incurred by it in compliance therewith, but the Trustee shall not require indemnity as a condition to making any payments on the Bonds or declaring the principal of and interest on the Bonds to be due immediately hereunder.

(d) The Trustee's rights, privileges, benefits, immunities and protections from liability including, without limitation, its right to indemnification in connection with the performance of its duties under this Indenture shall extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections including, without limitation, the Trustee's right to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the defeasance or discharge of this Indenture and final payment of the Bonds.

(e) Except as otherwise provided in this Article XI, the Trustee shall be under no obligation to take any action in respect of any default or otherwise, or toward the execution or enforcement of any of the trusts hereby created, or to institute, appear in or defend any suit or other

proceeding in connection therewith, unless requested in writing so to do by the Holders of a majority in aggregate principal amount of the Bonds then Outstanding, and if in its opinion such action may tend to involve it in fee, expense or liability, unless furnished, from time to time as often as it may require, with security and satisfactory indemnity. The foregoing provisions are intended only for the protection of the Trustee and shall not affect any discretion or power given by any provision of this Indenture to the Trustee to take action in respect of any default without such written notice or request from the Bondholders, or without such security or indemnity.

(f) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and with respect to such permissive rights, the Trustee shall not be answerable for other than its negligence or willful misconduct as described in Section 11.06(b) above.

(g) Notwithstanding the effective date of this Indenture or anything to the contrary in this Indenture, the Trustee shall have no liability or responsibility for any act or event relating to this Indenture which occurs prior to the date the Trustee formally executes this Indenture and commences acting as Trustee hereunder.

(h) The Trustee may conclusively rely upon and shall be protected in acting or refraining from acting in accordance with, any notice, request, consent, certificate, order or decree of a court of competent jurisdiction, judgment, affidavit, letter, telegram, requisition, direction, opinion, resolution, statement, or other paper or document believed to be genuine and correct and to have been signed or sent by the proper Person or Persons, not only as to due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any Person who at the time of making such request or giving such authority or consent is the Owner of the Bonds shall be conclusive and binding upon all future owners of the same Bonds and upon Bonds upon the registration of transfer thereof or issued in exchange therefor or in place thereof in respect of anything done, omitted or suffered to be done by the Trustee, the Issuer or the Borrower in reliance thereon. The Trustee shall have the right to accept and act upon instructions, including funds transfer instructions (“Instructions”) given pursuant to this Indenture and delivered using Electronic Means (as defined below); provided, however, that Borrower, the Issuer or such other party giving such instruction (the “Sender”) shall provide to the Trustee an incumbency certificate listing officers with the authority to provide such Instructions (“Authorized Officers”) and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Sender whenever a person is to be added or deleted from the listing. If the Sender elects to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee’s understanding of such Instructions shall be deemed controlling. The Borrower, the Issuer and any other Sender understand and agree that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. Each Sender shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Trustee and that the Sender and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Sender. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee’s reliance upon and

compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Borrower agrees: (i) to assume all risks arising out of the use of Electronic Means by the Borrower to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Borrower for use by the Borrower, the Issuer and the other parties who may give instructions to the Trustee under this Indenture; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures. “Electronic Means” shall mean the following communications methods: S.W.I.F.T., e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder.

(i) The Trustee shall not be liable or responsible for the failure of the Borrower to maintain insurance on the Project, nor shall it be responsible for any loss due to the insufficiency of such insurance or by reason of the failure of any insurer to pay the full amount of any loss against which it may have insured to the Issuer, the Borrower, the Trustee or any other Person.

(j) The Trustee shall be entitled to request and receive written instructions from the Issuer or Borrower and shall have no responsibility or liability for any losses or damages of any nature that may arise from any action taken or not taken by the Trustee in accordance with such written direction.

(k) If any assets shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the assets, the Trustee is hereby expressly authorized, in its sole discretion, to respond as it deems appropriate or to comply with all writs, orders or decrees so entered or issued, or which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction. If the Trustee obeys or complies with any such writ, order or decree it shall not be liable to any of the Issuer, the Borrower or to any other Person should, by reason of such compliance notwithstanding, such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

(l) Whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may conclusively rely upon a certificate of the Borrower, the Issuer or any other Person. The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction. Subject to the standard of care set forth in Section 11.06(a) and (b), the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report,

notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Borrower (or the Project), personally or by agent or attorney at the sole cost of the Borrower and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(m) The delivery of reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of the foregoing will not constitute constructive notice of any information contained therein or determinable from information contained therein.

(n) Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law.

Section 11.07. Trustee May Rely Upon Instruments. The Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any indenture, notice, telegram, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board, body or Person or to have been prepared and furnished pursuant to any of the provisions of this Indenture or the Documents, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements, and shall be protected and shall incur no liability in acting or proceeding in good faith in reliance thereon. The Trustee shall not be bound to recognize any Person as a Holder of any Bond or to take any action at his request unless such Bond shall be deposited with the Trustee or satisfactory evidence of the ownership of such Bond shall be furnished to the Trustee.

Section 11.08. Trustee May Own and Deal in Bonds and Deal with the Issuer and Borrower. The Trustee may in good faith buy, sell, own, hold and deal in any of the Bonds issued hereunder and secured by this Indenture, and may join in any action which any Bondholder may be entitled to take with like effect as if the Trustee were not a party to this Indenture. The Trustee, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Issuer or the Borrower or any related entity, and may act as depository, trustee, or agent for any committee or body of Holders of the Bonds secured hereby or other obligations of the Issuer as freely as if it were not Trustee, Bond Registrar or Paying Agent hereunder.

Section 11.09. Financial Liability of the Trustee. No provision of this Indenture will require the Trustee to expend or risk its own funds or otherwise incur or risk any financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights or powers if it will have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Except as may otherwise be provided in this Indenture, the Trustee will have the right to demand, in respect to the authentication of any Bonds or the release of any property, any showings, certificates, opinions (including Opinions of Counsel), appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof or of the Bond Loan

Agreement required as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the Issuer or the Borrower to the authentication of any Bonds, or the release of any property.

In no event shall the Trustee be responsible or liable for special, indirect, punitive, incidental or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

Section 11.10. Trustee May Construe Ambiguous or Inconsistent Provisions. The Trustee may construe any of the provisions of this Indenture insofar as the same may appear to be ambiguous or inconsistent with any other provisions hereof, and any construction of any such provisions hereof by the Trustee in good faith shall be binding upon the Bondholders.

Section 11.11. Resignation of Trustee. The Trustee may at any time resign and be discharged of the duties and obligations created by this Indenture by giving not less than thirty (30) days written notice to the Issuer specifying the date when such resignation shall take effect and such resignation shall take effect upon the day specified in such notice unless previously a successor shall have been appointed, in which event such resignation shall take effect immediately on the appointment of such successor, provided that such resignation shall not take effect unless and until a successor shall have been appointed unless the Trustee has not been paid its fees and expenses (in which case the resignation shall become effective on the date specified by the Trustee above).

Section 11.12. Removal of Trustee. The Trustee shall be removed by the Issuer or by the Holders of a majority in aggregate principal amount of the Bonds then Outstanding or their attorney in fact duly authorized (with the consent of the Issuer), excluding any Bonds held by or for the account of the Issuer, if so requested by an instrument or concurrent instruments in writing giving not less than sixty (60) days written notice, filed with the Trustee and the Issuer. The Issuer may also remove the Trustee at any time, except during the existence of any Event of Default as defined in Section 10.01 hereof, for cause or for acting or proceeding in violation of, or failing to act or proceed in accordance with any provision of this Indenture with respect to, the duties and obligations of the Trustee by filing with the Trustee an instrument signed by an authorized officer of the Issuer. A copy of each such instrument providing for any such removal shall be delivered by the Issuer to any Bondholder who shall have filed his name and address with the Issuer. Such removal of the Trustee in accordance with this Section 11.12 shall not be effective until a successor trustee shall have been appointed.

Section 11.13. Appointment of Successor Trustee. In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee, or of its property or affairs, the Issuer (upon direction of the Borrower) covenants and agrees that it will thereupon appoint a successor Trustee.

If in a proper case no appointment of a successor Trustee shall be made pursuant to the foregoing provision of this Section 11.13 within sixty (60) days after the Trustee shall have given

to the Issuer written notice as provided in Section 11.11 hereof, within sixty (60) days after the Issuer or the Holders shall have given to the Trustee written notice as provided in Section 11.12 hereof, or at any time after a vacancy in the office of the Trustee shall have occurred by reason of its inability to act, the Trustee (as the expense of the Borrower) or the Holder of any Bond may apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper, prescribe and appoint a successor Trustee.

Any Trustee appointed under the provisions of this Section 11.13 in succession to the Trustee shall be an organization or entity having a combined capital, surplus and undivided profits of at least \$50,000,000 if there be such an organization or entity willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture.

Section 11.14. Appointment of Successor Trustee by Court. In case at any time the Trustee shall resign, and no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article XI prior to the date specified in the notice of resignation as the date when such resignation shall take effect, the retiring Trustee may forthwith apply to a court of competent jurisdiction for the appointment of a successor Trustee. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article within sixty (60) days after a vacancy shall have occurred in the office of Trustee, the Holder of any Bond may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as it may deem proper, prescribe and appoint a successor Trustee.

Section 11.15. Acceptance of Trust by Successor Trustee. Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuer and the Rating Agency an instrument accepting such appointment hereunder, and thereupon such successor Trustee, without further act, deed or conveyance, shall become duly vested with all the estates, property, rights, powers, trust, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named Trustee herein. Upon request of such successor Trustee, the Trustee ceasing to act and the Issuer shall execute and deliver an instrument transferring to such successor Trustee all the estates, property, rights, powers and trusts hereunder of the Trustee so ceasing to act, and the Trustee so ceasing to act shall pay over to the successor Trustee all moneys and other assets at the time held by it hereunder.

Section 11.16. Merger or Consolidation of Trustee with Another Person. Any Person into which any Trustee hereunder may be merged or with which it may be consolidated, or any Person resulting from any merger or consolidation to which any Trustee hereunder shall be a party, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, shall be and shall become the successor Trustee under this Indenture and will have and succeed to the rights, powers, duties, immunities and privileges of its predecessor without the execution or filing of any paper or any further act on the part of the parties hereto, anything herein to the contrary notwithstanding.

Section 11.17. Action of Trustee During Existence of an Event of Default. Subject to Section 11.09 hereof, the Trustee shall, during the existence of an Event of Default known to the Trustee, exercise such of the rights and powers vested in it by this Indenture and use the same

degree of skill and care in their exercise as a prudent person would use and exercise under the circumstances in the conduct of his own affairs.

Section 11.18. Notice of an Event of Default. Notwithstanding anything herein to the contrary, upon the occurrence of an Event of Default actually known to a Responsible Officer of the Trustee, the Trustee shall within thirty (30) days give written notice thereof to the Issuer, to the Rating Agency, and to each Bondholder at its last address appearing upon the registration books of the Issuer kept by the Trustee unless such Event of Default shall have been cured before the giving of such notice.

Section 11.19. Trustee May Intervene. In any judicial proceeding to which the Issuer is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Holders of the Bonds, the Trustee may intervene on behalf of the Holders of the Bonds and shall, upon receipt of satisfactory indemnity do so if requested in writing by the Holders of a majority in aggregate principal amount of Bonds then Outstanding, if such intervention is permitted by the court having jurisdiction in the premises.

Section 11.20. Unclaimed Moneys. In case any moneys deposited with the Trustee for the payment of the principal of and interest on any Bond remains unclaimed for three (3) years after such principal or interest has been paid or has become due and payable, the Trustee shall disburse the moneys in accordance with Chapter 523A of the Hawaii Revised Statutes. Thereupon, the Trustee and the Issuer shall be released from any further liability with respect to payment of such purchase price or principal, premium, or interest and the Holder shall be entitled (subject to any applicable statute of limitations) to look only to the Borrower as an unsecured creditor for the payment thereof.

Section 11.21. Appointment of Co-Trustee. It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of organizations or entities to transact business as a trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Bond Loan Agreement, and in particular in case of the enforcement thereof on default, or in the case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate or co-trustee. The following provisions of this Section 11.21 are adopted to these ends. Neither the Trustee nor any co-trustee shall be responsible or liable for the acts, omissions, misconduct or negligence of the other. No co-trustee or separate trustee hereunder shall be required to meet the terms of eligibility as a successor Trustee under Section 11.13.

In the event that the Trustee appoints an additional individual or institution as a separate or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest, duty, obligation and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee but only to the extent necessary to enable such separate or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them.

Approval in writing from the Issuer shall be required prior to the appointment of the separate or co-trustee by the Trustee. All such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer at the expense of the Borrower. The Trustee may at any time accept the resignation of or remove any separate trustee or co-trustee. In case any separate or co-trustee or a successor to either shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate or co-trustee, so far as permitted by law and so approved by the Issuer, shall vest in and be exercised by the Trustee until the appointment of a successor to such separate or co-trustee.

Section 11.22. Financing Statements. Pursuant to Section 5.05 of the Bond Loan Agreement, the Borrower shall cause to be perfected any security interest created hereunder by the filing of financing statements which fully comply with the Hawaii Uniform Commercial Code to the extent any such security interest may be perfected by filing. Notwithstanding anything to the contrary contained herein, the Trustee shall not be responsible for any initial filings of any financing statements or the information contained therein (including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings required by any amendments to Article 9 of the Uniform Commercial Code. The Trustee shall cause to be filed a continuation statement prepared by the Borrower with respect to each Uniform Commercial Code financing statement relating to the Bonds which was filed at the time of the issuance thereof, in such manner and in such places as the initial filings were made, provided that a copy of the filed original financing statement is timely delivered to the Trustee. Unless the Trustee shall have been notified in writing by the Issuer or a Bondholder that the initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in (i) relying on such initial filing and descriptions in filing any financing or continuation statements or modifications thereto pursuant to this Section 11.22 and (ii) filing any continuation statements in the same filing offices as the initial filings were made. The Borrower shall be responsible for the costs, fees or expenses incurred by the Trustee in the preparation and filing of all continuation statements hereunder.

Section 11.23. Requests from Rating Agency. The Trustee shall promptly respond in writing, or in such other manner as may be reasonably requested, to requests from the Rating Agency for information deemed necessary by the Rating Agency in order to maintain the rating assigned thereby to the Bonds. The Trustee shall promptly furnish any such requested information in its possession to the Rating Agency and shall, as may be reasonably requested by the Rating Agency, take reasonable steps to assist in efforts to obtain any necessary information from the Issuer or the Borrower, as applicable.

ARTICLE XII

MODIFICATION OF INDENTURE AND OTHER DOCUMENTS

Section 12.01. Limitation on Amendments to this Indenture. This Indenture shall not be modified or amended in any respect except as provided in accordance with and subject to the provisions of this Article XII and only by a written instrument executed by each of the parties hereto, including the Borrower. All fees, costs and expenses (including attorneys' fees, costs and

expenses) incurred in connection with any amendment, modification or supplement shall be payable by the Borrower.

Section 12.02. Amendments to Indenture and Bond Loan Agreement Not Requiring Consent of Bondholders.

(a) The Issuer and the Trustee may, from time to time and at any time, without the consent of Bondholders, enter into Supplements or other agreements supplemental to this Indenture and the Bond Loan Agreement as follows:

(1) to specify and determine any matters and things relative to Bonds which shall not materially adversely affect the interest of the Bondholders;

(2) to cure any formal defect, omission or ambiguity in this Indenture or the Bond Loan Agreement if such action does not materially adversely affect the rights of the Bondholders;

(3) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may lawfully be granted or conferred, and which are not contrary to or inconsistent with this Indenture as heretofore in effect;

(4) to add to the covenants and agreements of the Issuer in this Indenture or the Bond Loan Agreement other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with this Indenture or the Bond Loan Agreement as theretofore in effect;

(5) to add to the limitations and restrictions in this Indenture or the Bond Loan Agreement, other limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with this Indenture or the Bond Loan Agreement as theretofore in effect;

(6) to confirm, as further assurance, any pledge under and the subjection to any claim, lien or pledge created, or to be created by, this Indenture, of the Revenues or of any other moneys, securities or funds; or

(7) to modify, amend or supplement this Indenture or the Bond Loan Agreement in any respect which is not materially adverse to the interests of the Owners of the Bonds.

(b) Before the Issuer shall enter into any Supplement to this Indenture pursuant to this Section 12.02, there shall have been filed with the Trustee an opinion of Bond Counsel to the effect that such Supplement is authorized or permitted by this Indenture and complies with the terms hereof, and that upon adoption such Supplement will be legal, valid and binding upon the Issuer in accordance with its terms. The opinion of Bond Counsel filed with the Trustee shall also include a Favorable Opinion of Bond Counsel.

(c) The Trustee shall send written notice to the Rating Agency, the Borrower and the Investor Limited Partner of any amendment to this Indenture or the Bond Loan Agreement. The Trustee shall provide the information in the foregoing sentence as a matter of courtesy and accommodation only and shall not be liable to any person for any failure to comply therewith.

Section 12.03. Amendments to Indenture Requiring Consent of Bondholders.

(a) Subject to the terms and provisions contained in this Section 12.03 and not otherwise, the Holders of at least 66 2/3% in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, to consent to and approve the execution and delivery by the Issuer and the Trustee of any Supplement to this Indenture as shall be deemed necessary or desirable by the Issuer and the Trustee for the purposes of modifying, altering, amending, adding to or rescinding any of the terms or provisions contained in this Indenture; provided, however, that, unless approved in writing by the Holders of all of the Bonds then Outstanding, nothing herein contained shall permit, or be construed as permitting, (i) a change in the terms of maturity of the principal of or the interest on any Outstanding Bond, or a reduction in the principal amount of any Outstanding Bond or the rate of interest thereon, or (ii) the creation of a claim or lien upon, or a pledge or assignment of, the Trust Estate ranking prior to or on a parity with the claim, lien, assignment or pledge created by this Indenture, or the release of the Trust Estate or any part thereof (except to the extent permitted pursuant to the Documents), or (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (iv) a reduction in the aggregate principal amount of the Bonds required for any action or consent by Bondholders set forth in this Indenture, including (without limitation) that required for consent to such Supplements. This Section 12.03 shall not limit or otherwise affect the ability of the Issuer to enter into Supplements to this Indenture without the consent of the Bondholders pursuant to Section 12.02 hereof.

(b) If at any time the Issuer and the Trustee shall determine to enter into any Supplement for any of the purposes of this Section 12.03, the Trustee shall cause written notice of the proposed Supplement to be given to all Holders of the Bonds; provided, however, that failure to give such notice or any defect therein, shall not affect the validity of any proceedings pursuant hereto. Such notice shall briefly set forth the nature of the proposed Supplement and shall state that a copy thereof is on file at the Trust Office of the Trustee for inspection by all Bondholders.

(c) No later than 120 days after the date of giving such notice, the Issuer and the Trustee may enter into such Supplement in substantially the form described in such notice only if there shall have first been filed with the Issuer (i) the written consents of Holders of at least 66 2/3% in aggregate principal amount of the Bonds then Outstanding (or 100% if required hereunder) and (ii) an opinion of Bond Counsel to the effect that (1) such Supplement is authorized or permitted by this Indenture and complies with the terms hereof, and that upon adoption it will be legal, valid and binding upon the Issuer in accordance with its terms, and (2) the effectiveness of the Supplement will not affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

(d) If the Holders of at least the percentage of Bonds required by this Section 12.03 shall have consented to and approved the Supplement as herein provided, no Holder of any Bond shall have any right to object to such Supplement, or to object to any of the terms and provisions

contained therein or the operation thereof, or in any manner to question the propriety thereof, or to enjoin or restrain the Issuer or the Trustee from entering into the same or from taking any action pursuant to the provisions thereof.

(e) Upon the effectiveness of any Supplement entered into pursuant to the provisions of this Section 12.03, this Indenture shall be, and be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Issuer, the Trustee and all Holders of Bonds then Outstanding shall thereafter be determined, exercised and enforced under this Indenture subject in all respects to such modifications and amendments.

Section 12.04. Supplemental Indentures Part of Indenture. Any Supplement entered into in accordance with the provisions of this Article XII shall thereafter form a part of this Indenture and all the terms and conditions contained in any such Supplement as to any provision authorized to be contained therein shall be and shall be deemed to be a part of the terms and conditions of this Indenture for any and all such purposes.

Section 12.05. Required Consent. Notwithstanding anything herein to the contrary, the Trustee may, but shall not be required to, enter into or consent to any Supplement or any amendment of any other Document that would materially adversely affect the rights, obligations, duties, powers, privileges, indemnities, immunities or other security provided to the Trustee herein or therein, except to the extent necessary, as set forth in an opinion of Bond Counsel, to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes.

Section 12.06. Amendments to Documents Requiring Consent of Bondholders. Except as provided in Section 12.02 hereof, the Issuer and the Trustee shall not consent to any amendment, change or modification of the Documents without the giving of notice and the written approval or consent of the Holders of the Bonds at the time Outstanding given and procured as provided in Section 12.03 hereof. If at any time the Issuer and the Borrower shall request the consent of the Trustee to any such proposed amendment, change or modification, the Trustee shall cause notice of such proposed amendment, change, or modification to be given in the same manner as provided by Section 12.03 hereof with respect to Supplements. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the Trust Office of the Trustee for inspection by all Bondholders.

ARTICLE XIII

MISCELLANEOUS

Section 13.01. The Issuer's Successors. In the event of the dissolution of the Issuer, all the covenants, stipulations, promises and agreements in this Indenture contained by or on behalf of, or for the benefit of, the Issuer, shall bind or inure to the benefit of the successors of the Issuer from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the Issuer shall be transferred.

Section 13.02. Indenture for Benefit of the Issuer, Trustee and Bondholders. Except as herein otherwise specifically provided, nothing in this Indenture expressed or implied is intended

or shall be construed to confer upon any Person, other than the Issuer, the Trustee and the Holders of the Bonds, any right, remedy or claim under or by reason of this Indenture, this Indenture being intended to be for the sole and exclusive benefit of the Issuer and the Trustee and the Holders of the Bonds; provided that this Indenture shall also be for the benefit of the Borrower, and the Borrower shall be deemed to be a third party beneficiary of and in connection with those matters in which the terms of this Indenture fairly construed are indicative that they are for the benefit of the Borrower.

Section 13.03. Severability. In case any one or more of the provisions of this Indenture or of the Bonds for any reason, is held to be illegal or invalid such illegality or invalidity shall not affect any other provisions of this Indenture or the Bonds, and this Indenture and the Bonds shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced as if such illegal or invalid provisions had not been contained therein.

Section 13.04. Issuer's Obligations Limited. The obligations of the Issuer hereunder shall be limited as provided in Section 2.09 hereof. To implement such provisions, it is recognized that, notwithstanding any other provision of this Indenture, the holders of the Bonds shall not look to the Issuer for damages suffered by the holders of the Bonds as a result of the Issuer's failure to perform any covenant, undertaking or obligation under this Indenture, the Bonds, the Regulatory Agreement or any other document, nor as a result of the incorrectness of any representation made by the Issuer in this Indenture, the Bond Loan Agreement or any other document to which the Issuer is a party, nor for any other reason. Although this Indenture recognizes that the documents shall not give rise to any pecuniary liability of the Issuer, nothing in the provisions of this Indenture shall be deemed to preclude in any way any action or proceeding (other than that element of any action or proceeding involving a claim for monetary damages against the Issuer) in any court or before any governmental body, agency or instrumentality or otherwise against the Issuer or any of its officers, agents or employees to enforce the provisions of any document, which the Issuer is obligated to perform and the performance of which the Issuer has not assigned to the Trustee or any other Person.

Although the Issuer shall have the right to seek remedies in the event of a default by the Borrower, by this Indenture the Issuer assigns to the Trustee the right, the burden and the duty of taking action, in order to implement the purposes and intent of the Act, without the Issuer incurring any pecuniary obligation or liability. In any case where action by the Trustee requires simultaneous or subsequent action by the Issuer, the Issuer shall cooperate with the Trustee and take any and all action necessary to effectuate the purposes and intent of this Indenture upon receipt of indemnification satisfactory to the Trustee. Notwithstanding the foregoing, the Issuer hereby reserves the Unassigned Rights of the Issuer, including, without limitation, (a) its rights to indemnification, to the payment of taxes and payment of its fees and expenses, and to receive notices and give consents to the extent provided herein and in the other documents referred to herein, and (b) the right to take all action necessary to assure and enforce compliance with the restrictions, covenants and provisions contained in the Regulatory Agreement, without in any way limiting the rights of the Trustee thereunder or hereunder, either on its own behalf or as the assignee of the Issuer.

Section 13.05. Governing Law. This Indenture, the Bonds and the Loan Documents shall be interpreted in accordance with and governed by the laws of the State of Hawaii.

Section 13.06. Notices; Publication of Notice.

(a) All notices, advice, certifications or other communications hereunder between the Issuer and the Trustee shall be sufficiently given and shall be deemed given when provided in writing and when delivered by hand or overnight courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, or transmitted by electronic means (including, without limitation, e-mail and facsimile transmission) addressed to the appropriate Notice Address. The Issuer or the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, advice, certifications or other communications shall be sent. Notices to Persons other than the Issuer or the Trustee (such as, for example, notices to Owners of Bonds) shall be governed by the other applicable provisions of this Indenture.

(b) Whenever the Issuer or the Trustee is required or permitted to give or publish notice of any event or occurrence under this Indenture, such notice shall be given or published in such manner and by such means as the Issuer or the Trustee, as the case may be, shall determine to be appropriate. Such publication may be by (but is not limited to) any of the following means: (1) publication in one or more newspapers or trade journals selected by the Issuer or the Trustee, as the case may be; (2) publication by or through one or more financial information reporting services; (3) delivery to the Municipal Securities Rulemaking Board's EMMA System or any successor repository or entity fulfilling a substantially similar or like role; or (4) by mailing a copy of such notice by first class mail, postage prepaid, to the Person entitled to receive the notice at such Person's address as shown on the records of the Issuer or the Trustee.

(c) The Trustee shall notify the Rating Agency and the Remarketing Notice Parties of (a) the occurrence of an Event of Default of which the Trustee has actual notice, (b) any change in the identity of the Trustee, (c) any amendments, modifications, supplements or changes to this Indenture, the Bond Loan Agreement, the Note or the Bonds, including any extension of principal or modification of interest or redemption premium due on any of the Bonds, in each case only in the event the Trustee has actual notice, (d) any change or proposed change in the structure or identity of the Borrower of which the Trustee has actual knowledge, (e) any change or notification of proposed change of the Mandatory Tender Date, (f) any partial prepayment of the Loan or the giving of notice of the call for redemption of any Bonds, (g) any defeasance or acceleration of the Bonds hereunder, (h) any change in the Remarketing Agent, or the Lender of which the Trustee has actual knowledge, (i) any sale of Permitted Investments below par, as shown in a Cash Flow Projection delivered to the Rating Agency prior to the sale date, (j) the occurrence of any monetary or other material default under the Loan of which the Trustee has actual notice or (k) any material change in the investment of funds subject to the lien of this Indenture.

Section 13.07. Trustee as Paying Agent and Bond Registrar. The Trustee is hereby designated and agrees to act as Paying Agent and Bond Registrar for and in respect to the Bonds.

Section 13.08. Execution of Instruments by Bondholders and Proof of Ownership of Bonds. Any request, direction, consent or other instrument in writing required or permitted by this Indenture to be signed or executed by Bondholders may be in any number of concurrent

instruments of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed by an instrument in writing. Proof of the execution of any such instrument and of the ownership of the Bonds shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee with regard to any action taken by it under such instrument if made in the following manner:

(a) The fact and date of the execution by any person of any such instrument may be proved by the certificate of any officer in any jurisdiction who, by the laws thereof, has power to take acknowledgments within such jurisdiction, to the effect that the person signing such instrument acknowledged before him the execution thereof, or by an affidavit of a witness to such execution.

(b) The ownership of Bonds shall be conclusively proved by the registration books kept under the provisions of Section 2.08 of this Indenture.

Nothing contained in this Section 13.08 shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which to it may seem sufficient. Any request or consent of the Holder of any Bond shall bind every future Holder of the same Bond in respect of anything done by the Trustee pursuant to such request or consent.

Section 13.09. Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original, but all of which shall constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture and signature pages for all purposes.

Section 13.10. U.S.A. Patriot Act. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The Issuer and the Borrower agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

Section 13.11. FHA Federal Laws and Requirements Control. Notwithstanding anything in this Indenture or the Bond Loan Agreement to the contrary:

(a) The Borrower, the Trustee and the Issuer acknowledge that this Indenture, and any obligations of the Borrower hereunder, are subject and subordinate to the Lender Loan Documents. Notwithstanding any provision in this Indenture to the contrary, no obligations of the Borrower hereunder shall be payable except from (A) Surplus Cash (as defined in the HUD Regulatory Agreement), (B) funds that are not derived from (i) revenues of the Project (as defined in the Lender Mortgage) or (ii) any reserve or deposit made with the Lender or any other party as required by HUD in connection with the Lender Loan Documents, or (C) a Lender Collateral Deposit which has been deposited into the Collateral Fund by or at the direction of the Lender (collectively, “Non-Project Sources”). No claims or actions shall be made (or payable) under this Indenture against

the Project, the proceeds of the Lender Borrower Note, or the assets of the Borrower, except from Non-Project Sources. In addition, the rights and obligations of the parties under this Indenture and all other documents evidencing, implementing, or securing this Indenture (collectively, the “Subordinate Bond Documents”) are and shall be subordinated in all respects to the rights and obligations of the parties to and under the Lender Loan Documents. In the event of any conflict between the provisions of (i) this Indenture or the Subordinate Bond Documents and (ii) the provisions of the Lender Loan Documents or the Program Obligations (as defined in the Lender Mortgage), GNMA statutory, regulatory or administrative requirements, the provisions of the Lender Loan Documents, the Program Obligations or the GNMA statutory, regulatory or administrative requirements, as applicable, shall control. The provisions of this Section 13.10 shall control over any inconsistent provisions in this Indenture or the Subordinate Bond Documents.

(b) Any subsequent amendment to this Indenture or the Bond Loan Agreement is subject to prior written approval of HUD (so long as the Project is subject to a mortgage insured or held by HUD). No amendment to this Indenture or the Bond Loan Agreement shall conflict with the provisions of the Program Obligations.

(c) The Bonds are not a debt of the United States of America, HUD, FHA, GNMA or any other agency or instrumentality of the federal government and are not guaranteed by the full faith and credit of the United States or any agency or instrumentality thereof.

(d) There is no pledge hereunder or under the Bond Loan Agreement of the gross revenues or any of the assets of the Project.

(e) Neither a default under this Indenture nor under the Bond Loan Agreement shall constitute a default under the Lender Loan Documents related to the Project.

(f) Nothing contained herein or in the Bond Loan Agreement shall inhibit or impair the right of FHA to require or agree to any amendment, change or modification of any Lender Loan Documents related to the Project for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective or inconsistent provision contained therein, or in regard to matters or questions arising under said Lender Loan Documents so long as any such amendment, change or modification shall not adversely affect the payment terms of the Bonds.

(g) None of the Issuer, the Trustee, or any of the Owners of the Bonds has or shall be entitled to assert any claim against the Project, any reserves or deposits required by HUD in connection with the Project, or the rents or deposits or other income of the Project.

(h) Proceeds from any condemnation award or from the payment of a claim under any hazard insurance policy relating to the Project will not be payable to the Trustee but will be payable in accordance with the Lender Loan Documents.

(i) Notwithstanding anything in this Indenture, the Bond Loan Agreement, the Note or the Bond Purchase Agreement to the contrary, in no event shall HUD have any claim to or lien upon the Trust Estate under this Indenture and funds held by the Trustee under this Indenture and pledged to secure the repayment of the Bonds. Further, nothing herein shall restrict the rights and obligations of the parties as they relate to the Bonds and the rights and obligations therein are not subordinated.

(j) In the event of an assignment or conveyance of the Lender Loan to the FHA Commissioner, subsequent to the issuance of the Bonds, all money, remaining in all funds and accounts other than the Rebate Fund and any other funds remaining under the Indenture after payment or provision for payment in full of debt service on the Bonds and the fees and expenses of the Issuer, Trustee, and other such parties unrelated to the Borrower (other than funds originally deposited by the Borrower or related parties on or before the date of issuance of the Bonds) shall be returned to the Lender.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Issuer has caused this Indenture to be signed in its name by its authorized officer, and the Trustee has caused this Indenture to be signed in its name by its duly authorized officer, all as of the day and year first above written.

CITY AND COUNTY OF HONOLULU

By: _____

U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION,
as Trustee

By: _____
Thomas S. Zrust
Vice President

CONSENT AND AGREEMENT OF BORROWER

For and in consideration of the issuance of the Bonds by the Issuer, the Borrower consents to and approves the Indenture in all respects. In addition, the Borrower agrees that whenever the Indenture by its terms imposes any duty or obligation on the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Indenture, and the Borrower agrees to carry out and perform its duties and obligations thereunder.

BORROWER:

KOMOHALE MAUNAKEA VENTURE LP,
a Hawaii limited partnership

By: Komohale Maunakea Manager LLC,
a Delaware limited liability company,
its General Partner

By: _____
Name: Bradley C. Martinson
Title: Authorized Representative

By: _____
Name: Stanford S. Carr
Title: Authorized Representative

EXHIBIT A
FORM OF BOND

No. R-1

\$[PAR AMOUNT]

UNITED STATES OF AMERICA
STATE OF HAWAII

CITY AND COUNTY OF HONOLULU
MULTIFAMILY HOUSING REVENUE BONDS
(MAUNAKEA TOWER APARTMENTS)
SERIES 2023

Unless this Bond is presented by an authorized representative of the Securities Depository (as defined in the Indenture) to the Trustee for registration of transfer, exchange or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of the Securities Depository (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of the depository), any transfer, pledge or other use hereof for value or otherwise by or to any Person is wrongful inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

<u>DATED DATE</u>	<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>CUSIP NUMBER</u>
-------------------	----------------------	----------------------	---------------------

[May] __, 2023	[RATE]%	[December 1, 2026]	
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Registered Owner:	CEDE & CO.
Principal Amount:	[PAR AMOUNT IN WORDS] DOLLARS

FOR VALUE RECEIVED, the City and County of Honolulu (the “Issuer”), a political subdivision and body corporate and politic organized and existing under the laws of the State of Hawaii (the “State”), hereby promises to pay (but only out of the Trust Estate pledged therefor) to the Registered Owner identified above, or its successor or registered assignee or legal representative, the Principal Amount set forth above, on the Maturity Date identified above, in lawful money of the United States of America which on the date of payment is legal tender for the payment of public and private debts, upon the presentation and surrender of this Bond at the corporate trust office of U.S. Bank Trust Company, National Association, a national banking association, as trustee, or its successor in trust (the “Trustee”), and to pay interest thereon (but only out of the Revenues) to the registered owner hereof from the initial delivery of the Bond until maturity, at the Interest Rate per annum identified above, or at the Remarketing Rate, as the case may be, payable at the times and in the manner hereinafter set forth. Principal hereof shall be payable, upon the request of any registered holder of Bonds on the applicable Record Date having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such holder to the Trustee in writing. All interest hereon shall be paid by check or draft mailed by the Trustee to the registered Owner hereof at his address as it appears on the registration books of the Issuer, or, upon the request of any registered holder of Bonds having an aggregate principal amount of \$1,000,000 or

more, by wire transfer of immediately available funds from the Trustee to the bank and account number provided by such registered Owner to the Trustee in writing, such interest to the maturity hereof being payable semi-annually on each June 1 and December 1, commencing December 1, 2023, in lawful money of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts.

THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY FROM THE SECURITY THEREFOR AND ARE NOT AN OBLIGATION OF THE STATE OR ANY OTHER POLITICAL SUBDIVISION THEREOF. THE BONDS ARE NOT A GENERAL OR MORAL OBLIGATION OF THE ISSUER OR A CHARGE UPON ITS GENERAL FUND, NOR SHALL THE FULL FAITH AND CREDIT OF THE ISSUER BE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS. NO HOLDER OF ANY BONDS HAS THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE ISSUER TO PAY THE BONDS OR THE INTEREST OR THE REDEMPTION PREMIUM, IF ANY, THEREON.

This Bond is one of an issue of the \$[PAR AMOUNT] City and County of Honolulu Multifamily Housing Revenue Bonds (Maunakea Tower Apartments) Series 2023 (the “Bonds”), of like date and tenor, except as to number and denomination, issued under and pursuant to the provisions of Chapter 49, Hawaii Revised Statutes, and as amended, as made applicable by Hawaii Revised Statutes Sections 46 15.1 and 46-15.2 (collectively, the “Act”), and a resolution of the Issuer adopted on [May __, 2023], for the purpose of financing a portion of the costs of the acquisition, rehabilitation and equipping by Komohale Maunakea Venture LP, a Hawaii limited partnership (the “Borrower”), of multifamily rental housing development consisting of approximately 379 units known as Maunakea Tower Apartments and to be located at 1245 Maunakea Street, Honolulu, Hawaii 96817 (the “Project”). The proceeds of the Bonds are being loaned to the Borrower by the Issuer under a Loan Agreement dated as of [May] 1, 2023, between the Borrower and the Issuer (the “Bond Loan Agreement”) and evidenced by a Promissory Note dated the Closing Date from the Borrower to the Issuer (the “Note”).

The Bonds are issued under a Trust Indenture dated as of [May] 1, 2023 (the “Indenture”), between the Issuer and the Trustee, and, to the extent provided therein, are equally and ratably secured and entitled to the protection given by the Indenture. Pursuant to the Indenture, the Issuer has assigned to the Trustee (among other things) the Revenues. Pursuant to the Note and the Bond Loan Agreement, payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Borrower to the Trustee for the account of the Issuer. The obligations of the Borrower under the Note and the Bond Loan Agreement are secured by the proceeds of the Bonds deposited into the Project Fund created pursuant to Section 4.01(b) of the Indenture, and from moneys deposited into the Collateral Fund created pursuant to Section 4.01(e) of the Indenture.

Reference is made to the Indenture, the Note and the Bond Loan Agreement and to all amendments and supplements thereto for a description of the property pledged and assigned and the provisions, among others, with respect to the nature and extent of the security, the rights, duties and other obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the rights of the holders of the Bonds and provisions for defeasance of such rights. Capitalized terms used herein have the same meaning as set forth in the Indenture. The terms and

conditions set forth herein concerning payment and other rights and remedies of the owners of the Bonds are descriptive only and are subject in all cases to the terms and conditions as set forth in the Indenture.

This Bond is negotiable and is transferable, as provided in the Indenture, only upon the books of the Issuer kept at the designated corporate trust office of the Trustee, by the registered owner hereof in person or by his duly authorized attorney, and may be exchanged for new Bonds of the same aggregate principal amount of authorized denominations, maturity and interest rate, in registered form, but only upon presentation and surrender of this Bond, all in the manner and subject to the limitations and conditions provided in the Indenture. The Issuer and the Trustee may deem and treat the Person in whose name this Bond is registered as the absolute Owner hereof for all purposes; and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

The Bonds are issuable in the form of registered Bonds without coupons in denominations of \$5,000 each or integral multiples thereof.

The Bonds are subject to mandatory tender in whole and not in part on each Mandatory Tender Date (as defined in the Indenture), and shall be purchased at a price equal to 100 percent of the principal amount of such Bonds, plus accrued interest, if any to the applicable Mandatory Tender Date, and without premium, as set forth in the Indenture.

The Bonds are subject to redemption prior to maturity as provided in the Indenture.

In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds then Outstanding under the Indenture may become or may be declared due and payable before the stated maturities thereof, together with the interest accrued thereon.

The Holder of this Bond shall have no right to enforce the provisions of the Indenture, or to institute action to enforce the covenants therein, or to take any action with respect to any default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture. The Trustee shall treat the registered Owner of this Bond as the Person exclusively entitled to payment of principal and interest, and the exercise of all rights and powers of the Owner of this Bond.

In any case where the date of maturity of or an Interest Payment Date for this Bond shall not be a Business Day, then payment of interest or principal need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity.

This Bond shall not be entitled to any benefit under the Indenture, or be valid or become obligatory for any purpose, until the Trustee shall have executed the Certificate of Authentication appearing hereon.

IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED that the issuance of this Bond is duly authorized by law; that all acts, conditions and things required to exist and to be done precedent to and in the issuance of this Bond to render the same lawful and valid have been properly done and performed and have happened in regular and due time, form and manner as

required by law; and that all acts, conditions and things necessary to be done or performed by the Issuer or to have happened precedent to or in the execution and delivery of the Indenture have been done and performed and have happened in regular and due form as required by law.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the CITY AND COUNTY OF HONOLULU has caused this bond to be executed in its name by its [Director of Department of Planning and Permitting] and countersigned by its Mayor and its official seal or a facsimile thereof to be hereunto impressed or imprinted hereon, all as of the date set forth above.

CITY AND COUNTY OF HONOLULU

By: _____
[Director of Department of Planning and
Permitting]

(SEAL)

COUNTERSIGNED:

By: _____
Mayor

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the Indenture referred to in this Bond.

U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION, as Trustee

By: _____
Authorized Signatory

Date of Authentication: _____, 20____

FORM OF ASSIGNMENT

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto
(Please Print or Type Name and Address of Assignee): _____

(Social Security or Taxpayer Identification Number: _____
_____) the within Bond and all rights thereunder, and hereby
irrevocably constitutes and appoints _____

attorney to transfer said Bond on the books of the within named Issuer maintained by the Trustee
for the registration thereof, with full power of substitution in the premises.

NOTICE: The signature to this assignment must
correspond with the name as it appears on the face
of the within bond in every particular, without
alteration or enlargement or any change whatever.
The signature must be guaranteed.

Signature guaranteed by:

[Bank, Trust Company or Firm]

Authorized Signature

(Signature(s) must be guaranteed by a broker or other financial institution which is a participant in
the Securities Transfer Agent's Medallion Program (STAMP, SEMP, MSP)).

EXHIBIT B
FORM OF PROJECT FUND REQUISITION

BORROWER: KOMOHALE MAUNAKEA VENTURE LP

PROJECT: MAUNAKEA TOWER APARTMENTS

REQUISITION NO.: _____

In the Amount of \$ _____

TO: U.S. Bank Trust Company, National Association, as trustee

The Borrower hereby requests payments in the following amounts, from the following sources and to be made to the following parties, all as set forth on the Request for Payment attached to this Requisition:

AMOUNT	SOURCE	PAYABLE TO:
	[identify name of Account and Fund]	[Borrower's account number]
		[third party payment/wire instructions must be attached]

REQUISITION – CONTENTS AND ATTACHMENTS

Borrower's Representations and Warranties

Contractor's Application and Certification for Payment (AIA Form G 702)

Requisitions and Invoices Supporting Application

REPRESENTATIONS AND WARRANTIES

1. To the Borrower's knowledge, no changes have been made in the Plans and Specifications that require and have not received the prior approval of any Governmental Authority having jurisdiction over the Project or any other parties from whom such approval is required.
2. To the Borrower's knowledge, the rehabilitation and equipping of the Project has been performed in accordance with the Plans and Specifications.
3. Funding of this Requisition shall be in accordance with the terms and provisions of (i) the Loan Agreement dated as of [May] 1, 2023 (the "Agreement"), and (ii) the Trust Indenture dated as of [May] 1, 2023, with respect to the Bonds (the "Indenture").

4. All monies requisitioned by the Borrower for acquisition and rehabilitation and disbursed by the Trustee under previously approved requisitions have been paid to the Contractor or other contractor or supplier or other party entitled to payment and, to Borrower's best knowledge, all subcontractors, vendors and suppliers; all other funds requisitioned by the Borrower and disbursed by the Trustee under previously approved requisitions have been expended for the purpose for which they were requisitioned.
5. All of the information submitted to the Trustee in connection with this Requisition is true and accurate as of the date of submission.
6. The representations and warranties set forth in the Documents are true and correct as of the date hereof with the same effect as if made on this date unless such representation or warranty relates to a specific time.
7. The Borrower represents and warrants that (i) there has occurred no Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default on the part of the Borrower under the terms of the Documents, (ii) except as previously disclosed by the Borrower to the Issuer, the Borrower has not received notice from or been informed by any Governmental Authority of any alleged deficiencies in the work performed to date or any deviation of such work from Plans and Specifications or notice of any assertion of a claim that the Project has not been constructed in accordance with all applicable requirements and (iii) the Documents are in full force and effect.
8. The Borrower represents and warrants that, following the disbursement by the Trustee of the aggregate amounts requested under these Requisitions, (i) no more than 5% of the Net Proceeds of the Bonds will have been used for costs that are not Qualified Project Costs; (ii) less than 25% of the Net Proceeds of the Bonds will have been used for the cost of acquiring land; and (iii) not more than 2% of the Net Proceeds of the Bonds will have been used for Costs of Issuance.
9. With respect to this requested disbursement, the Borrower (i) certifies that it has reviewed any wire instructions set forth in such Requisition to confirm such wire instructions are accurate, (ii) reaffirms its indemnity obligations in the Indenture, and (iii) agrees that it will not seek recourse from the Trustee as a result of losses incurred by it solely for making the disbursement in accordance with this Requisition.
10. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto under the Indenture or the Tax Certificate.

Executed this ____ day of _____, 202__.

BORROWER:

KOMOHALE MAUNAKEA VENTURE LP,
a Hawaii limited partnership

By: Komohale Maunakea Manager LLC,
a Delaware limited liability company,
its General Partner

By: _____
Name: Bradley C. Martinson
Title: Authorized Representative

By: _____
Name: Stanford S. Carr
Title: Authorized Representative

EXHIBIT C
FORM OF COST OF ISSUANCE REQUISITION

CITY AND COUNTY OF HONOLULU
MULTIFAMILY HOUSING REVENUE BONDS
(MAUNAKEA TOWER APARTMENTS)
SERIES 2023

Dated: _____

Costs of Issuance Requisition No. ____

TO: U.S. Bank Trust Company, National Association, as trustee (the “Trustee”) under the Trust Indenture dated as of [May] 1, 2023, between the City and County of Honolulu and the Trustee (the “Indenture”).

Terms used herein and not otherwise defined shall have the meanings given to such terms in the Indenture.

The undersigned, Borrower Representative of Komohale Maunakea Venture LP (the “Borrower”), hereby certifies to you that he/she is authorized and empowered to submit this Requisition to you and that attached hereto as Schedule “A” is a schedule of Costs of Issuance incurred in connection with the issuance of the above described Bonds, including the names and addresses of the payees and the specific amounts payable to each such payee, and that to the best of the undersigned’s information and belief, such amounts are true and correct.

This Requisition is being delivered to you in accordance with the referenced Indenture pursuant to which the Bonds were issued. You are hereby instructed to withdraw from the Cost of Issuance Fund created under the Indenture the amounts shown across from each payee listed on Schedule “A” hereto and pay such amounts to each such payee by wire transfer, check delivered by first class mail or by such other means as is acceptable to you and any such payee.

With respect to this requested disbursement, the Borrower (i) certifies that it has reviewed any wire instructions set forth in such Requisition to confirm such wire instructions are accurate, (ii) reaffirms its indemnity obligations in the Indenture, and (iii) agrees that it will not seek recourse from the Trustee as a result of losses incurred by it solely for making the disbursement in accordance with this Requisition.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned has signed this Requisition by and on behalf of the Borrower.

BORROWER:

KOMOHALE MAUNAKEA VENTURE LP,
a Hawaii limited partnership

By: Komohale Maunakea Manager LLC,
a Delaware limited liability company,
its General Partner

By: _____
Name: Bradley C. Martinson
Title: Authorized Representative

By: _____
Name: Stanford S. Carr
Title: Authorized Representative

SCHEDULE "A"
SCHEDULE OF COSTS OF ISSUANCE

PAYEE	AMOUNT
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LOAN AGREEMENT

Between

CITY AND COUNTY OF HONOLULU,
as Issuer

and

KOMOHALE MAUNAKEA VENTURE LP,
as Borrower

Dated as of [May] 1, 2023

Relating to:

City and County of Honolulu
Multifamily Housing Revenue Bonds
(Maunakea Tower Apartments)
Series 2023

The interest of the City and County of Honolulu (the “Issuer”) in this Loan Agreement has been assigned (except for “Unassigned Rights of the Issuer” defined in the Indenture) pursuant to the Trust Indenture, dated as of the date hereof (the “Indenture”), between the Issuer and U.S. Bank Trust Company, National Association, a national banking association, as trustee (the “Trustee”), and is subject to the security interest of the Trustee thereunder.

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LOAN AGREEMENT

THIS LOAN AGREEMENT (“Agreement” or “Loan Agreement”) is entered into as of [May] 1, 2023, between the CITY AND COUNTY OF HONOLULU, a political subdivision and a body corporate and politic organized and existing under the Constitution and laws of the State of Hawaii (the “Issuer”), and KOMOHALE MAUNAKEA VENTURE LP, a Hawaii limited partnership (the “Borrower”).

WITNESSETH:

WHEREAS, the Issuer is authorized under the provisions of Chapter 49, Hawaii Revised Statutes, as amended, as made applicable by Hawaii Revised Statutes Sections 46 15.1 and 46-15.2 (collectively, the “Act”), to issue revenue bonds to finance its program of providing loans to finance multifamily rental housing projects; and

WHEREAS, the Borrower has requested the Issuer to issue its Multifamily Housing Revenue Bonds (Maunakea Tower Apartments) Series 2023 (the “Bonds”), the proceeds of which will be utilized to make a loan to the Borrower (the “Loan”) to finance a portion of cost of the acquisition, rehabilitation, installation and equipping of a multifamily rental housing development, consisting of one (1) condominium unit within the Beretania North Condominium Project known as Maunakea Tower Apartments, which includes approximately 379 residential dwelling units and related personal property and equipment, located in Maunakea Tower Apartments owned by Borrower (the “Project”); and

WHEREAS, pursuant to and in accordance with the Act, the Issuer desires to provide funds to finance the acquisition, rehabilitation, installation and equipping of the Project and the payment of certain costs of issuance by issuing the Bonds, pursuant to a Trust Indenture dated as of [May] 1, 2023 (the “Indenture”), between the Issuer and U.S. Bank Trust Company, National Association, a national banking association, organized and existing under the laws of the United States of America, as trustee (the “Trustee”); and

WHEREAS, the Loan will be evidenced by this Agreement and a promissory note (the “Note”), from the Borrower to the Issuer in the form of EXHIBIT B hereto; and

WHEREAS, in order to assure compliance with Sections 103 and 142 through 150 of the Code, the Issuer and the Borrower have entered into the Tax Certificate and the Issuer, Borrower and Trustee have entered into the Regulatory Agreement, each of which sets forth various certifications, representations, and covenants relating to the Federal Tax Status of the Bonds; and

WHEREAS, the parties hereto, intending to be legally bound hereby, and for and in consideration of the premises and the mutual covenants hereinafter contained, do hereby covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. All capitalized, undefined terms used herein shall have the same meanings ascribed thereto in the Indenture.

Section 1.02. Uses of Phrases. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words “Bond,” “Bondholder,” “Holder,” “Owner” and “Person” shall include the plural as well as the singular number. Any percentage of Bonds, specified herein for any purpose, is to be figured on the unpaid principal amount thereof then Outstanding. All references herein to specific sections of the Code refer to such sections of the Code and all successor or replacement provisions thereto.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.01. Representations, Covenants and Warranties of the Issuer. The Issuer represents, covenants and warrants that:

(a) The Issuer is a political subdivision and a body corporate and politic, duly organized and existing under laws of the State. Under the provisions of the Act and the resolution adopted by the Issuer on [May __, 2023], the Issuer is authorized to enter into the Issuer Documents and the transactions contemplated hereunder and thereunder and to carry out its obligations hereunder and thereunder. By proper action of its Governing Body, the Issuer has been duly authorized to execute and deliver the Issuer Documents and to issue and sell the Bonds.

(b) The Issuer is issuing the Bonds, at the request of the Borrower, in order to provide for the financing of the acquisition and rehabilitation of the Project.

(c) To its knowledge and in reliance upon the advice of counsel, neither the execution nor the delivery of the Bonds, or any Issuer Document, conflicts with or results in a breach of any of the terms, conditions or provisions of any constitutional provisions or statute of the State, or of any agreement, instrument, judgment, order or decree to which the Issuer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

Section 2.02. Representations, Covenants and Warranties of the Borrower. The Borrower represents, covenants and warrants that:

(a) Good Standing; Single Purpose Covenants. The Borrower (i) is a limited partnership duly organized and existing in good standing under the laws of the State of Hawaii, (ii) has the power to own its property and to carry on its business as now being conducted and as contemplated by this Agreement and the Tax Certificate and (iii) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such qualification necessary, including, but not limited to, the State. The Borrower’s business and purpose shall consist solely of the

ownership, rehabilitation, operation and management of the Project and such other lawful activities as are incidental, necessary or appropriate thereto. The Borrower shall not incur any indebtedness other than Project indebtedness and normal trade accounts payable in the ordinary course of the Borrower's business. The Borrower shall not assume or guaranty any other Person's indebtedness or obligations. The Borrower shall not dissolve or liquidate, in whole or in part, consolidate or merge with or into any other entity or convey, transfer or lease its property and assets substantially as an entirety to any entity. The Borrower shall not institute or consent to any bankruptcy, insolvency or reorganization proceedings with respect to it, consent to the appointment of a receiver or similar official with respect to it, make any assignment for the benefit of its creditors or admit in writing its inability to pay its debts generally as they become due. The Borrower shall: maintain books and records and bank accounts separate from those of any other Person; conduct its business in its own name and use separate stationery, invoices and checks; maintain its assets in such a manner that it is not costly or difficult to segregate and identify such assets; observe all organizational formalities and hold itself out to creditors and the public as a legal entity separate and distinct from any other entity; prepare separate tax returns and financial statements, or if part of a consolidated group, then be shown thereon as a separate member of such group; allocate and charge fairly and reasonably any common employee or overhead shared with affiliates; and transact all business with affiliates on an arm's length basis and pursuant to enforceable agreements. The Borrower shall not commingle its assets or funds with those of any other Person.

(b) Authority. The Borrower has full power and authority to (i) execute and deliver the Documents to which it is a party and (ii) incur the obligations provided for herein and therein, all of which have been duly authorized by all proper and necessary corporate action. All consents or approvals of any public authority which are required as a condition to the validity of the Documents to which the Borrower is a party have been obtained.

(c) Binding Agreements. The Borrower Documents have been properly executed by a duly authorized officer of the General Partner of the Borrower, and constitute valid and legally binding obligations of the Borrower, and are fully enforceable against the Borrower in accordance with their respective terms, subject to bankruptcy, insolvency or other laws affecting creditors' rights generally, and with respect to certain remedies which require, or may require, enforcement by a court of equity, such principles of equity as the court having jurisdiction may impose.

(d) Litigation. There is no litigation or proceeding pending or, to the knowledge of the Borrower, threatened in writing against the Borrower before any court or administrative agency which, if determined adversely to the Borrower, will materially adversely affect the Borrower or the Project, or the authority of the Borrower to enter into or perform under the Borrower Documents or which in any way would adversely affect the validity or enforceability of the Bonds or the Documents.

(e) Conflicts; Defaults. There is (i) no provision of the Borrower's organizational documents, or resolutions of the Borrower and no provision of any existing mortgage, indenture, contract or agreement binding on the Borrower affecting any of the Borrower's property and (ii) to the Borrower's knowledge, no provision of law or order of court binding upon the Borrower or affecting any of the Borrower's property, in each case which would conflict with or in any way prevent the execution, delivery, or performance of the terms of the Borrower Documents and the other financing documents and regulatory agreements to be entered into at closing in connection

with this transaction, or which would be in default or violated as a result of such execution, delivery or performance. The Borrower is not in material default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party.

(f) Title to Project, Liens and Encumbrances. The Borrower has a fee simple interest in the real property on which the Project is situated and is the fee simple owner of the Project, free and clear of all liens or encumbrances other than those encumbrances set forth on Schedule B of Title Commitment File No 684100370 issued by Old Republic Title & Escrow of Hawaii, Ltd. (the “Permitted Encumbrances”). There exist no liens, encumbrances or other charges against the Project (including without limitation statutory and other liens of mechanics, workers, contractors, subcontractors, suppliers, taxing authorities and others), except Permitted Encumbrances. The Borrower is the sole borrower under the Loan.

(g) Indenture. The Borrower understands that the Issuer will, pursuant to the Indenture and as security for the payment of the principal of and the interest on the Bonds, assign and pledge to the Trustee, and create a security interest in favor of the Trustee in certain of its rights, title and interest in and to this Agreement (including all payments hereunder) reserving, however, the Unassigned Rights; and the Borrower hereby agrees and consents to such assignment and pledge. The Borrower acknowledges that it has received a copy of the Indenture for its examination and review. By its execution of this Agreement, the Borrower acknowledges that it has approved, has agreed to and is bound by the applicable provisions of the Indenture. The Borrower agrees that the Trustee shall be entitled to enforce and to benefit from the terms and conditions of this Agreement that relate to it notwithstanding the fact that it is not a signatory hereto.

(h) Events Affecting Tax Exemption. The Borrower has not taken or permitted to be taken any action that would impair the exclusion from gross income for federal income tax purposes of the interest payable on the Bonds, and the Borrower has never been advised that the interest is or will be subject to inclusion in gross income. As of the Closing Date, the Borrower is in compliance with all requirements contained in the Tax Certificate, and the representations set forth in the Tax Certificate pertaining to the Borrower and the Project are true and accurate in all material respects. Notwithstanding the above, if the Borrower becomes aware of any situation, event or condition that would result in the interest on the Bonds being included in gross income for federal income tax purposes, the Borrower promptly shall give written notice thereof to the Issuer and the Trustee.

(i) Compliance with Laws and Documents. The Project is of the type authorized and permitted by the Act and will, from the Closing Date forward, be operated in compliance with the provisions of the Act and the provisions of the Code applicable thereto with respect to multifamily rental housing and/or qualified residential rental facilities. The Borrower will use due diligence to cause the Project to be operated in accordance with the Act and all other applicable laws, rulings, regulations and ordinances of any applicable Governmental Authority and the departments, agencies and political subdivisions thereof. The Borrower has obtained or will cause to be obtained all requisite approvals of the Issuer and of any applicable Governmental Authority or other federal and local governmental bodies required for the operation of the Project. The Project is located wholly within the boundaries of the Issuer’s jurisdiction.

(j) Compliance by the Borrower with the provisions of the Bond Documents and the Borrower Documents will not involve, to the extent applicable, any prohibited transaction within the meaning of the Employee Retirement Income Security Act of 1974, as amended (sometimes referred to in this subparagraph 2.02(i) as “ERISA”), or Section 4975 of the Code. No “employee pension benefit plans”, that are subject to Title IV of ERISA (sometimes referred to in this subparagraph 2.02(i) as “Plans”), maintained by the Borrower, nor any trust created thereunder, have incurred any “accumulated funding deficiency” as defined in Section 302 of ERISA, to the extent applicable and the present value of all benefits vested under all Plans, if any, did not exceed, as of the last annual valuation date, the value of the assets of the Plans allocable to such vested benefits.

(k) The Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis that satisfies the requirements of the Regulatory Agreement, including all applicable requirements of the Act and the Code, and pursuant to leases that comply with all applicable laws.

(l) The Borrower shall, through the term of this Agreement and at no expense to the Issuer, promptly comply or cause compliance with all applicable laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities which may be applicable to the Project or to the repair and alteration thereof, or to the use or manner of use of the Project, including, but not limited to, the Americans with Disabilities Act, all federal, State and local environmental, health and safety laws, rules, regulations and orders applicable to or pertaining to the Project and Federal Worker Adjustment and Retraining Notification Act.

(m) No Material Misstatements. The representations and warranties of the Borrower contained in the Borrower Documents (including, without limitation, any information furnished by the Borrower in connection with the preparation of any materials related to the issuance or delivery of the Bonds on the Closing Date), contain no material misstatement of fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading. The representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower’s closing certificates, as of the Closing Date, are true, correct and complete in all material respects, do not contain any untrue statement or misleading statement of material fact, and do not omit to state a material fact necessary to make the certifications, representations, warranties, statements, information and descriptions contained therein, in light of the circumstances under which they were made, not misleading. The estimates and assumptions contained in this Agreement and in any certificate of the Borrower delivered as of the Closing Date are reasonable and based on the most accurate information available to the Borrower.

(n) The information used in the preparation of the financial statements of the Borrower, the Borrower Documents and any other written statement furnished by the Borrower to the Issuer (including the descriptions and information contained in the Official Statement relating to (i) the Borrower and the Project, (ii) the operations and financial and other affairs of the Borrower, (iii) the application by the Borrower of the proceeds to be received by it from the Loan and (iv) the participation by the Borrower in the transactions contemplated in this Agreement and in the Official Statement, including, without limitation, the information relating to the Borrower in the Official Statement under the caption “Certain Bondholders’ Risks”), do not contain any untrue

statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading. There is no fact that the Borrower has not disclosed to the Issuer in writing that materially adversely affects or, so far as the Borrower can now foresee, will materially adversely affect the financial condition of the Borrower, the ability of the Borrower to own and operate the Project or the Borrower's ability to make payments on the Note when and as the same become due and payable.

(o) Interest of Member or Agent of the Issuer. To the knowledge of the Borrower, no member of the Governing Body of the Issuer or other agent of the Issuer has been or is in any manner interested, directly or indirectly, in that person's own name or in the name of any other Persons, in the loan of the Bond proceeds, the Bonds, the Documents, the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Documents. There (i) is no completed, pending or threatened bankruptcy, reorganization, receivership, insolvency or like proceeding, whether voluntary or involuntary, affecting the Project or the Borrower and (ii) has been no assertion or exercise of jurisdiction over the Project or the Borrower by any court empowered to exercise bankruptcy powers.

(p) Tax Returns. The Borrower will timely file all tax returns for the Borrower, and pay or cause to be paid when due all taxes imposed on their operations, assets, income or properties. No claims with respect to any taxes have been assessed upon the Borrower and remain unpaid.

(q) No Reliance on the Issuer. The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing of the Project; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it or the Issuer is a party or of which it is a beneficiary; that it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project; and that it has not relied on the Issuer for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the Issuer in any manner, except to issue the Bonds.

(r) Fees. The Borrower shall pay all fees as provided under the Note and in this Agreement, when due and payable without demand pursuant to Section 4.03 hereof, which fees shall be paid to the Trustee for deposit in the Expense Fund.

(s) Name of Borrower. The Borrower filed its Registration Statement for Partnership with the State of Hawaii under the name of Komohale Maunakea Venture LP.

(t) Governmental Requirements. To the Borrower's knowledge: (i) no violation of any Governmental Requirement exists with respect to the Project, the Borrower, or any other asset of the Borrower, (ii) the Project conforms in all material respects with all applicable zoning, planning, building and environmental laws, ordinances and regulations of Governmental Authorities having jurisdiction over the Project, (iii) all necessary utilities are or will be available to the Project, and (iv) the Borrower has obtained or will obtain all requisite zoning approvals necessary with respect to the Project.

(u) Condemnation. No condemnation, eminent domain or similar proceeding is pending, or to the knowledge of the Borrower, threatened in writing, with respect to the Project or any portion thereof.

(v) Governmental Approvals. The Borrower has obtained, or will obtain and there are currently in full force and effect, or will be in full force and effect, all consents, and permits, licenses, accreditations, certifications and other approvals (governmental or otherwise) that:

(i) would constitute a condition precedent to, or the absence of which would materially adversely affect, the enforceability of and the performance by the Borrower of its obligations hereunder; and

(ii) are necessary for the acquisition, rehabilitation, equipping, financing and operation of the Project.

(w) No Cease and Desist. The Borrower is not presently under any cease or desist order or other orders of a similar nature, temporary or permanent, of any federal or state authority which would have the effect of preventing or hindering performance of its duties hereunder, nor are there any proceedings presently in progress or to its knowledge contemplated which would, if successful, lead to the issuance of any such order.

(x) No Intent of Sale of Project. The Borrower intends to hold the Project for its own account [and has no current plans to sell] and has not entered into any agreement to sell any of the Project.

(y) Notification of Default. The Borrower agrees to immediately notify the Trustee and the Issuer in writing of any Default, or any event which with notice or the passage of time would constitute a Default.

(z) Maintenance of Insurance. The Borrower will promptly cause to be paid all premiums for insurance policies required to be maintained for the Project. The Borrower shall, at all times during the term of the Loan, maintain at its sole cost and expense, for the mutual benefit of the Borrower, the Lender and the Trustee, all of the insurance specified in [Section 6.10 of the Lender Disbursement Agreement], as required by Lender and the Issuer and applicable law, and in such amounts and with such maximum deductibles as the Lender and the Issuer may require, as those requirements may change.

(aa) Lease or Use of Project. The Borrower hereby represents that it has not entered into any leases or agreements to lease all or any part of the Project now in effect except for leases to residential tenants in compliance with the Regulatory Agreement and a laundry lease.

(bb) Non-Discrimination. The Borrower has not and shall not discriminate on the basis of race, creed, religion, color, sex, marital status, age or national origin in the lease, use, or occupancy of the Project or in connection with the employment or application for employment of Persons for the operation and management of the Project. The Borrower specifically agrees that the Borrower will not refuse to lease units in the Project to persons whose family includes minor dependents who will occupy such unit, unless such refusal is based upon factors not related to the

presence of such minors in the family, which factors may include, but shall not be limited to, negative credit, rental history or potential overcrowding of a unit.

ARTICLE III

REHABILITATION OF THE PROJECT; ISSUANCE OF THE BONDS

Section 3.01. Agreement for Rehabilitation of the Project. (a) The Borrower agrees to make or cause to be made all contracts and do all things necessary for the acquisition, rehabilitation and equipping of the Project. The Borrower further agrees that it will acquire and rehabilitate the Project in accordance with approved Plans and Specifications with all reasonable dispatch and use its best efforts to cause acquisition, rehabilitation and equipping of the Project to be completed by the Completion Date, or as soon thereafter as may be practicable, delays caused by force majeure as defined in Section 7.01 hereof only excepted; but if for any reason such acquisition, rehabilitation and equipping is not completed by said Completion Date, there shall be no resulting liability on the part of the Borrower or the Issuer and no diminution in or postponement of the payments required in Section 4.02 hereof to be paid by the Borrower.

(b) The Borrower shall cause the Project to be maintained in good, habitable and safe (so as to not threaten the health or safety of the Project's tenants or their invited guests) condition and repair (reasonable wear and tear excepted) and shall not remove, demolish or materially alter the improvements to the Project (except for the performance of the construction and rehabilitation work comprising the Project or removal of aging or obsolete equipment or furnishings in the normal course of business). After completion of repairs, no structural or other material defect or damages to the Project will exist, whether latent or otherwise.

Section 3.02. Agreement to Issue, Sell and Deliver the Bonds; Deposit of Bond Proceeds. In order to provide funds for the payment of the Qualified Project Costs, the Issuer, concurrently with the execution of this Agreement, will issue, sell and deliver the Bonds and deposit the proceeds thereof with the Trustee, which amounts shall be immediately deposited into the Project Fund.

Section 3.03. Disbursements from the Project Fund. In the Indenture, the Issuer has authorized and directed the Trustee to make disbursements from the Project Fund to pay Costs of the Project in the manner consistent with the Tax Certificate. The Trustee shall make disbursements from the Project Fund as provided in the Indenture, and pursuant to the receipt of a Requisition in substantially the form attached to the Indenture as Exhibit B. The Borrower agrees that the moneys transferred by the Trustee from the Project Fund to any reserve fund required by the Lender Disbursement Agreement shall only be disbursed for Qualified Project Costs as permitted by the Tax Certificate.

Section 3.04. Furnishing Documents to the Trustee. The Borrower agrees to cause such Requisitions to be directed to the Trustee as may be necessary to effect payments out of the Project Fund in accordance with Section 3.03 hereof.

Section 3.05. Establishment of Completion Date. (a) The Borrower shall evidence completion of the Project and the actual date of completion to the Issuer and the Trustee by an

executed Completion Certificate. The Completion Certificate shall be executed by the Borrower and shall state to the best information and belief of the Borrower, after due inquiry, that rehabilitation of the Project has been completed in material compliance with all applicable laws, regulations and agreements, and all costs of labor, services, materials and supplies used in the Project have been paid, all equipment necessary for the operation of the Project has been purchased, installed and paid for, is suitable and sufficient for its intended purposes, and is fully operable, all costs and expenses incurred in connection with the Project have been paid except for amounts not yet due and payable or being diligently contested in good faith by the Borrower, and the Project is suitable and sufficient for its intended purposes. The Completion Certificate shall include a table of sources and uses showing the final allocation for all sources of funding for the Project, a confirmation of compliance with the tax covenants contained in the Tax Certificate and in any other documents delivered in connection with the issuance of the Bonds. Notwithstanding the foregoing, the Completion Certificate shall further state that it is given without prejudice to any rights of the Borrower against third parties that exist at the date of the Completion Certificate or that may subsequently come into being. The Completion Certificate shall be furnished by the Borrower to the Issuer and the Trustee promptly following the completion of the Project.

(b) Notwithstanding anything contained in the Documents to the contrary, the Borrower shall not be able to prepay the Loan and optionally redeem the Bonds unless and until the Project has been completed in accordance with the requirements of this Article III, except in the event of a material casualty to the Project.

Section 3.06. Borrower Required to Pay in Event Project Fund Insufficient. In the event the moneys in the Project Fund available for payment of the Costs of the Project are not sufficient to pay the Costs of the Project in full, the Borrower agrees to complete the Project and to pay that portion of the Costs of the Project in excess of the moneys available therefor in the Project Fund. The Issuer does not make any warranty, either express or implied, that the moneys paid into the Project Fund and available for payment of the Costs of the Project will be sufficient to pay all of the Costs of the Project. The Borrower agrees that, if after exhaustion of the moneys in the Project Fund, the Borrower should pay any portion of the Costs of the Project pursuant to the provisions of this Section 3.06, the Borrower shall not be entitled to any reimbursement therefor from the Issuer, the Trustee or the Holders of any of the Bonds, nor shall the Borrower be entitled to any diminution of the amounts payable under this Agreement. Notwithstanding the foregoing, the terms, conditions and covenants of this Section 3.06 do not in any way affect the ability of the Issuer to pursue its rights and remedies under the Documents.

Section 3.07. Remarketing of Bonds. The Borrower is hereby granted the right to request a remarketing of the Bonds in the manner and to the extent set forth in Section 3.07 of the Indenture and, in consultation with the Remarketing Agent, designate the length of the remarketing period and the related Mandatory Tender Date in the manner and to the extent set forth in Sections 3.05 and 3.07 of the Indenture.

ARTICLE IV

LOAN PROVISIONS

Section 4.01. Loan of Proceeds. The Issuer agrees, upon the terms and conditions contained in this Agreement and the Indenture, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds. Such proceeds shall be disbursed to or on behalf of the Borrower as provided in Section 3.03 hereof.

Section 4.02. Amounts Payable.

(a) On or prior to the Closing Date, the Borrower shall have delivered or caused to be delivered the Capitalized Interest Deposit to the Trustee for deposit to the Project Fund.

(b) The Borrower hereby covenants and agrees to repay the Loan on or before any date that any payment of interest or principal is required to be made in respect of the Bonds pursuant to the Indenture, until the principal of and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, in immediately available funds, a sum which, together with any other moneys available for such payment in the Capitalized Interest Account of the Bond Fund and the Collateral Fund, will enable the Trustee to pay the amount payable on such date as principal of (whether at maturity or acceleration or otherwise) and interest on the Bonds as provided in the Indenture. Deposits into the Bond Fund for payments by the Trustee of principal and interest on the Bonds from amounts in the Capitalized Interest Account of the Bond Fund or the Collateral Fund shall be credited against the Borrower's obligation to pay principal and interest on the Loan.

(c) It is understood and agreed that all payments of principal and interest payable by the Borrower under subsection (b) of this Section 4.02 are assigned by the Issuer in accordance with the terms of the Indenture to the Trustee for the benefit of the Holders of the Bonds (excluding amounts on deposit in the Rebate Fund and the Expense Fund). The Borrower consents to such assignment.

(d) In the event the Borrower should fail to make any of the payments required in this Section 4.02, the item or installment so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same with interest thereon, to the extent permitted by law, from the date when such payment was due, at the rate of interest borne by the Bonds.

Section 4.03. Fees and Expenses. The Borrower agrees to pay, when due, the Issuer's Administrative Fee, the Trustee's Fee and the Rebate Analyst Fee and any and all other costs, fees or expenses at any time incurred by the Issuer, the Trustee, the Dissemination Agent or the Rebate Analyst (including the fees and expenses of their counsel actually incurred) in connection with the issuance, sale and delivery of the Bonds and the performance of their duties in connection with the transactions contemplated hereby, including, without limitation, all costs of recording and filing. Specifically, and without limiting the foregoing, the Borrower agrees to pay to and indemnify any Issuer Indemnified Party (as defined below), the Trustee or any payee designated by the Issuer, within thirty (30) days after receipt of request for payment thereof, all fees or expenses of the

Issuer and the Trustee actually incurred and related to the Project and the financing thereof that are not paid from the funds held under the Indenture, including, without limitation, legal fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of any documents relating to the Project or the Bonds or in connection with questions or other matters arising under such documents.

The obligations of the Borrower under this Section 4.03 shall survive the termination of this Agreement and the payment and performance of all of the other obligations of the Borrower hereunder and under the other Borrower Documents.

Section 4.04. Obligations of the Borrower Unconditional. The obligations of the Borrower to make the payments required under this Agreement, and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, irrespective of any defense or any right of notice, setoff, recoupment or counterclaim it might otherwise have against the Issuer, the Trustee or any other Person. Subject to termination as provided herein, the Borrower (i) will not suspend or discontinue, or permit the suspension or discontinuance of, any payments provided for under this Agreement, (ii) will perform and observe all of its other agreements contained in this Agreement and the other Documents and (iii) will not terminate this Agreement for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project, commercial frustration of purpose, or change in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the State or any political subdivision of either, any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Agreement, whether express or implied, or any failure of the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Indenture, whether express or implied.

Section 4.05. Lender Loan to the Borrower. To provide and secure funds for the completion of the Project, and to provide for the delivery of Lender Collateral Deposits, the Borrower shall concurrently with the execution and delivery hereof, obtain the Lender Loan from the Lender and enter into the Lender Mortgage. The Borrower will promptly take all necessary actions on its part to close the Lender Loan and to satisfy all other terms and conditions of the Lender Loan and the requirements of the Lender.

Pursuant to the terms of the Funding Agreement, the Borrower shall cause the Lender to advance funds in an aggregate amount not to exceed \$[PAR AMOUNT] comprising one or more Lender Collateral Deposits to the Trustee for deposit into the Collateral Fund subject to Section 6.02 of the Indenture.

Section 4.06. Optional Prepayment. The Loan is subject to optional prepayment by the Borrower according to the same terms and conditions as an optional redemption of Bonds set forth in Section 3.01 of the Indenture.

ARTICLE V

SPECIAL COVENANTS

Section 5.01. No Warranty of Condition or Suitability by the Issuer. The Borrower recognizes, acknowledges and agrees that the Issuer makes no warranty or representation, express or implied or otherwise, with respect to the development or the location, use, description, design, merchantability, condition, workmanship, or fitness, suitability or use for any particular purpose, condition or durability thereof. The Borrower further recognizes that the Issuer makes no representations or warranties of any kind as to the Borrower's title to the Project or ownership thereof or otherwise, it being agreed that all risks incident thereto are to be borne by the Borrower. In the event of any defect or deficiency of any nature in the Project or any fixture or other item constituting a portion thereof, whether patent or latent, the Issuer shall have no responsibility or liability with respect thereto. These provisions have been negotiated and are intended to be a complete exclusion and negation of any warranties or representations by the Issuer, express or implied, with respect to the Project or any fixture or other item constituting a portion thereof, whether arising pursuant to the Uniform Commercial Code of the State of Hawaii or another law now or hereafter in effect or otherwise.

Section 5.02. Access to the Project. The Borrower agrees that the Issuer, the Trustee and their duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right to inspect the Project and the rehabilitation thereof at all reasonable times upon reasonable notice, subject to the rights of tenants. The Issuer, the Trustee and their duly authorized agents shall also be permitted, at all reasonable times and upon reasonable notice, to examine the books, accounts, contracts, documents, and other papers of the Borrower with respect to the Project which shall all be maintained by the Borrower in reasonable condition and for audit.

Section 5.03. Further Assurances and Corrective Instruments. The Borrower agrees that it will, and will request the Issuer to, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

Section 5.04. Issuer and Borrower Representatives. Whenever under the provisions of this Agreement the approval of the Issuer or the Borrower is required or the Issuer or the Borrower is required to take some action at the request of the other, such approval or such request shall be given in writing both for the Issuer by an authorized representative of the Issuer and for the Borrower by a Borrower Representative. The Trustee shall be authorized to act on any such approval or request pursuant to the Indenture.

Section 5.05. Financing Statements. The Borrower shall file, or shall cause to be filed, and shall deliver copies to the Trustee of, any and all financing statements, or any amendments thereof or continuation statements thereto, to perfect the security interests granted in the Indenture, in the manner prescribed in the Indenture. The Borrower shall pay all costs of filing such instruments and any fees and expenses (including reasonable attorneys' fees) associated therewith.

Section 5.06. Allocation and Use of Proceeds to Eligible Costs. Notwithstanding anything to the contrary set forth in any of the documents evidencing or securing the Bonds, all of

the Bond proceeds shall, for federal income tax purposes, be (1) allocated on a pro rata basis to each building in the Project and the land on which it is located, and (2) used exclusively to pay costs of acquisition, rehabilitation and equipping of the Project which are includable in the aggregate basis of any building and the land on which the building is located (“Eligible Costs”) in a manner such that each building satisfies the requirement of Section 42(h)(4)(B) of the Code. Accordingly, none of the proceeds of the Bonds will be deemed to have been used to pay any of the Costs of Issuance for the Bonds or to fund any reserve account other than the Project Fund or an account to be used to pay Eligible Costs.

Section 5.07. Restriction on Plans and Specifications. The Borrower will not cause, permit or suffer to exist any material deviations from the Plans and Specifications and will not approve or consent to any construction change directive without the prior approval of the Lender, to the extent Lender’s approval for such change is required under the Lender Loan Documents. Such approval shall not be unreasonably withheld, conditioned or delayed.

Section 5.08. Requisitions. (a) Beginning on the Closing Date, the Borrower may complete, execute and deliver to the Trustee a Requisition for disbursement of amounts on deposit in the Project Fund to the Borrower to pay Costs of the Project. Each Requisition shall be signed on behalf of the Borrower and shall be in the form set forth on Exhibit B to the Indenture. Each Requisition for amounts on deposit in the Project Fund shall state: (1) the number of the Requisition, (2) the amount to be disbursed and the sources of such disbursement, (3) that each obligation described therein is a Cost of the Project, has been properly incurred and has not been the basis for any previous disbursement and (4) that the expenditure of such disbursement when added to all previous disbursements will result in (i) no more than 5% of the Net Proceeds of the Bonds will have been used for costs that are not Qualified Project Costs; (ii) less than 25% of the Net Proceeds of the Bonds will have been used for the cost of acquiring land; and (iii) not more than 2% of the Net Proceeds of the Bonds will have been used for Costs of Issuance. The Borrower shall submit the Requisitions to the Trustee for payment. Approved Requisitions may be submitted to the Trustee by e-mail or fax.

(b) The amounts deposited into the Project Fund may be disbursed by the Trustee only in accordance with Section 6.02 of the Indenture, including delivery of a written Requisition of the Borrower satisfying the requirements of this Section 5.08 and Section 6.02 of the Indenture.

(c) On the Closing Date, the Borrower shall complete, execute and deliver to the Trustee a Requisition for disbursement of amounts on deposit in the Cost of Issuance Fund to pay Costs of Issuance. Each Requisition shall be signed on behalf of the Borrower, and shall be in the form set forth on Exhibit C to the Indenture.

Section 5.09. Covenant with Bondholders. The Issuer and the Borrower agree that this Agreement is executed and delivered in part to induce the purchase by others of the Bonds and, accordingly, all covenants and agreements of the Issuer and the Borrower contained in this Agreement are hereby declared to be for the benefit of the Trustee and the Holders of the Bonds from time to time. Notwithstanding the foregoing, the Bondholder’s rights to enforce this provision of this Agreement are governed by the terms of the Indenture.

Section 5.10. Covenant to Provide Ongoing Disclosure. The Borrower shall enter into a written undertaking for the benefit of the Holders to provide for the continuing disclosure of information about the Bonds, the Borrower and other matters as may be required to cause compliance with Rule 15c2 12 of the Securities and Exchange Commission (the “Rule”). Failure of the Borrower to comply with the Rule shall not be a default under the Indenture, this Agreement or any of the other Bond Documents; provided, however, the Borrower acknowledges that the Issuer, the Trustee or any Bondholder shall be entitled to bring an action for specific performance to cause the Borrower to comply with the covenant set forth in this Section 5.10.

Section 5.11. Borrower Receipt of Insurance or Condemnation Proceeds. In the event the Borrower receives any proceeds of insurance or any condemnation awards with respect to the Project from a party other than the Trustee, the Borrower shall promptly upon receipt remit all such insurance proceeds or condemnation awards to the Lender for deposit and application in accordance with applicable Lender Loan Documents.

Section 5.12. Reporting Requirements of the Borrower. The Borrower will furnish to the Issuer and agencies of the State such periodic reports or statements as are required under the Act, if any, or as such agencies may otherwise reasonably require of the Issuer or the Borrower throughout the term of this Agreement.

Section 5.13. Indenture. The provisions of the Indenture concerning the Bonds and other matters therein are an integral part of the terms and conditions of the Loan, and this Agreement shall constitute conclusive evidence of approval of the Indenture by the Borrower to the extent it relates to the Borrower. Additionally, the Borrower agrees that, whenever the Indenture by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Indenture, and the Borrower agrees to carry out and perform all of its obligations under the Indenture as fully as if the Borrower were a party to the Indenture.

Section 5.14. Financial Information. The Borrower agrees that it will have the books and records of the Borrower audited annually by an independent certified public accountant as soon as practicable after the close of each fiscal year of the Borrower, and will furnish within 120 days after the end of each fiscal year to the Issuer and the Trustee commencing in the fiscal year in which the Completion Certificate is delivered a copy of the audit report certified by such accountant and prepared in accordance with generally accepted accounting principles, which report shall include calculations of the availability of funds for distributions and disclose the amount of distributions to partners of the Borrower for the preceding year. The Borrower and the Issuer acknowledge that the Trustee shall have no obligations under this Section 5.14 other than to receive such statements and, if requested, to furnish such statements to Bondholders. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Borrower's or Issuer's compliance with any of its covenants hereunder. The Trustee shall have no duty to review or make independent investigation with respect to any of the foregoing received by the Trustee, and shall hold the same solely as repository

Section 5.15. Tax Credit Requirement. The Issuer, the Trustee and the Borrower each acknowledge that the Borrower intends to cause the Project to satisfy the requirements necessary for low income housing tax credit (“Tax Credit”) pursuant to Section 42 of the Code. In the event that any of the restrictions described in this Agreement conflict with any Tax Credit requirements imposed by Section 42 of the Code, the Issuer, the Trustee and the Borrower each agree that the more restrictive requirements shall control. The provisions of this Section 5.15 are for the benefit of the Borrower and neither the Trustee nor the Issuer shall have any obligation to enforce this Section 5.15 nor shall they incur any liability to any Person, including without limitation, the Borrower and any other affiliate of the Borrower or the Holders of the Bonds for any failure to meet the requirements of this Section 5.15; and provided further, failure to comply with this Section 5.15 shall not constitute a default or Event of Default under this Agreement.

Section 5.16. Brokers and Financial Advisors. The Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with this Loan, other than those disclosed to the Issuer and the Lender and whose fees shall be paid by the Borrower pursuant to a separate agreement. The Borrower and the Lender shall indemnify and hold the other harmless from and against any and all claims, liabilities, costs and expenses of any kind in a way relating to or arising from a claim by any Person that such Person acted on behalf of the indemnifying party in connection with the transactions contemplated herein. The provisions of this Section 5.16 shall survive the expiration and termination of this Agreement and the repayment of the Borrower Obligations.

Section 5.17. Trial by Jury. The Borrower hereby agrees not to elect a trial by jury of any issue triable of right by a jury, and waives any right to trial by jury fully to the extent that any such right shall hereafter exist with regard to the Documents, or any claim, counterclaim or other action arising in connection therewith. This waiver of right to trial by jury is given knowingly and voluntarily by the Borrower, and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. The Trustee is hereby authorized to file a copy of this paragraph in any proceeding as conclusive evidence of this waiver by the Borrower. This Section 5.17 in no way affects the right of the Issuer to elect a trial by jury.

Section 5.18. Issuer, Trustee and Lender Not in Control; No Partnership. None of the covenants or other provisions contain in this Agreement shall, or shall be deemed to, give the Issuer, the Trustee or the Lender the right or power to exercise control over the affairs or management of the Borrower, the power of the Issuer, the Trustee and the Lender being limited to the rights to exercise the remedies referred to in the Documents. The relationship between the Borrower and the Issuer, the Trustee, the Lender and the Bondholders is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Documents is intended, nor shall be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between the Borrower and the Issuer, the Trustee, the Lender or any Bondholder or to create an equity interest in the Project in the Issuer, the Trustee, the Lender or any Bondholder. Neither the Issuer, the Trustee, the Lender nor any Bondholder undertakes or assumes any responsibility or duty to the Borrower or to any other Person with respect to the Project, except as expressly provided in the Documents; and notwithstanding any other provision of the Documents: (1) the Issuer, the Trustee and the Bondholders are not, and shall not be construed as, a partner, joint venture, alter ego, manager, controlling person or other business associate or participant of any kind of the Borrower or its stockholders, members or partners and

the Issuer, the Trustee and the Bondholders do not intend to ever assume such status; (2) the Issuer, the Trustee and the Bondholders shall in no event be liable for any of the Borrower Obligations, expenses or losses incurred or sustained by the Borrower; and (3) the Issuer, the Trustee and the Bondholders shall not be deemed responsible for or a participant in any acts, omissions or decision to the Borrower or its stockholders, members or partners. The Issuer, the Trustee the Bondholders and the Borrower disclaim any intention to create a partnership, joint venture, agency or common interest in profits or income between the Issuer, the Trustee, the Bondholders and the Borrower or to create an equity an equity interest in the Project of the Issuer, the Trustee or the Bondholders, or any sharing of liabilities, losses, costs or expenses.

Section 5.19. Regulatory Agreement. In order to maintain the excludability of interest on the Bonds from gross income for federal income tax purposes and to assure compliance with the Act and other laws of the State, and certain additional requirements of the Issuer, the Borrower has, concurrently with or before the execution and delivery of the Bonds, executed and delivered and will cause to be recorded in the Bureau of Conveyances of the State of Hawaii, the Regulatory Agreement. The Borrower covenants to observe and perform its obligations under the Regulatory Agreement and will cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement, including all applicable requirements of the Act and the Code, and pursuant to leases which comply with all applicable laws and the Regulatory Agreement. The Project, when rehabilitated, will meet the requirements of this Agreement and the Regulatory Agreement and any applicable requirements of the Act and the Code.

The Borrower covenants to file, or cause to be filed, of record the Regulatory Agreement and such other documents and take such other steps as are necessary in order to assure that the restrictions contained in the Regulatory Agreement will, subject to the terms of the Regulatory Agreement, be binding upon all owners of the Project.

Section 5.20. Tax Matters.

(a) Representations and Covenants. The Borrower represents, warrants and covenants as follows:

(i) The Borrower will not take any action, or fail to take any action or permit any action to be taken, if any such action or inaction would adversely affect the Federal Tax Status of the Bonds. Without limiting the generality of the foregoing, the Borrower covenants that it will comply with the instructions and requirements of the Tax Certificate, which is incorporated herein as if set forth fully herein.

(ii) The Borrower will, on a timely basis, provide the Issuer with all necessary information and, with respect to the Borrower's rebate requirement or yield reduction payments (both as may be required under the Tax Certificate) required to be paid, all necessary funds, in addition to any funds that are then available for such purpose in the Rebate Fund, to enable the Issuer to comply with all arbitrage and rebate requirements of the Code. To that end, the Borrower covenants and agrees to make such payments to the Trustee as are required of it under the Tax Certificate. The obligation of the Borrower to

make such payments shall remain in effect and be binding upon the Borrower notwithstanding the release and discharge of the Indenture and this Agreement.

(iii) Neither the Borrower nor any “related party,” within the meaning of Section 1.150 1(b) of the Regulations, to the Borrower shall be permitted to purchase any Bonds in an amount related to the Loan.

(b) Continuing Compliance. The requirements stated in this Section 5.20 will survive the defeasance and discharge of the Bonds for as long as such matters are relevant to the Federal Tax Status of the Bonds.

ARTICLE VI

RESTRICTION ON TRANSFER; ASSIGNMENT, SELLING, LEASING; INDEMNIFICATION

Section 6.01. Restriction on Transfer. (a) In the event the Borrower intends to sell, lease (except to the tenants who will occupy units in the Project), sublease or otherwise materially encumber the whole of or any part of the Project or sell, assign or otherwise, except as otherwise provided herein, transfer any interest in the Borrower (a “transfer”), it shall (i) apply to the Issuer for consent to transfer, provided that consent of the Issuer shall not be unreasonably withheld, conditioned or delayed with respect to any transfer which is subject to the approval of the Issuer pursuant to this Section 6.01 and (ii) comply with the provisions of the Regulatory Agreement restricting any such transfer.

(b) In addition, in connection with a proposed transfer, the Borrower and any transferee shall comply with all applicable provisions of the laws and regulations of the State in effect at that time regarding notice to tenants, and tenants’ rights generally, including, specifically, the right of first refusal, or any successor legislation thereto. The transferee shall expressly assume the Borrower’s duties and obligations under this Agreement and any other Documents to which the Borrower is a party in writing simultaneously with any approved transfer as set forth in this Section 6.01. The Borrower shall make available to the Trustee and the Issuer copies of any documents reflecting an amendment to interests in the Borrower or other organizational documents relating to the sale or other transfer of assets of the Borrower.

(c) Except as otherwise provided for herein, the Borrower will not, directly or indirectly, by operation of law or otherwise, sell, assign, grant a deed of trust, pledge, hypothecate, transfer or otherwise dispose of the Project or any interest in the Project, and will not encumber, alienate, hypothecate, grant a security interest in or grant any other ownership or control interest whatsoever in the Project, in the leases or in the rents, issues and profits therefrom.

(d) Except as otherwise provided for herein, no interest in the Borrower and no ownership interest in the General Partner may be sold, conveyed, transferred, assigned, pledged or otherwise transferred, in whole or in part, directly or indirectly, by operation of law or otherwise.

(e) Notwithstanding anything to the contrary contained in the subsections above or otherwise in the Borrower Documents, each of the following transactions are hereby deemed to be expressly permitted hereunder and shall not require any further consent of the Issuer:

- (i) Any transfers permitted or consented to under the Lender Loan Documents.
- (ii) The transfer by the Investor Limited Partner of all or any portion of its interest in the Borrower to (A) any other entity which is an affiliate of the Investor Limited Partner or its members, (B) any other entity which is controlled by, or under common control with, PNC Bank, National Association (the “Investor Sponsor”), (C) an entity that is sponsored by the Investor Sponsor, or (D) after all required capital has been contributed by the Investor Limited Partner to the Borrower, any other third party; and
- (iii) The pledge and encumbrance of the interests in the Borrower of the Investor Limited Partner to or for the benefit of any financial institution which enables the Investor Limited Partner to make its capital contributions to the Borrower and any subsequent realization by any such lender upon the interests of the Investor Limited Partner in the Borrower.
- (iv) The removal and replacement of the General Partner pursuant to the terms of the Partnership Agreement.
- (v) An amendment to the Partnership Agreement memorializing the transfers or removal described in this subsection (e).
- (f) The Borrower will not become a party to any merger or consolidation, or agree to effect any asset acquisition or stock acquisition.
- (g) The Borrower will not convert the ownership of the Project into cooperative housing corporation form of ownership other than a limited equity cooperative that is a qualified cooperative housing corporation as defined in Section 143(k)(9) of the Code.
- (h) The Borrower will not seek the dissolution or winding up, in whole or in part, of the Borrower or voluntarily file, or consent to the filing of, a petition for bankruptcy, reorganization, or assignment for the benefit of creditors or similar proceedings.
- (i) [Reserved]
- (j) The Borrower will not take any action that would adversely affect the Federal Tax Status of the Bonds nor omit or fail to take any action required to maintain the Federal Tax Status of the Bonds.
- (k) This Agreement may not be sold, transferred or otherwise disposed of by the Borrower without the prior written consent of the Issuer (which consent shall be within the reasonable discretion of the Issuer), subject to each of the following conditions:
 - (i) No such assignment will relieve the Borrower from primary liability for any of its obligations hereunder (unless the Issuer agrees in writing to release the Borrower) and in the event of any such assignment, the Borrower will continue to remain primarily liable for payment of its obligations hereunder and for performance and observance of the other covenants and agreements on its part herein provided.

(ii) No such assignment will, in the opinion of Bond Counsel (all such expenses related to such opinion shall be paid by the Borrower), adversely affect the Federal Tax Status of the Bonds.

(iii) The assignee will assume in writing the obligations of the Borrower hereunder and under the Regulatory Agreement to the extent of the interest assigned in a form acceptable to the Issuer (the “Assumption Agreement”).

(iv) Prior to any such assignment, the Borrower will furnish or cause to be furnished to the Issuer and the Trustee an executed original of the Assumption Agreement.

Section 6.02. Indemnification by Borrower. THE BORROWER (THE “INDEMNITOR”) HEREBY AGREES TO RELEASE THE ISSUER AND EACH OF THEIR RESPECTIVE OFFICERS, AGENTS, OFFICIALS, EMPLOYEES, FINANCIAL ADVISORS, MEMBERS OF ITS GOVERNING BODY AND ANY PERSON WHO CONTROLS THE ISSUER WITHIN THE MEANING OF THE SECURITIES ACT OF 1933 (THE “ISSUER INDEMNIFIED PARTIES”) AND THE TRUSTEE AND ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES (THE “TRUSTEE INDEMNIFIED PARTIES” AND, TOGETHER WITH THE ISSUER INDEMNIFIED PARTIES, THE “INDEMNIFIED PARTIES”) FROM, AND COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND ISSUER INDEMNIFIED PARTIES AND THE TRUSTEE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, EXPENSES (INCLUDING ATTORNEYS’ FEES AND EXPENSES, LITIGATION AND COURT COSTS, COSTS INCURRED IN CONNECTION WITH ANY AUDIT BY THE INTERNAL REVENUE SERVICE, AMOUNTS PAID IN SETTLEMENT BY OR WITH THE APPROVAL OF THE BORROWER AND AMOUNTS PAID TO DISCHARGE JUDGMENTS), TAXES, CAUSES OF ACTION, SUITS, DEMANDS AND JUDGMENTS OF ANY NATURE, JOINT OR SEVERAL, BY OR ON BEHALF OF ANY PERSON ARISING OUT OF OR IN CONNECTION WITH:

(a) THE APPROVAL OF FINANCING FOR THE PROJECT, OR THE MAKING OF THE LOAN;

(b) THE ISSUANCE AND SALE OR RESALE OF ANY BONDS OR ANY CERTIFICATIONS OR REPRESENTATIONS MADE BY ANY PERSON OTHER THAN THE PARTY SEEKING INDEMNIFICATION IN CONNECTION THEREWITH, INCLUDING, BUT NOT LIMITED TO, ANY (I) STATEMENT OR INFORMATION MADE BY THE BORROWER WITH RESPECT TO THE BORROWER OR THE PROJECT IN ANY OFFERING DOCUMENT OR MATERIALS REGARDING THE BONDS, THE PROJECT OR THE BORROWER OR IN THE TAX CERTIFICATE OR IN ANY OTHER CERTIFICATE EXECUTED BY THE BORROWER WHICH, AT THE TIME MADE, IS MISLEADING, UNTRUE OR INCORRECT IN ANY MATERIAL RESPECT; (II) UNTRUE STATEMENT OR ALLEGED UNTRUE STATEMENT OF A MATERIAL FACT RELATING TO THE BORROWER OR THE PROJECT, WHICH IS MADE AS APPROVED BY THE BORROWER AND IS CONTAINED IN ANY OFFERING MATERIAL RELATING TO THE SALE OF THE BONDS, AS FROM TIME TO TIME AMENDED OR SUPPLEMENTED, OR ARISING OUT OF OR BASED UPON THE OMISSION OR ALLEGED OMISSION TO STATE IN SUCH

OFFERING MATERIAL A MATERIAL FACT RELATING TO THE BORROWER OR THE PROJECT REQUIRED TO BE STATED IN SUCH OFFERING MATERIAL OR NECESSARY IN ORDER TO MAKE THE STATEMENTS IN SUCH OFFERING MATERIAL NOT MISLEADING; OR (III) FAILURE TO PROPERLY REGISTER OR OTHERWISE QUALIFY THE SALE OF BONDS OR FAILURE TO COMPLY WITH ANY LICENSING OR OTHER LAW OR REGULATION WHICH WOULD AFFECT THE MANNER IN WHICH OR TO WHOM THE BONDS COULD BE SOLD;

(c) THE INTERPRETATION, PERFORMANCE BY THE BORROWER, ENFORCEMENT, BREACH, DEFAULT OR AMENDMENT OF THE BOND DOCUMENTS, THE LOAN DOCUMENTS OR ANY OTHER DOCUMENTS RELATING TO THE PROJECT OR THE BONDS OR IN CONNECTION WITH ANY FEDERAL OR STATE TAX AUDIT, OR ANY QUESTIONS OR OTHER MATTERS ARISING UNDER SUCH DOCUMENTS;

(d) THE BORROWER'S FAILURE TO COMPLY WITH ANY REQUIREMENT OF THIS AGREEMENT, THE TAX CERTIFICATE OR THE REGULATORY AGREEMENT;

(e) THE CONDITION OF THE PROJECT (ENVIRONMENTAL OR OTHERWISE), INCLUDING ANY VIOLATION OF ANY LAW, ORDINANCE, COURT ORDER OR REGULATION AFFECTING THE PROJECT OR ANY PART OF IT;

(f) ANY DAMAGE OR INJURY, ACTUAL OR CLAIMED, OF WHATSOEVER KIND, CAUSE OR CHARACTER TO THE PROJECT (INCLUDING LOSS OF USE OF THE PROJECT) OR PERSONS, OCCURRING OR ALLEGEDLY OCCURRING IN, ON OR ABOUT THE PROJECT OR ARISING OUT OF ANY ACTION OR INACTION OF THE BORROWER OR ANY OF ITS AGENTS, SERVANTS, EMPLOYEES OR LICENSEES, WHETHER OR NOT RELATED TO THE PROJECT, OR RESULTING FROM THE ACQUISITION, REHABILITATION, DESIGN, REPAIR, OPERATION, USE OR MANAGEMENT OF ALL OR ANY PART OF THE PROJECT;

(g) ANY AND ALL CLAIMS ARISING IN CONNECTION WITH THE OPERATION OF THE PROJECT, OR THE CONDITIONS, ENVIRONMENTAL OR OTHERWISE, OCCUPANCY, USE, POSSESSION, CONDUCT OR SUPERVISION OF WORK DONE IN OR ABOUT, OR FROM THE PLANNING, DESIGN, REHABILITATION, REPAIR OR EQUIPPING OF, THE PROJECT OR ANY PART OF IT, INCLUDING, BUT NOT LIMITED TO, THE AMERICANS WITH DISABILITIES ACT;

(h) WITH RESPECT TO THE TRUSTEE INDEMNIFIED PARTIES, THE ACCEPTANCE OR ADMINISTRATION OF THE TRUST OR TRUSTS HEREUNDER, INCLUDING THE COSTS AND EXPENSES OF ENFORCING THE PROVISIONS OF THE INDENTURE AND THIS AGREEMENT (INCLUDING THIS SECTION) AGAINST THE ISSUER, THE BORROWER OR ANY OTHER PERSON AND DEFENDING ITSELF AGAINST ANY CLAIM (WHETHER ASSERTED BY THE ISSUER, THE BORROWER, OR ANY HOLDER OR ANY OTHER PERSON) OR LIABILITY IN CONNECTION WITH THE EXERCISE OR PERFORMANCE OF ANY OF ITS POWERS OR DUTIES HEREUNDER; AND

(i) TO THE EXTENT NOT MENTIONED IN ANY OF THE PRECEDING SUBSECTIONS OF THIS SECTION 6.02, ANY CAUSE WHATSOEVER CAUSED BY THE BORROWER OR ITS AFFILIATES IN CONNECTION WITH TRANSACTIONS PROVIDED FOR IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS OR OTHERWISE IN CONNECTION WITH THE PROJECT, THE BONDS OR THE EXECUTION OR AMENDMENT OF ANY DOCUMENT RELATING TO THE BONDS OR THE PROJECT OR THE ACCEPTANCE OR ADMINISTRATION OF THE TRUSTS UNDER THE INDENTURE.

THIS INDEMNIFICATION SHALL EXTEND TO AND INCLUDE, WITHOUT LIMITATION, ALL COSTS, COUNSEL FEES, EXPENSES AND LIABILITIES INCURRED IN CONNECTION WITH ANY SUCH CLAIM, OR PROCEEDING BROUGHT WITH RESPECT TO SUCH CLAIM.

IF ANY CLAIM SHALL BE MADE OR ANY ACTION SHALL BE BROUGHT AGAINST THE ISSUER INDEMNIFIED PARTIES OR THE TRUSTEE INDEMNIFIED PARTIES IN RESPECT OF WHICH INDEMNITY CAN BE SOUGHT AGAINST THE BORROWER PURSUANT TO THIS SECTION 6.02 OR OTHERWISE, THE ISSUER INDEMNIFIED PARTIES OR THE TRUSTEE INDEMNIFIED PARTIES SHALL PROMPTLY NOTIFY THE BORROWER IN WRITING, AND THE BORROWER SHALL PROMPTLY ASSUME THE DEFENSE OF SUCH CLAIM OR ACTION, INCLUDING THE EMPLOYMENT OF COUNSEL CHOSEN BY THE BORROWER AND APPROVED BY THE ISSUER OR THE TRUSTEE, THE PAYMENT OF ALL FEES OR EXPENSES AND THE RIGHT TO NEGOTIATE A SETTLEMENT WITH THE CONSENT AND APPROVAL OF THE ISSUER OR THE TRUSTEE; IF THE BORROWER SHALL HAVE FAILED TO ASSUME THE DEFENSE OF SUCH ACTION OR TO RETAIN COUNSEL REASONABLY SATISFACTORY TO THE ISSUER OR THE TRUSTEE WITHIN A REASONABLE TIME AFTER NOTICE OF THE COMMENCEMENT OF SUCH ACTION, THE BORROWER SHALL PAY THE FEES AND EXPENSES OF COUNSEL RETAINED BY THE ISSUER INDEMNIFIED PARTIES OR THE TRUSTEE INDEMNIFIED PARTIES. IF THE ISSUER INDEMNIFIED PARTIES OR THE TRUSTEE INDEMNIFIED PARTIES ARE ADVISED IN A WRITTEN OPINION OF COUNSEL THAT THERE MAY BE LEGAL DEFENSES AVAILABLE TO THE ISSUER INDEMNIFIED PARTIES OR THE TRUSTEE INDEMNIFIED PARTIES WHICH ARE ADVERSE TO OR IN CONFLICT WITH THOSE AVAILABLE TO THE BORROWER OR THAT THE DEFENSE OF THE ISSUER INDEMNIFIED PARTIES OR THE TRUSTEE INDEMNIFIED PARTIES SHOULD BE HANDLED BY SEPARATE COUNSEL, THE BORROWER SHALL NOT HAVE THE RIGHT TO ASSUME THE DEFENSE OF THE ISSUER INDEMNIFIED PARTIES OR THE TRUSTEE INDEMNIFIED PARTIES, BUT SHALL BE RESPONSIBLE FOR THE FEES AND EXPENSES OF COUNSEL RETAINED BY THE ISSUER INDEMNIFIED PARTIES OR THE TRUSTEE INDEMNIFIED PARTIES IN ASSUMING ITS OWN DEFENSE. NOTWITHSTANDING THE FOREGOING, THE ISSUER INDEMNIFIED PARTIES OR THE TRUSTEE INDEMNIFIED PARTIES SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL WITH RESPECT TO ANY SUCH CLAIM OR IN ANY SUCH ACTION AND TO PARTICIPATE IN THE DEFENSE THEREOF, BUT THE ISSUER INDEMNIFIED PARTIES OR THE TRUSTEE INDEMNIFIED PARTIES SHALL PAY THE FEES AND EXPENSES OF SUCH COUNSEL UNLESS THE EMPLOYMENT OF SUCH COUNSEL HAS BEEN SPECIFICALLY AUTHORIZED BY THE BORROWER OR UNLESS THE PROVISIONS OF

THE IMMEDIATELY PRECEDING SENTENCE ARE APPLICABLE. THE BORROWER SHALL NOT BE LIABLE FOR ANY SETTLEMENT OF ANY SUCH ACTION EFFECTED WITHOUT THE CONSENT OF THE BORROWER, BUT IF SUCH CLAIM OR ACTION IS SETTLED WITH THE CONSENT OF THE BORROWER, OR IF THERE IS A FINAL JUDGMENT FOR THE PLAINTIFF IN ANY SUCH ACTION WITH OR WITHOUT CONSENT, THE BORROWER AGREES TO INDEMNIFY AND HOLD HARMLESS THE ISSUER INDEMNIFIED PARTIES AND THE TRUSTEE INDEMNIFIED PARTIES FROM AND AGAINST ANY LOSS, LIABILITY, FEE OR EXPENSE BY REASON OF SUCH SETTLEMENT OR JUDGMENT.

THE BORROWER SHALL ALSO INDEMNIFY THE ISSUER INDEMNIFIED PARTIES AND THE TRUSTEE INDEMNIFIED PARTIES FOR ALL REASONABLE COSTS AND EXPENSES, INCLUDING COUNSEL FEES OR EXPENSES, INCURRED IN: (I) ENFORCING ANY OBLIGATION OF THE BORROWER UNDER THIS AGREEMENT OR ANY RELATED AGREEMENT, (II) TAKING ANY ACTION REQUESTED BY THE BORROWER, (III) TAKING ANY ACTION REQUIRED BY THIS AGREEMENT OR ANY RELATED AGREEMENT, OR (IV) TAKING ANY ACTION CONSIDERED NECESSARY BY THE ISSUER INDEMNIFIED PARTIES OR THE TRUSTEE INDEMNIFIED PARTIES AND WHICH IS AUTHORIZED BY THIS AGREEMENT OR ANY RELATED AGREEMENT. IF AN ISSUER INDEMNIFIED PARTY OR A TRUSTEE INDEMNIFIED PARTY TAKES ANY ACTION UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT EXECUTED IN CONNECTION HERewith FOR THE BENEFIT OF THE BORROWER, IT WILL DO SO IF AND ONLY IF (A) THE ISSUER INDEMNIFIED PARTIES OR THE TRUSTEE INDEMNIFIED PARTIES ARE A NECESSARY PARTY TO ANY SUCH ACTION OR PROCEEDING, AND (B) THE ISSUER INDEMNIFIED PARTIES OR THE TRUSTEE INDEMNIFIED PARTIES HAVE RECEIVED SPECIFIC WRITTEN DIRECTION FROM THE BORROWER, AS REQUIRED UNDER THIS AGREEMENT OR UNDER ANY OTHER INSTRUMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT, AS TO THE ACTION TO BE TAKEN BY THE ISSUER INDEMNIFIED PARTIES OR THE TRUSTEE INDEMNIFIED PARTIES.

THIS INDEMNIFICATION SHALL NOT BE AFFECTED BY ANY INVESTIGATION BY OR ON BEHALF OF THE ISSUER INDEMNIFIED PARTIES OR THE TRUSTEE INDEMNIFIED PARTIES OR BY ANY INFORMATION THE ISSUER INDEMNIFIED PARTIES OR THE TRUSTEE INDEMNIFIED PARTIES MAY HAVE OR OBTAIN WITH RESPECT THEREOF. THIS INDEMNIFICATION SHALL EXTEND TO AND INCLUDE, WITHOUT LIMITATION, ALL COSTS, FEES OR EXPENSES, COUNSEL FEES AND EXPENSES AND LIABILITIES INCURRED IN CONNECTION WITH ANY SUCH CLAIM, OR PROCEEDING BROUGHT WITH RESPECT TO SUCH CLAIM TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING IF AS THE RESULT OF THE NEGLIGENCE, GROSS NEGLIGENCE OR BREACH OF CONTRACTUAL DUTY OF THE ISSUER INDEMNIFIED PARTIES, UNLESS LIABILITY IS A RESULT OF BAD FAITH, WILLFUL MISCONDUCT OR FRAUD (OR, WITH RESPECT TO THE TRUSTEE INDEMNIFIED PARTIES, NEGLIGENCE) ON THE PART OF THE ISSUER INDEMNIFIED PARTIES OR THE TRUSTEE INDEMNIFIED PARTIES AND THEIR SUCCESSORS AND ASSIGNS. THE INDEMNIFICATION PROVIDED IN THIS ARTICLE VI IS IN ADDITION TO, AND NOT IN SUBSTITUTION OF, THE INDEMNIFICATION PROVISIONS IN OTHER DOCUMENTS

EXECUTED AND DELIVERED IN CONNECTION WITH THE MAKING OF THE LOAN AND THE ISSUANCE OF THE BONDS.

ALL AMOUNTS PAYABLE TO THE ISSUER UNDER THIS AGREEMENT SHALL BE DEEMED TO BE FEES AND EXPENSES PAYABLE TO THE ISSUER FOR THE PURPOSES OF THE PROVISIONS OF THIS AGREEMENT, AND OF THE INDENTURE DEALING WITH ASSIGNMENT OF THE ISSUER'S RIGHTS UNDER THIS AGREEMENT. THE ISSUER AND ITS MEMBERS, OFFICERS, AGENTS, EMPLOYEES AND THEIR SUCCESSORS AND ASSIGNS SHALL NOT BE LIABLE TO THE BORROWER FOR ANY REASON.

ANY PROVISION OF THIS AGREEMENT OR ANY OTHER INSTRUMENT OR DOCUMENT EXECUTED AND DELIVERED IN CONNECTION THEREWITH TO THE CONTRARY NOTWITHSTANDING, THE ISSUER RETAINS THE RIGHT TO (I) ENFORCE ANY APPLICABLE FEDERAL OR STATE LAW OR REGULATION OR RESOLUTION OF THE ISSUER, AND (II) ENFORCE ANY RIGHTS ACCORDED TO THE ISSUER BY FEDERAL OR STATE LAW OR REGULATION OF THE ISSUER, AND NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS AN EXPRESS OR IMPLIED WAIVER THEREOF. THE INDEMNIFICATIONS PROVIDED BY THE INDEMNITOR SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT AND THE SATISFACTION OF THE NOTE, AND THE RESIGNATION OR REMOVAL OF THE TRUSTEE.

Section 6.03. The Issuer to Grant Security Interest to Trustee. The parties hereto agree that pursuant to the Indenture, the Issuer shall assign to the Trustee, in order to secure payment of the Bonds, all of the Issuer's right, title and interest in and to this Agreement and the Note, except for Unassigned Rights of the Issuer. The Issuer retains the right to enforce any or all of the Unassigned Rights, and may take independent action to so enforce such Unassigned Rights.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.01. Defaults Defined. The following shall be "Defaults" under this Agreement and the term "Default" shall mean, whenever it is used in this Agreement, any one or more of the following events:

(a) failure by the Borrower to pay any amount required to be paid under subsection (b) of Section 4.02 or Section 4.03 hereof;

(b) failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed herein other than as referred to in subsection (a) of this Section 7.01 or failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed in the Regulatory Agreement or the Tax Certificate, for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, will have been given to the Borrower by the Issuer or the Trustee; provided, with respect to any such failure covered by this subsection (b), no event of default will be deemed to have occurred so long as a course of action adequate to remedy such failure will

have been commenced within such sixty (60) day period and will thereafter be diligently prosecuted to completion and the failure will be remedied thereby;

(c) the dissolution or liquidation of the Borrower, or the voluntary initiation by the Borrower of any proceeding under any federal or state law relating to bankruptcy, insolvency, arrangement, reorganization, readjustment of debt or any other form of debtor relief, or the initiation against the Borrower of any such proceeding which shall remain undismissed for ninety (90) days, or failure by the Borrower to promptly have discharged any execution, garnishment or attachment of such consequence as would impair the ability of the Borrower to carry on its operations at the Project, or assignment by the Borrower for the benefit of creditors, or the entry by the Borrower into an agreement of composition with its creditors or the failure generally by the Borrower to pay its debts as they become due; or

(d) the occurrence and continuance of an Event of Default under the Indenture.

The provisions of subsection (b) of this Section 7.01 are subject to the following limitation: if by reason of force majeure it is impossible for the Borrower in whole or in part, despite its best efforts, to carry out any of its agreements contained herein (other than its obligations contained in Article IV hereof), the Borrower shall not be deemed in Default during the continuance of such inability. Such force majeure event does not affect any obligations of the Borrower other than the timing of performance of such obligations. The term “force majeure” as used herein shall mean, without limitation, the following: acts of God; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or of any of their departments, agencies or officials, or of any civil or military authority; insurrections; riots; terrorism; landslides; earthquakes; fires; storms; droughts; floods; epidemics; pandemics; explosions; or other similar events, occurrences, or causes not reasonably within the control of the Borrower. The Borrower agrees, however, to use its best efforts to remedy with all reasonable dispatch the cause or causes preventing the Borrower from carrying out its agreement.

Section 7.02. Remedies on Default. A copy of any notice of default provided to Borrower under any of the Borrower Documents shall also be provided to the Investor Limited Partner and the Lender. Whenever any Default referred to in Section 7.01 hereof shall have happened and be continuing beyond the expiration of any applicable cure period, the Trustee, or the Issuer (in the event the Trustee fails to act), may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement, the Note, the Regulatory Agreement or any other Document in the event of default thereunder. Any amounts collected pursuant to action taken under this Section 7.02 shall be paid into the Collateral Fund.

Section 7.03. No Remedy Exclusive. Subject to Section 10.01 of the Indenture, no remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power nor shall it be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed

expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article VII, it shall not be necessary to give any notice, other than such notice as may be required in this Article VII. Such rights and remedies as are given the Issuer hereunder shall also extend to the Trustee, and the Trustee and the Holders of the Bonds, subject to the provisions of the Indenture, including, but not limited to the Unassigned Rights of the Issuer, shall be entitled to the benefit of all covenants and agreements herein contained.

Section 7.04. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 7.05. Right to Cure. Notwithstanding anything to the contrary herein or otherwise in the Borrower Documents, if the Borrower shall, for whatever reason, at any time fail to pay any amount or perform any act which it is obligated to pay or perform under any of the Borrower Documents and, as a result, a default or event of default occurs or may occur thereunder, the Investor Limited Partner shall have the right to perform such act or pay such amount on behalf of the Borrower and thereby cure or prevent such default or event of default, provided such default or event of default is cured within any applicable cure period or grace period provided to the Borrower herein or otherwise in the Borrower Documents. Any cure of any event of default by the Investor Limited Partner under the Borrower Documents shall be deemed a cure by Borrower thereunder.

Section 7.06. No Interference or Impairment of Lender Loan. Notwithstanding anything herein to the contrary, none of the Issuer, the Trustee nor any other Person shall:

- (a) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due and payable under, the Lender Loan; or
- (b) interfere with or attempt to interfere with or influence the exercise by the Lender of any of its rights under the Lender Loan, including, without limitation, the Lender remedial rights under the Lender Loan upon the occurrence of an event of default by the Borrower under the Lender Loan.

The foregoing prohibitions and limitations shall not be construed to affect the ability or rights of the Trustee to take any actions permitted under the Indenture or to affect the Unassigned Rights of the Issuer or to limit the rights of the Issuer to enforce its rights against the Borrower under the indemnification provisions of this Agreement so long as it does not cause the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future.

Notwithstanding anything in this Agreement to the contrary, any right of the Issuer or the Trustee to take any action at law or in equity to enforce the obligations, covenants and agreements of the Borrower under this Agreement which includes any claim for indemnification, damages or

any other monetary obligation sought to be enforced shall be subject and subordinate in all respects to the repayment in full of all amounts due under the Lender Loan Documents.

No subsequent owner of the Project shall be liable or obligated for the breach or default of any obligation of any prior Borrower unless specifically assumed in writing by a subsequent Borrower, including, but not limited to, any payment or indemnification obligation. Such obligations shall be personal to the Person who was the Borrower at the time the default or breach was alleged to have occurred and such Person shall remain liable for any and all damages occasioned by the default or breach even after such Person ceases to be the Borrower with regards to the Project.

Promptly upon determining that an Event of Default of this Agreement has occurred, the Issuer or the Trustee shall, by notice in writing to the Lender, inform the Lender that such Event of Default has occurred, the nature of such Event of Default and that such Event of Default has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable; notwithstanding the occurrence of such Event of Default, neither the Issuer nor the Trustee shall have, and each of them acknowledge that they shall not have, any right to cause or direct acceleration of the Lender Loan or to foreclose on the Lender Mortgage.

ARTICLE VIII

HAZARDOUS MATERIALS

Section 8.01. Reserved.

Section 8.02. Compliance Regarding Hazardous Substances. Borrower has complied, will comply, and will use commercially reasonable efforts to cause all tenants and any other Persons who may come upon the Project to comply, with all federal, state and local laws, regulations and ordinances governing or applicable to Hazardous Materials, including those requiring disclosures to prospective and actual buyers or tenants of all or any portion of the Project. The Borrower will not install or allow to be installed any aboveground or additional underground storage tanks on the Project without the prior written approval of the Issuer. The Borrower must comply with the reasonable recommendations of any qualified environmental engineer or other expert engaged by the Borrower, the Issuer or the Investor Limited Partner with respect to the Project.

Section 8.03. Notices Regarding Hazardous Substances. The Borrower must promptly notify the Issuer in writing (i) if it has actual knowledge that there may be any Hazardous Materials in or around any part of the Project, any improvements constructed on the Project, or the soil, groundwater or soil vapor on or under the Project at a level of concentration that results in the Hazardous Materials being subject to regulation, control, removal or restriction by any governmental agency under any law, regulation or ordinance, or that the Borrower or the Project may be subject to any threatened or pending investigation by any governmental agency under any law, regulation or ordinance pertaining to any Hazardous Materials, and (ii) of any claim made or threatened in writing by any Person, other than a governmental agency, against the Borrower arising out of or resulting from any Hazardous Substance being present or released in, on or around any part of the Project, any improvements constructed on the Project or the soil, groundwater or

soil vapor on or under the Project (any of the matters described in clauses (i) and (ii) above is a “Hazardous Materials Claim”).

Section 8.04. Remedial Work. The Borrower must promptly undertake any and all remedial work (“Remedial Work”) in response to Hazardous Materials Claims to the extent required by governmental agency or agencies involved, or to comply with the reasonable recommendations set forth in any written environmental assessment report prepared by a third party engineer retained by the Issuer, if such standard requires a higher degree of remediation, and in all events to minimize any impairment to Trustee’s security under the Loan Documents. All Remedial Work must be conducted (i) in a diligent and timely fashion by licensed contractors acting under the supervision of a consulting environmental engineer; (ii) pursuant to a detailed written plan for the Remedial Work approved by all public or private agencies or Persons with a legal or contractual right to such approval; (iii) with insurance coverage pertaining to liabilities arising out of the Remedial Work as is then customarily maintained with respect to such activities; and (iv) only following receipt of any required permits, licenses or approvals. The selection of the Remedial Work contractors and consulting environmental engineer, the contracts entered into with such parties, any disclosures to or agreements with any public or private agencies or parties relating to Remedial Work and the written plan for the Remedial Work (and any changes thereto) is subject to the prior written approval of the Investor Limited Partner and the Issuer, which approval may not be unreasonably withheld or delayed.

Section 8.05. Indemnity Regarding Hazardous Substances. THE INDEMNITOR INDEMNIFIES, DEFENDS AND HOLDS EACH OF THE ISSUER INDEMNIFIED PARTIES AND THE TRUSTEE INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST ANY AND ALL COSTS DIRECTLY OR INDIRECTLY ARISING OUT OF OR RESULTING FROM ANY HAZARDOUS MATERIALS BEING PRESENT OR RELEASED IN, ON OR AROUND ANY PART OF THE PROJECT, OR IN THE SOIL, GROUNDWATER OR SOIL VAPOR ON OR UNDER THE PROJECT (COLLECTIVELY, “INDEMNIFIED COSTS”), ARISING OUT OF OR AS A RESULT OF EVENTS PRIOR TO THE LATER OF THE FULL AND FINAL PAYMENT OF THE BONDS OR BEFORE THE DATE OF A TRANSFER OF THE PROJECT, AS APPLICABLE, INCLUDING:

(i) ANY CLAIM FOR SUCH INDEMNIFIED COSTS ASSERTED AGAINST ANY INDEMNIFIED PARTY OR ANY TRUSTEE INDEMNIFIED PARTY BY ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AGENCY, INCLUDING THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND ALL OF THE ENVIRONMENTAL REGULATORY AUTHORITIES OF THE STATE, AND INCLUDING ANY CLAIM THAT ANY INDEMNIFIED PARTY IS LIABLE FOR ANY SUCH INDEMNIFIED COSTS AS AN “OWNER” OR “OPERATOR” OF THE PROJECT UNDER ANY LAW RELATING TO HAZARDOUS MATERIALS; AND

(ii) ANY CLAIM FOR SUCH INDEMNIFIED COSTS ASSERTED AGAINST ANY ISSUER INDEMNIFIED PARTY BY ANY PERSON OTHER THAN A GOVERNMENTAL AGENCY, INCLUDING (I) ANY PERSON WHO MAY PURCHASE OR LEASE ALL OR ANY PORTION OF THE PROJECT FROM BORROWER, FROM ANY INDEMNIFIED PARTY OR FROM ANY OTHER PURCHASER OR LESSEE, (II) ANY PERSON WHO MAY AT ANY TIME HAVE

ANY INTEREST IN ALL OR ANY PORTION OF THE PROJECT, (III) ANY PERSON WHO MAY AT ANY TIME BE RESPONSIBLE FOR ANY CLEANUP COSTS OR OTHER INDEMNIFIED PARTY RELATING TO THE PROJECT, AND (IV) ANY PERSON CLAIMING TO HAVE BEEN INJURED IN ANY WAY AS A RESULT OF EXPOSURE TO ANY HAZARDOUS MATERIALS; AND

(iii) ANY INDEMNIFIED COSTS INCURRED BY ANY INDEMNIFIED PARTY IN THE EXERCISE BY THE INDEMNIFIED PARTY OF ITS RIGHTS AND REMEDIES UNDER THIS AGREEMENT; AND

(iv) ANY INDEMNIFIED COSTS INCURRED BY ANY INDEMNIFIED PARTY AS A RESULT OF CURRENTLY EXISTING CONDITIONS IN, ON OR AROUND THE PROJECT, WHETHER KNOWN OR UNKNOWN BY THE INDEMNITOR OR THE INDEMNIFIED PARTY AT THE TIME THIS AGREEMENT IS EXECUTED, OR ATTRIBUTABLE TO THE ACTS OR OMISSIONS OF THE INDEMNITOR, ANY OF THE BORROWER'S TENANTS, OR ANY OTHER PERSON IN, ON OR AROUND THE PROJECT WITH THE CONSENT OR UNDER THE DIRECTION OF THE INDEMNITOR;

(v) ANY INDEMNIFIED COSTS INCURRED BY ANY INDEMNIFIED PARTY AS A RESULT OF THE DEPOSIT, STORAGE, DISPOSAL, BURIAL, DUMPING, INJECTING, SPILLING, LEAKING, OR OTHER PLACEMENT OR RELEASE IN ON OR FROM THE PROJECT OF HAZARDOUS MATERIALS OR THE VIOLATION OR ALLEGED VIOLATION OF ANY HAZARDOUS MATERIALS LAW OR OFFICIAL INTERPRETATION THEREOF IN CONNECTION WITH THE PROJECT OR THE LAND ON WHICH IT IS LOCATED; AND

(vi) ANY INDEMNIFIED COSTS INCURRED BY (X) ANY PERSONAL INJURY (INCLUDING WRONGFUL DEATH) OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO HAZARDOUS MATERIALS; (Y) ANY LAWSUIT BROUGHT OR THREATENED, SETTLEMENT REACHED, OR GOVERNMENT ORDER RELATING TO HAZARDOUS MATERIALS, AND/OR (Z) ANY VIOLATION OF LAWS, ORDERS, REGULATIONS, REQUIREMENTS OR DEMANDS OF GOVERNMENT AUTHORITIES, OR ANY POLICIES OR REQUIREMENTS OF THE TRUSTEE INDEMNIFIED PARTIES, WHICH ARE BASED UPON OR IN ANY WAY RELATED TO HAZARDOUS MATERIALS INCLUDING, WITHOUT LIMITATION, ATTORNEY AND CONSULTANT FEES AND EXPENSES, INVESTIGATION AND LABORATORY FEES OR EXPENSES, COURT COSTS, FEES OR EXPENSES AND LITIGATION FEES OR EXPENSES.

THE OBLIGATIONS OF THE INDEMNITOR UNDER THIS SECTION 8.05 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT AND THE RESIGNATION OR REMOVAL OF THE TRUSTEE.

Section 8.06. Defense of Indemnified Parties. UPON DEMAND BY ANY ISSUER INDEMNIFIED PARTY OR TRUSTEE INDEMNIFIED PARTY, THE INDEMNITOR MUST PROMPTLY DEFEND ANY INVESTIGATION, ACTION OR PROCEEDING INVOLVING

ANY INDEMNIFIED COSTS THAT IS BROUGHT OR COMMENCED AGAINST ANY ISSUER INDEMNIFIED PARTY OR TRUSTEE INDEMNIFIED PARTY, WHETHER ALONE OR TOGETHER WITH BORROWER OR ANY OTHER PERSON, ALL AT THE BORROWER'S OWN COST AND BY COUNSEL APPROVED BY THE INDEMNIFIED PARTY. IN THE ALTERNATIVE, ANY ISSUER INDEMNIFIED PARTY OR TRUSTEE INDEMNIFIED PARTY MAY ELECT TO CONDUCT ITS OWN DEFENSE AT THE BORROWER'S EXPENSE.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Term of Agreement. This Agreement shall remain in full force and effect from the date hereof until such time as all of the Bonds and all amounts payable hereunder and under the Indenture shall have been fully paid or provision made for such payments, whichever is later, provided, that the provisions of Sections 4.03, 5.20 and 6.02 and Article VIII hereof shall survive termination of this Agreement and the resignation or removal of the Trustee.

Section 9.02. Notices; Publication of Notice. (a) All notices, advice, certifications or other communications hereunder between the Issuer and the Borrower shall be sufficiently given and shall be deemed given when delivered by hand or overnight courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, or transmitted by electronic means (including, without limitation, e-mail and facsimile transmission) addressed to the appropriate Notice Address. The Issuer, the Borrower or the Investor Limited Partner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, advice, certifications or other communications shall be sent. Notices to Persons other than the Issuer, the Borrower or the Investor Limited Partner (such as, for example, notices to owners of Bonds) shall be governed by the other applicable provisions of the Indenture.

(b) Whenever the Issuer or the Borrower is required or permitted to give or publish notice of any event or occurrence under this Agreement, such notice shall be given or published in such manner and by such means as the Issuer or the Borrower, as the case may be, shall determine to be appropriate. Such publication may be by (but is not limited to) any of the following means: (1) publication by or through one or more financial information reporting services; (2) delivery to the Municipal Securities Rulemaking Board's EMMA System or any successor repository or entity fulfilling a substantially similar or like role; or (3) by mailing a copy of such notice by first class mail, postage prepaid, to the Person entitled to receive the notice at such Person's address as shown on the records of the Issuer or the Borrower.

Section 9.03. Nonrecourse Liability of Borrower. From and after the date of this Agreement, (i) the liability of the Borrower under this Agreement shall be limited to the Trust Estate, and such amounts as may be invested in accordance with Section 7.01 of the Indenture, and the Issuer and the Trustee shall look exclusively thereto or to such other security as may from time to time be given or have been given for payment of the Bonds, and any judgment rendered against the Borrower under this Agreement shall be limited to the Project and moneys derived from the operation of the Project, and any other security so given for satisfaction thereof; and (ii) no deficiency or other personal judgment shall be sought or rendered against the Borrower or its

successors, transferees or assigns, in any action or proceeding arising out of this Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding; provided, however, that nothing herein shall limit the Issuer's or the Trustee's ability to exercise any right or remedy with respect to any property pledged or granted to the Issuer or any trustee under this Agreement, or both, or to exercise any right against the Borrower, on account of any claim for fraud or deceit, and against any other Person on account of any claim for fraud or deceit. Notwithstanding anything herein to the contrary, nothing in this Section 9.03 shall limit the rights of indemnification against the Borrower pursuant to Sections 4.03, 6.02, 8.05 and 8.06 hereof. Furthermore, notwithstanding anything to the contrary, the Borrower shall be fully liable for: (1) amounts payable to the Issuer constituting Unassigned Rights of the Issuer, (2) any amount due and owing as a result of any calculation or determination which may be required in connection with the Bonds for the purpose of complying with Section 148 of the Code (including rebate liability) or any applicable Treasury regulation, (3) payment of the Issuer's Administrative Fee, the Trustee's Fee and the Rebate Analyst's Fee and (4) the indemnification and the payment obligations to the Issuer under Sections 4.03, 6.02, 8.05 and 8.06 hereof.

The limit on the Borrower's liability set forth in this Section 9.03 shall not, however, be construed, and is not intended to in any way, constitute a release, in whole or in part, of the indebtedness evidenced by this Agreement or a release, in whole or in part, or an impairment of the security interest, or in case of any default or enforcing any other right of the Issuer under this Agreement or to alter, limit or affect the liability of any Person who may now or hereafter or prior hereto guarantee, or pledge, grant or assign its assets or collateral as security for, the obligations of the Borrower under this Agreement.

The provisions of this Section 9.03 shall survive the termination of this Agreement.

Section 9.04. No Pecuniary Liability of the Issuer; Issuer May Rely. (a) All obligations of the Issuer incurred under this Agreement, the Regulatory Agreement, the Tax Certificate and the Indenture shall be limited obligations of the Issuer, payable solely and only from Bond proceeds, Revenues and other amounts derived by the Issuer from the Trust Estate. NO DIRECTOR, OFFICER, AGENT, EMPLOYEE, OR ATTORNEY OR MEMBER OF THE ISSUER, OR ANY PAST, PRESENT OR FUTURE MEMBER OF ITS GOVERNING BODY, INCLUDING ANY PERSON EXECUTING THIS AGREEMENT ON BEHALF OF THE ISSUER, SHALL BE LIABLE PERSONALLY UNDER THIS AGREEMENT OR FOR ANY REASON RELATING TO THE ISSUANCE OF THE BONDS. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE BONDS, OR FOR ANY CLAIM BASED ON THE BONDS, OR OTHERWISE IN RESPECT OF THE BONDS, OR BASED ON OR IN RESPECT OF THIS AGREEMENT OR ANY AMENDMENT TO THIS AGREEMENT, AGAINST ANY DIRECTOR, OFFICER, AGENT, EMPLOYEE, ATTORNEY OR MEMBER OF THE ISSUER, OR ANY PAST, PRESENT OR FUTURE MEMBER OF ITS GOVERNING BODY, OR ANY SUCCESSOR WHETHER BY VIRTUE OF ANY CONSTITUTION, STATUTE OR RULE OF LAW, OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, ALL SUCH LIABILITY BEING, BY THE ACCEPTANCE OF THIS AGREEMENT AND AS PART OF THE CONSIDERATION FOR THE ISSUE OF THE BONDS, EXPRESSLY WAIVED AND RELEASED.

(b) It is expressly understood and agreed by the parties to this Agreement that:

(i) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by the Trustee, any Bondholder or the Borrower as to the existence of a fact or state of affairs required under this Agreement to be noticed by the Issuer;

(ii) the Issuer shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Borrower or such other appropriate party; and

(iii) none of the provisions of this Agreement shall require the Issuer to expend or risk its own funds (apart from the proceeds of Bonds issued under the Indenture) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Agreement unless it first shall have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

(c) No provision, representation, covenant or agreement contained in this Agreement or in the Indenture, the Bonds, or any obligation herein or therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability (except to the extent of any loan repayments, revenues and receipts derived by the Issuer pursuant to this Agreement and other moneys held pursuant to the Indenture, other than in the Rebate Fund and the Expense Fund). No provision hereof shall be construed to impose a general or moral obligation of the Issuer or a charge upon its general fund, or shall the full faith and credit of the Issuer be pledged to the payment of the principal and interest on the Bonds. No Holder of any of the Bonds has the right to compel any exercise of the taxing power of the Issuer to pay the Bonds or the interest or redemption premium, if any, thereon.

(d) All covenants, obligations and agreements of the Issuer contained in this Agreement and the Indenture shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future director, officer, agent or employee of the Issuer, or of its Governing Body, in other than their official capacity, and no official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof or by reason of the covenants, obligations or agreements of the Issuer contained in this Agreement or in the Indenture. No provision, covenant or agreement contained in this Agreement, the Indenture or the Bonds, or any obligation herein or therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge. No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of the Issuer contained in this Agreement or in any Bond or for any claim based hereon or otherwise in respect hereof or upon any obligation, covenant, promise, or agreement of the Issuer contained in any agreement, instrument, or certificate executed in connection with the Project or the issuance and sale of the Bonds, against any member of the governing body of the Issuer, its officers, counsel, financial advisor, or agents, as such, in his or her individual capacity, past, present, or future, or of any successor thereto, whether by virtue of any constitutional provision, statute, or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that no personal liability whatsoever shall attach to, or be incurred by, any member of the governing board, officers, counsel,

financial advisors, or agents, as such, in his or her individual capacity, past, present, or future, of the Issuer, or of its Governing Body, or of any successor thereto, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the Issuer and the Trustee or the Borrower to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such director, officer, counsel, financial advisor, or agent, is, by the execution of the Bonds, this Agreement, and the Indenture, and as a condition of, and as part of the consideration for, the execution of the Bonds, this Agreement, and the Indenture, expressly waived and released.

Section 9.05. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Borrower, the Trustee, the Holders of Bonds and their respective successors and assigns.

Section 9.06. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 9.07. Amounts Remaining in Funds. It is agreed by the parties hereto that any amounts remaining on deposit under the Indenture upon expiration or earlier termination of this Agreement, as provided in this Agreement, shall be used to pay the fees and expenses of the Trustee and the Issuer in accordance with the Indenture and any balance thereafter shall be paid to the Borrower pursuant to the provisions of the Indenture.

Section 9.08. Amendments, Changes and Modifications. Subsequent to the issuance of the Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), and except as otherwise herein expressly provided, this Agreement may only be effectively amended, changed, modified, altered or terminated in accordance with the provisions of the Indenture.

Section 9.09. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.10. Applicable Law. This Agreement shall be interpreted in accordance with and governed by the laws of the State of Hawaii.

Section 9.11. Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Agreement.

Section 9.12. Conflict with HUD-Insured Loan and HUD Regulations; Supremacy of Senior Lender Mortgage and HUD Regulatory Agreement.

(a) The provisions hereof are subordinate and subject to the National Housing Act, HUD and GNMA regulations, related administrative requirements, and the Lender Mortgage, Lender Borrower Note, the HUD Regulatory Agreement and the other Lender Loan Documents. In the event of any conflict between the provisions of this Agreement and the provisions of any applicable HUD regulations, HUD Program Obligations (as defined in the Lender Loan

Documents), GNMA statutory, regulatory or administrative requirements, or the Lender Loan Documents, the HUD regulations, HUD Program Obligations, the GNMA statutory, regulatory or administrative requirements, or the Lender Loan Documents, as applicable, shall control. Any ambiguity or inconsistency will be resolved in favor of, and pursuant to, the HUD Program Obligations, HUD and GNMA statutory, regulatory and administrative requirements and the terms of the Lender Loan Documents.

(b) Enforcement of this Agreement will not result in any claim against the Project, the undisbursed proceeds of the Lender's loan (the "HUD Insured Loan"), any reserve or deposit required by HUD in connection with the HUD Insured Loan or the rents or income from the Project (other than available Surplus Cash, as such term is defined in the HUD Regulatory Agreement or as otherwise permitted by HUD).

(c) The Borrower shall not be deemed to be in violation of this Agreement if it shall take (or refrain from taking) any actions required (or prohibited) by HUD pursuant to the National Housing Act, applicable HUD (and Section 8, if applicable) Regulations and related administrative requirements or the HUD Loan Documents.

(d) Any funds held by the Lender in connection with the Project for or on behalf of the Borrower shall be maintained separate and apart from the funds established and held by the Trustee and the various escrows and funds, if any, under the Indenture.

(e) No amendment to this Agreement shall conflict with the provisions of the National Housing Act, any applicable HUD regulations, related administrative requirements, the HUD Loan Documents, or any applicable GNMA regulations and related administrative requirements.

(f) This Agreement shall not be construed to restrict or adversely affect the duties and obligations of the Lender under the contract of mortgage insurance between HUD and the Lender with respect to the Project.

(g) None of the Issuer, the Trustee or any owner of the Bonds has or shall be entitled to assert any claim against the Project, the undisbursed HUD Insured Loan proceeds, any reserves or deposits required by HUD in connection with the HUD Insured Loan or the rents or deposits or other income of the property other than "Surplus Cash" as defined in the HUD Regulatory Agreement.

(h) Nothing herein is intended to alter or conflict with the terms, conditions, and provisions of the HUD regulations, handbooks, administrative requirements, lender notices and the HUD Program Requirements in effect at the time of HUD's endorsement of the Lender Borrower Note, or the documents required to be executed by the Borrower in connection with the endorsement of the Lender Borrower Note; and to the extent that they do so, the HUD regulations, administrative requirements, handbooks, lender notices, Program Obligations and documents shall control and this Agreement shall be amended or deemed amended so as not to alter or conflict with the aforesaid regulations, documents, administrative requirements, handbooks, notices or Program Obligations. This Section 9.12 shall terminate and be void upon termination of HUD Insured Loan.

(i) Notwithstanding anything in the Indenture, this Agreement, the Note or the Bond Purchase Agreement to the contrary, in no event shall HUD have any claim to or lien upon the Trust Estate under the Indenture and funds held by the Trustee under the Indenture and pledged to secure the repayment of the Bonds. Further, nothing herein shall restrict the rights and obligations of the parties as they relate to the Bonds and the rights and obligations therein are not subordinated.

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Agreement to be executed in their respective official names and attested by their duly authorized officers, all as of the date first above written.

CITY AND COUNTY OF HONOLULU

By: _____

BORROWER:

KOMOHALE MAUNAKEA VENTURE LP,
a Hawaii limited partnership

By: Komohale Maunakea Manager LLC,
a Delaware limited liability company,
its General Partner

By: _____
Name: Bradley C. Martinson
Title: Authorized Representative

By: _____
Name: Stanford S. Carr
Title: Authorized Representative

EXHIBIT A

Project Description

The Borrower plans to use the proceeds of the Loan for the purpose of financing a portion of the costs of the acquisition, rehabilitation and equipping by the Borrower of an approximately 379 unit multifamily housing facility and related facilities to be known as Maunakea Tower Apartments and to be located at 1245 Maunakea Street, Honolulu, Hawaii 96817.

EXHIBIT B

Form of Promissory Note

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE TRUSTEE IN ACCORDANCE WITH THE INDENTURE, BOTH REFERRED TO HEREIN.

\$ _____ [May] __, 2023

FOR VALUE RECEIVED, Komohale Maunakea Venture LP, a limited partnership duly formed and validly existing under the laws of the State of Hawaii (the “Borrower”), by this promissory note hereby promises to pay to the order of the City and County of Honolulu (the “Issuer”) the principal sum of _____ Dollars, together with interest on the unpaid principal amount hereof, from the Closing Date (as defined in the Indenture referenced below) until paid in full, at a rate per annum equal to the rate of interest borne by the Bonds. All such payments of principal and interest shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the designated corporate trust office of U.S. Bank Trust Company, National Association, a national banking association duly organized and validly existing under the laws of the United States, or its successor as trustee under the Indenture.

The principal and interest shall be payable on the dates that principal and interest on the Bonds are payable, as provided in the Indenture and the Agreement.

This promissory note is the “Note” referred to in the Loan Agreement, dated as of [May] 1, 2023 (as the same may be amended, modified or supplemented from time to time, the “Agreement”), between the Borrower and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to U.S. Bank Trust Company, National Association, as trustee (the “Trustee”) under the Trust Indenture dated as of [May] 1, 2023 (as the same may be amended, modified or supplemented from time to time, the “Indenture”), between the Issuer and the Trustee, and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of the Issuer’s Multifamily Housing Revenue Bonds (Maunakea Tower Apartments) Series 2023 (the “Bonds”), issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture and the Bonds are hereby incorporated as a part of this Note.

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Borrower.

The Borrower hereby promises to pay reasonable costs of collection and reasonable attorneys’ fees in case of default on this Note.

This Note shall be governed by, and construed in accordance with, the laws of the State of Hawaii, without regard to conflict of laws principles.

BORROWER:

KOMOHALE MAUNAKEA VENTURE LP,
a Hawaii limited partnership

By: Komohale Maunakea Manager LLC,
a Delaware limited liability company,
its General Partner

By: _____
Name: Bradley C. Martinson
Title: Authorized Representative

By: _____
Name: Stanford S. Carr
Title: Authorized Representative

ENDORSEMENT

Pay to the order of U.S. Bank Trust Company, National Association, a national banking association, without recourse, as Trustee under the Indenture referred to in the Note, as security for the Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

CITY AND COUNTY OF HONOLULU

By: _____

Dated: [May] __, 2023

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL (X) PICK UP ()

Hawkins Delafield & Wood LLP
One Embarcadero Center, Suite 3820
San Francisco, California 94111
Attention: Alexis Harrington

Tax Map Key No.: (1) 1-7-005:041 (CPR 0002)

Total Pages: _____

TYPE OF DOCUMENT

Regulatory Agreement and Declaration of Restrictive Covenants

PARTIES TO DOCUMENT:

City and County of Honolulu, as Issuer
Komohale Maunakea Venture LP, as Borrower
U.S. Bank Trust Company, National Association, as Trustee

REGULATORY AGREEMENT AND DECLARATION OF
RESTRICTIVE COVENANTS

CITY AND COUNTY OF HONOLULU
MULTIFAMILY HOUSING REVENUE BONDS
(MAUNAKEA TOWER APARTMENTS)
SERIES 2023

REGULATORY AGREEMENT AND DECLARATION OF
RESTRICTIVE COVENANTS

by and among

CITY AND COUNTY OF HONOLULU,
as Issuer

and

KOMOHALE MAUNAKEA VENTURE LP,
as Borrower

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee

Dated as of [May] 1, 2023

Relating to

CITY AND COUNTY OF HONOLULU
MULTIFAMILY HOUSING REVENUE BONDS
(MAUNAKEA TOWER APARTMENTS)
SERIES 2023

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REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the “Agreement”), dated as of [May] 1, 2023, by and among the CITY AND COUNTY OF HONOLULU (the “Issuer”), a political subdivision and body corporate and politic existing under the laws of the State of Hawaii, U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States, as trustee (the “Trustee”) under that certain Trust Indenture, of even date herewith, between the Issuer and the Trustee, relating to the Bonds identified herein (the “Trust Indenture”), and KOMOHALE MAUNAKEA VENTURE LP, a Hawaii limited partnership (the “Borrower”).

W I T N E S S E T H :

WHEREAS, the Issuer is authorized under the provisions of Chapter 49, Hawaii Revised Statutes, as amended, as made applicable by Hawaii Revised Statutes Sections 46 15.1 and 46-15.2 (collectively, the “Act”), to issue revenue bonds to finance its program of providing loans to finance multifamily rental housing projects; and

WHEREAS, in order to assist the Borrower in financing the acquisition, rehabilitation, installation and equipping of a multifamily rental housing development, known as the Maunakea Tower Apartments and located on real property as described in EXHIBIT A hereto (the “Project”), the Issuer has authorized the issuance of its revenue bonds, in the principal amount of \$[PAR AMOUNT] to be designated the “*City and County of Honolulu Multifamily Housing Revenue Bonds (Maunakea Tower Apartments) Series 2023*” (the “Bonds”) and secured by that certain Trust Indenture dated concurrently herewith.

WHEREAS, in order to assure the Issuer and the bondholders that interest on the Bonds will be exempt from federal income taxation under Section 103 of the Internal Revenue Code of 1986, as amended from time to time (the “Code”), and State of Hawaii income tax, and to satisfy the public purposes for which the Bonds are authorized to be issued under the Act, and to satisfy the purposes of the Issuer in determining to issue the Bonds, certain limits on the occupancy of units in the Project need to be established and certain other requirements need to be met; and

WHEREAS, interest on the Bonds is exempt from state and federal income taxation only if the Project is continuously in compliance with requirements of the Code; and

WHEREAS, in order to ensure that the Project will be financed, used and operated in accordance with the Code, and in order to set forth the terms on which the proceeds of the Bonds will be expended, the Issuer, the Trustee and the Borrower have determined to enter into this Agreement; and

WHEREAS, the Issuer, the Borrower and the Trustee each represent as to itself that it has the power and authority to enter into this Agreement.

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

Section 1. Definitions. Unless the context otherwise requires, capitalized terms used in this Agreement shall for all purposes of this Agreement have the meanings specified in the preambles hereto, in this Section, or in the Trust Indenture.

“Administrator” means any administrator appointed by the Issuer as its agent in the administration of this Agreement, and any successor so appointed. Until any different Administrator is appointed, and at any time while such office is vacant, the term “Administrator” shall mean the Issuer.

“Annual Income” means (i) when referring to the income of one tenant, the current gross income of such tenant, and (ii) when referring to the income of a household, the current gross income of all individuals in such household, calculated, in each instance, in a manner consistent with the determination of lower income families under Section 8 of the United States Housing Act of 1937, as amended (or, if such program is terminated, under such program as in effect immediately before such termination).

“Area” means the City and County of Honolulu, State of Hawaii.

“Bond Counsel” means Hawkins Delafield & Wood LLP or any other firm of attorneys or attorney at law selected by the Issuer, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America, but shall not include counsel for the Borrower.

“City Occupancy Guidelines” means _____.

“Closing Date” means [May] __, 2023.

“Code” means the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder or pursuant to the Internal Revenue Code of 1954, as amended.

“HAP Contract” means any Housing Assistance Payments contract between the U.S. Department of Housing and Urban Development and the Borrower effective with respect to the Project.

“Housing Act” means the United States Housing Act of 1937, as amended, or its successor.

“HUD” means the United States Department of Housing and Urban Development.

“Income Certification” means a verification of income prepared in accordance with HUD Handbook 4350.3, Appendix 1 or successor provision and an Occupancy Certificate in the form attached as EXHIBIT B to this Agreement or in such other form as may be provided by the Issuer to the Borrower.

“Inducement Date” means February 9, 2023, the date of the first official action by the Issuer expressing its intent to issue revenue obligations to assist the Borrower in financing the Project by declaration of official intent.

“Loan Agreement” means the Loan Agreement between the Issuer and the Borrower, dated as of the date hereof.

“Low Income Tenant” means any Tenant whose Annual Income does not exceed limits determined in a manner consistent with determinations of lower income families under Section 8 of the Housing Act, except that the percentage of median gross income that qualifies shall be sixty percent (60%) of median gross income for the Area, with adjustments for smaller and larger families, the method of determining income to be the method in effect on the date of issuance of the Bonds. If all the occupants of a unit are students (as defined under Section 152(f)(2) of the Code), such occupants shall not qualify as Low Income Tenants unless the unit is occupied by an individual described in Section 42(i)(3)(D)(i) of the Code. The determination of a Tenant’s status as a Low Income Tenant shall be made upon initial occupancy of a unit in the Project by such Tenant on the basis of an Income Certification executed by the Tenant and, unless a Waiver is in effect, on an annual basis as set forth herein.

“Low Income Units” means the units in the Project required to be rented to, or held available for occupancy by, Low Income Tenants pursuant to Section 2(e) hereof.

“Maturity Date” means [December 1, 2026], the date of the final maturity of the Bonds.

“Qualified Project Costs” means and includes costs in connection with the acquisition, rehabilitation and installation of equipment or fixtures of or with respect to the Project, but only to the extent that (i) such costs were paid or incurred by or on account of the Borrower or any Related Person on or after the date which is 60 days prior to the Inducement Date or are preliminary capital expenditures (within the meaning of United States Treasury Regulations Section 1.150-2(f)(2)) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of construction or rehabilitation of the Project that do not exceed 20% of the issue price of the Bonds (as defined in United States Treasury Regulations Section 1.148-1); (ii) such costs are chargeable to the Project’s capital account or would be so chargeable either with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs, within the meaning of Treasury Regulation Section 1.103-8(a)(1); (iii) if any portion of the Project is being constructed or rehabilitated by a Related Person of the Borrower (whether as a general contractor or a subcontractor), such costs include only the actual out-of-pocket costs incurred by such Related Person in constructing or

rehabilitating the Project (or any portion thereof) and not, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the construction or rehabilitation of the Project or payments received by such Related Person due to early completion of the Project (or any portion thereof); (iv) such costs do not constitute (1) costs of issuance of the Bonds, or (2) leasing commissions, costs of advertising for the Project or other costs related to the rental of units in the Project, or (3) management fees for the management and operation of the Project; and (v) such costs are used to finance residential rental property described in Section 142(d) of the Code and Section 1.103-8(b) of the Treasury Regulations.

“Qualified Project Period” means the period beginning on the first day on which ten percent (10%) of the residential units in the Project are occupied and ending on the latest of the following:

(A) the date which is fifteen (15) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied,

(B) the first day on which no tax-exempt bond or note issued with respect to the Project is outstanding, or

(C) the date on which any assistance provided with respect to the Project under Section 8 of the Housing Act terminates.

“Related Person” of a person means a person with a relationship to such person such that (i) the relationship between such persons would result in a disallowance of losses under Section 267 or 707(b) of the Code or (ii) such persons are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears therein).

“Single-Room Occupancy Unit” means a single-room occupancy unit within the meaning of Section 42 of the Code.

“State” means the State of Hawaii.

“Tenant” means, at any time of determination thereof, all persons who together occupy a single residential unit in the Project, and upon the occupancy of a unit by any individual in addition to the previous Tenant of such unit, such unit shall be deemed to be occupied by a new Tenant. Tenant shall not include any resident manager.

“Verification of Income” means a Verification of Income in the form attached as EXHIBIT B or in such other form as may be provided by the Issuer to the Borrower.

“Waiver” means the waiver from yearly determinations by the Borrower of annual Income Certifications of Low Income Tenants that reside in the Project which waiver is available to the Borrower, upon application, pursuant to Section 142(d)(3)(A) and

Section 42(g)(8)(B) of the Code, and which waiver, among other things, is available only for so long as the percentage of Low Income Units equals 100%.

Section 2. Representations, Covenants and Warranties of the Borrower.

(a) The Borrower hereby incorporates herein, as if set forth in full herein, each of the representations, covenants and warranties of the Borrower contained in the Issuer's Tax Certificate, the Loan Agreement and agreements relating to the acquisition, rehabilitation and operation of the Project.

(b) The Borrower hereby represents and warrants that the Project is located entirely within the Area.

(c) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions contemplated by this Agreement; that it is familiar with the provisions of all of the documents and instruments relating to the Bonds to which it is a party or of which it is a beneficiary; that it understands the financial and legal risks inherent in such transactions; and that it has not relied on the Issuer or the Trustee for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the Issuer or the Trustee in any manner except for the Issuer to issue the Bonds in order to provide funds to assist the Borrower in acquiring the Project.

(d) The Borrower acknowledges and agrees that prior to the date which is no later than two (2) years after the later of (i) the date on which the Borrower acquires the Project or (ii) the Closing Date (the "Rehabilitation Period"), the Borrower shall incur rehabilitation expenditures ("Rehabilitation Expenditures") from proceeds of the Bonds, its own funds, tax credit funds, or otherwise, in an amount which equals or exceeds an amount that is at least 15% of the portion of the cost of acquiring the Project financed with the net proceeds of the Bonds. For purposes of this subsection (d), Rehabilitation Expenditures shall mean any amount properly chargeable to a capital account which is incurred by the Borrower in connection with the rehabilitation of the Project as provided in Section 147(d) of the Code. For the Rehabilitation Period, the Borrower shall file with the Issuer on or before the fifteenth (15th) day of each calendar quarter, a Rehabilitation Expenditures report showing the Rehabilitation Expenditures, by type and amount, incurred for the preceding calendar quarter and the cumulative total of Rehabilitation Expenditures incurred to date.

(e) The Borrower acknowledges and agrees that the Project is to be owned, managed and operated as a "qualified residential rental project" (within the meaning of Section 142(d) of the Code) and, to that end, the Borrower represents, warrants and covenants, in compliance with Section 142(d) of the Code, and subject to additional set-aside requirements set forth in Section 6 herein, that:

(1) For the Qualified Project Period, the Borrower will maintain the Project as multifamily rental housing consisting of one or more buildings, together with (i) any functionally related and subordinate facilities, which are used on other than a transient basis, which meet the other requirements set forth herein and which are

available to members of the general public and (ii) commercial space permitted in accordance with Section 142(d) and 103 of the Code. For purposes of this paragraph (1), the term “functionally related and subordinate facilities” includes facilities for use by the tenants, for example, swimming pools, other recreational facilities, parking areas, and other facilities which are reasonably required for the Project, for example, heating and cooling equipment, trash disposal equipment and units for resident managers and maintenance personnel. Substantially all of the Project will contain such units and functionally related and subordinate facilities. All of the foregoing will be located on the site described in EXHIBIT A hereto. The Project will not be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium, rest home, or trailer park or court for use on a transient basis.

(2) All of the dwelling units in the Project were and will be similarly constructed, and each dwelling unit in the Project will contain facilities for living, sleeping, eating, cooking and sanitation for a single person or a family which are complete, separate and distinct from other dwelling units in the Project and will include a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink (to the extent required by the Code and the Housing Act). A unit shall not fail to be treated as a residential unit merely because such unit is a Single-Room Occupancy Unit.

(3) If the Project consists of multiple buildings, they will be owned for federal income tax purposes by the Borrower, will be located on a single tract of land and will be financed pursuant to a common plan. For purposes of this paragraph (3), the term “tract” means any parcel or parcels of land which are contiguous (i.e., whose boundaries meet at one or more points) except for the interposition of any road, street, stream or similar property. A common plan of financing exists if, for example, all such buildings are provided by the same issue or several issues subject to a common indenture.

(4) Commencing on the first day of the Qualified Project Period, Low Income Tenants shall occupy at least 40% of all occupied units in the Project before any additional units are occupied by persons who are not Low Income Tenants; and, for the Qualified Project Period, no less than 40% of the total number of completed units of the Project shall at all times be rented to and occupied by Low Income Tenants. For purposes of this paragraph (4), (i) a vacant unit which was most recently occupied by a Low Income Tenant is treated as rented to and occupied by a Low Income Tenant until reoccupied, other than for a temporary period of not more than 31 days, at which time the character of such unit shall be redetermined; and (ii) a unit occupied by a Tenant who at the commencement of the occupancy qualifies as a Low Income Tenant shall be treated as continuing to be a Low Income Tenant except, however, that any Tenant whose Annual Income as of the most recent annual recertification (as described in paragraph (7), below) exceeds 140% of the applicable income limit (i.e., 140% of 60% of the area median income as adjusted for family size) shall not be treated as continuing to meet the low income requirements: (a) if after such determination but before the next determination, any residential unit of comparable or smaller size in the Project (in the

building, in the case of a project to which tax credits are allowed under Section 42 of the Code) is occupied by a new resident whose income exceeds the low income limits (in which case noncompliance may result); or (b) at such time after the determination but before the next determination that another residential unit is rented in substitution therefor towards meeting the applicable low income requirement, in which case only the substitute unit shall be treated as meeting the requirements. Occupancy of a unit shall refer to the date that the Tenant has possession of the unit available to him and the right to occupy such unit pursuant to a fully executed lease.

(5) For the Qualified Project Period, once available for occupancy each residential unit in the Project (except for not more than 1 unit set aside for a resident manager or other administrative use) must be rented or held available for rental, on a first-come first-served, lottery or other equitable basis, subject to the other requirements hereof, to members of the general public who are natural persons, on a continuous basis and may not be converted to condominium, owner-occupied or other nonrental use.

(6) For the Qualified Project Period, the Borrower shall file with the Issuer and the Trustee, (i) at the time of initial occupancy of any Low Income Tenant, (ii) on a quarterly basis, upon the vacancy and reoccupancy of any Low Income Unit, and (iii) as often as necessary to comply with the requirements of Section 142(d) of the Code and the Act, an Income Certification which shall be subject to independent investigation and verification by the Issuer and/or the Administrator and the Trustee. The Borrower shall use its best efforts to verify the information set forth in any Verification of Income submitted by each Low Income Tenant at the time of submission of such certification, including, for other than Section 8 certificate holders, the following steps as part of the verification process by the Borrower: (1) obtain a federal income tax return for the applicant for the most recent tax year; and/or (2) obtain a written verification of employment from the applicant's current employer; or (3) if the applicant is not employed and/or has no tax return, obtain verification of the applicant's source of income. During the Qualified Project Period, the Borrower shall file with the Administrator on behalf of the Issuer and with the Trustee a Certificate of Continuing Program Compliance, in the form attached to this Agreement as EXHIBIT C or such other form as may be provided by the Issuer, such a certificate shall be filed on or before the fifteenth (15th) day of each calendar quarter and shall set forth the required information for the preceding calendar quarter. The Administrator shall monitor compliance of the Project with the requirements set forth herein on behalf of the Issuer and the Trustee and shall provide them with notice of any circumstances of non-compliance of which it becomes aware. The books and records of the Borrower pertaining to the incomes of Low Income Tenants residing in the Project must be open to inspection by any authorized representative of the Issuer, the Trustee and the Administrator. The Borrower shall notify the Issuer and the Trustee, in writing, of the completion of the rehabilitation of the Project.

(7) For the Qualified Project Period, the Borrower shall submit to the Secretary of the Treasury (at such time and in such manner as the Secretary shall

prescribe) an annual certification as to whether the Project continues to meet the requirements of Section 142(d) of the Code, unless a Waiver has been obtained. The Borrower is on notice that the Code provides that failure to comply will subject the Borrower to penalty as provided in Section 6652(j). In addition, on or before 60 days following the end of the Borrower's fiscal year, the Borrower shall submit to the Issuer the information set forth in EXHIBIT D, for the preceding fiscal year.

(8) For the Qualified Project Period, the Borrower shall not sell, transfer or otherwise dispose of the Project, in whole or in part, without the prior written consent of the Administrator on behalf of the Issuer, which consent shall be given promptly provided that (a) the Borrower shall not be in default hereunder, (b) the continued operation of the Project shall comply with the provisions of this Agreement, (c) the purchaser or assignee shall be willing and capable of complying with the terms and conditions of this Agreement, (d) the purchaser or assignee shall execute any document requested by the Issuer with respect to the assumption of the Borrower's obligations under this Agreement, including without limitation an instrument of assumption hereof, and shall deliver to the Issuer and the Trustee an opinion of its counsel to the effect that each such document and this Agreement are valid, binding and enforceable obligations of such purchaser or assignee, (e) the Issuer shall not have any reason to believe that the purchaser or assignee is incapable, financially or otherwise, of complying with, or may be unwilling to comply with, the terms of all agreements binding on such purchaser or assignee relating to the Project, (f) the Issuer and the Trustee shall have received an opinion of Bond Counsel to the effect that any such sale, transfer or other disposition will not cause interest on the Bonds to be includable in gross income of the holders thereof for federal income tax purposes, and (g) such other conditions are met as the Issuer and the Trustee may reasonably impose. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this paragraph (8) shall be null, void and without effect, shall cause a reversion of title to the Borrower, and shall be ineffective to relieve the Borrower of its obligations under this Agreement. Upon any sale or other transfer which complies with this Agreement, the Borrower shall be fully released from its obligations hereunder to the extent such obligations have been assumed by the transferee of the Project. Any transfer of the Project to any entity, whether or not affiliated with the Borrower, shall be subject to the provisions of this paragraph (8).

(9) For the Qualified Project Period, all Tenant lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Borrower which is unrelated to the Project and shall be maintained, as required from time to time by the Administrator on behalf of the Issuer or by the Trustee, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the Project, the Issuer or the Trustee. Failure to keep such lists and applications or to make them available to the Issuer or the Trustee will be a default hereunder.

(10) For the Qualified Project Period, all Tenant leases shall be subordinate to this Agreement and the Security Instrument and shall contain clauses, among others, wherein each Tenant who occupies a Low Income Unit: (i) certifies the accuracy of the statements made in the Verification of Income and (ii) agrees that the family income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy of such Tenant, that such Tenant will comply promptly with all requests for information with respect thereto from the Borrower, the Trustee or the Administrator on behalf of the Issuer, and that the failure to provide accurate information in the Verification of Income or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of the tenancy of such Tenant.

(11) For the Qualified Project Period, the Borrower shall not: (a) except pursuant, or subordinate, to the provisions of this Agreement and the Security Instrument (or except upon receipt by the Borrower of an opinion of Bond Counsel that such action will not adversely affect the exclusion from gross income of interest on the Bonds for federal income tax purposes), or except upon a sale, transfer or other disposition of the Project in accordance with the terms of this Agreement, encumber any of the Project or grant commercial leases of any part thereof, except leases of roof space to internet, cellular tower or solar panel providers solely for the benefit of, and of a size commensurate with, the Project, and customary leases for laundry machines and cable television, internet or other utility infrastructure solely for the benefit of, and of a size commensurate with, the Project, or permit the conveyance, transfer or encumbrance of any part of the Project (except for apartment leases); (b) demolish any part of the Project or substantially subtract from any real or personal property of the Project; or (c) permit the use of the dwelling accommodations of the Project for any purpose except rental residences.

(12) For the Qualified Project Period, the Borrower shall exercise reasonable diligence to comply with the requirements of this Agreement and shall correct any noncompliance within sixty (60) days after such noncompliance is first discovered or would have been discovered by the exercise of reasonable diligence.

(13) All of the amounts received by the Borrower from the proceeds of the Bonds and earnings from the investment of such proceeds will be used to pay costs related to the Project; at least 95% of such amounts will be used to pay or reimburse the Borrower for payment of Qualified Project Costs as certified by the Borrower and its certified accountant; and the amount of such proceeds used to pay issuance costs of the Bonds, within the meaning of Section 147(g) of the Code, shall not exceed 2% of such proceeds.

(14) The Borrower covenants and agrees that it has not taken or permitted to be taken and will not take or permit to be taken or omit to take or cause to be taken any action which will cause the interest on the Bonds to become subject to federal income taxation pursuant to the provisions of Section 103 of the Code; provided that the

Borrower shall not have violated these covenants if the interest on any of the Bonds becomes taxable to a person solely because such person is a “substantial user” of the Project or a “related person” within the meaning of Section 147(a) of the Code; and provided further that none of the covenants and agreements herein contained shall require the Borrower to enter an appearance or intervene in any administrative, legislative or judicial proceeding in connection with any changes in applicable laws, rules or regulations or in connection with any decisions of any court or administrative agency or other governmental body affecting the taxation of interest on the Bonds. In addition, if the Borrower should take or permit, or omit to take or cause to be taken, any such action, it will take all lawful actions necessary to rescind or correct such actions or omissions promptly upon obtaining knowledge thereof.

(15) The Borrower shall submit to the Administrator, within fifteen (15) days after receipt of a written request (or such longer period as may be reasonably required by the Borrower to obtain such information or forms or such shorter period as may be required by the Issuer in order to comply with such reporting requirements), any information or completed forms requested by the Issuer in order to comply with reporting requirements of the State or the Internal Revenue Service.

(16) For the Qualified Project Period, the Borrower covenants and agrees not to sell any of the individual dwelling units or any other real property within the Project, comprising less than all of the Project.

(f) Within thirty (30) days after the dates on which at least 10% and 50%, respectively, of the dwelling units in the Project are first occupied following issuance of the Bonds, the Borrower shall prepare and submit to the Issuer a certificate (which may be in the form attached hereto as EXHIBIT E) in recordable form identifying such date for purposes of the calculation of the commencement and termination of the Qualified Project Period.

(g) The Borrower covenants and agrees that it shall take, or cause to be taken, the calculation and payment to the Internal Revenue Service of rebate of excess earnings on gross proceeds of the Bonds on the date the Bonds are redeemed or mature (the “Computation Date”). Such calculation and payment shall be done in compliance with Section 148 of the Code and the Issuer’s Tax Certificate. For this purpose, gross proceeds includes any amounts constituting sale proceeds and investment earnings with respect to the Bonds, and any amount reasonably expected and available to be used to pay debt service on the Bonds. Such calculation shall be submitted to the Trustee and the Issuer within fifteen (15) days of each Computation Date, and the payment of rebate to the Internal Revenue Service shall not be later than sixty (60) days following the Computation Date, accompanied by IRS Form 8038-T, signed by the Issuer. The Borrower shall provide a copy of such filing to the Issuer and the Trustee. The exceptions to rebate set forth in the Issuer’s Tax Certificate shall apply and no rebate calculation need be undertaken for any time period during which at no time were any of the gross proceeds of the Bonds invested at a yield exceeding the yield referenced in the Issuer’s Tax Certificate relating to the Bonds. The Borrower shall submit to the Issuer and Trustee on an annual basis, beginning [May] 1, 2024, the record of investments of the gross proceeds of the Bonds and, if applicable,

evidence that an exception to rebate applies; provided, that, for so long as Trustee is the depository bank and/or disbursing bank for the gross proceeds, the Trustee shall maintain records of investments of the gross proceeds and shall make such records available to the Issuer on behalf of the Borrower pursuant to the terms of the Indenture.

Section 3. Considerations. (a) The Issuer has issued the Bonds to provide financing for the Project, all for the purpose, among others, of inducing the Borrower to acquire and operate the Project. In consideration of the issuance of the Bonds by the Issuer, the Borrower has entered into this Agreement and has agreed to restrict the uses to which the Project can be put for the term hereof.

(b) The Borrower shall pay to or on behalf of the Issuer all Costs of Issuance and, on or before the Closing Date, the Borrower shall have paid to the Issuer the amount of \$50,000.00 as a financing fee.

(c) In addition, the Borrower shall pay the following annual fees to the Issuer in arrears on each May 1, commencing on May 1, 2024, until the expiry of the Qualified Project Period:

(1) an administration fee (to be remitted directly to the Issuer) equal to 1/8% (0.125%) of the then-outstanding principal amount of the Bonds, plus

(2) a compliance monitoring fee (the “Compliance Monitoring Fee”) of \$35 per unit (excluding any manager units, if any).

(d) On each April 15 prior to the end of the Qualified Project Period, the Trustee shall provide to the Borrower the then-outstanding principal amount of the Bonds. Prior to the immediately following May 1, the Borrower shall provide to the Issuer a written calculation of (x) such then-outstanding principal amount of the Bonds, multiplied by (y) 0.00125, and shall inform the Issuer that the product of such calculation is the annual administration fee amount that will be paid on such May 1 in accordance with Sections 3(c)(1) and (2) above.

Section 4. Transfer Restrictions. The Borrower covenants and agrees that the Borrower will cause or require as a condition precedent to any conveyance, transfer, assignment or any other disposition of the Project prior to the termination of the Qualified Project Period (the “Transfer”) that the transferee of the Project pursuant to the Transfer assume in writing, in a form acceptable to the Issuer, all duties and obligations of the Borrower under this Agreement, including this Section, in the event of a subsequent Transfer by the transferee prior to expiration of the Qualified Project Period (the “Assumption Agreement”). The Borrower shall deliver the draft Assumption Agreement to the Issuer prior to the Transfer. This limited transfer restriction does not affect the rights of HUD to approve the proposed transfer as required under the HAP Contract.

Section 5. Additional Requirements of the Act. In addition to the requirements set forth in Section 2, the Borrower hereby agrees to comply with the requirements of the Act by assuring that the Project provides low and moderate income housing.

Section 6. Additional Requirements of the Issuer. In addition to the requirements set forth in Sections 2 through 5 hereof, each of which is hereby incorporated as a specific requirement of the Issuer, whether or not required by State or federal law, the Borrower hereby agrees to comply with each of the requirements of the Issuer set forth in this Section 6 from the date hereof to and including [[May] 1, 20__], as follows:

(a) Not less than 100% of the units in the Project (except for units occupied by resident managers, if any) shall be rented to individuals or families who qualify as Low Income Tenants as of their date of initial occupancy. For purposes of determining whether a tenant is a Low Income Tenant, the Annual Income of such Tenant may not exceed 60% of median gross income for the Area adjusted for household size, as established by HUD.

(b) The Borrower shall comply at all times with the City Occupancy Guidelines.

(c) The Borrower shall provide a written notice, approved in advance by the Issuer, of the policies pertaining to the Low Income Units to all low income applicants.

(d) The financial records of the Project are to be maintained by the Borrower in accordance with generally accepted accounting principles. At the request of the Issuer, the Borrower shall provide the Issuer access to the books of account for the Project and the records pertaining to the Low Income Units. The Borrower shall provide to the Issuer monthly operating statements for the Project by the 15th day of the following month. In addition, the Borrower shall, from time to time, provide the Issuer such other reports as the Issuer may reasonably request relative to the operation of the Project. Not more than one hundred and twenty (120) days following the end of each fiscal year, the Borrower shall provide to the Issuer annual audited financial statements for the Project, prepared by an independent certified public accounting firm. The Borrower shall provide to the Issuer an annual operating budget for the Project at least sixty (60) days prior to the beginning of each fiscal year.

(e) The Borrower shall not discriminate on the basis of race, creed, color, sex, marital status, religion, national origin or age in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the rehabilitation, operation and management of the Project.

Any of the foregoing requirements of the Issuer may be expressly waived by the Issuer in writing, but (i) no waiver by the Issuer of any requirement of this Section 6 shall, or shall be deemed to, extend to or affect any other provision of this Agreement, including particularly but without limitation the provisions of Sections 2 and 5 hereof, except to the extent the Issuer has received an opinion of Bond Counsel that any such provision is not required by the Act and may be waived without adversely affecting the exclusion from gross income of interest on the Bonds for federal income tax purposes; and (ii) any requirement of this Section 6 shall be

void and of no force and effect if the Issuer and the Borrower receive a written opinion of Bond Counsel to the effect that compliance with any such requirement would cause interest on the Bonds to become includable in gross income for federal income purposes, if such opinion is accompanied by a copy of a ruling from the Internal Revenue Service to the same effect, or to the effect that compliance with such requirement would be in conflict with the Act.

(f) Notwithstanding anything set forth in this agreement to the contrary, the provisions of this Section 6 shall remain in effect, enforceable as set forth in this Agreement and shall bind the Borrower and its successors and assigns for the [__-year period] set forth in this Section 6.

Section 7. Enforcement of Terms. The benefits of this Agreement shall inure to, and may be enforced by, respectively, the Issuer, the Trustee and their successors, and, to the extent permitted by the Trust Indenture, the bondholders and the successors and assigns of any of the foregoing, for the Qualified Project Period, or for such longer period set forth in Section 6 hereof, whether or not the Mortgage Loan may be paid in full, and whether or not the Bonds are outstanding. Notwithstanding the foregoing, the requirements of the Code set forth in Section 2 of this Agreement shall cease to apply to the Project in the event of involuntary noncompliance by the Borrower caused by a fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law or an action of a federal agency which prevents the Issuer from enforcing such requirements, or condemnation or similar event, but only if, within a reasonable period, either the Bonds are retired or amounts received as a consequence of such event are used to provide a project which meets such requirements; and promptly following any foreclosure the Issuer agrees to execute a release reflecting the termination of such requirements with respect to the Project, subject to the next succeeding sentence. The provisions of the preceding sentence shall cease to apply if the Project is subject to foreclosure, transfer of title by deed in lieu of foreclosure or similar event if, at any time during that part of the Qualified Project Period subsequent to such event, the Borrower obtains an ownership interest in the Project for federal income tax purposes. The Borrower hereby agrees that, following any foreclosure, the transfer of title by deed in lieu of foreclosure or similar event, neither the Borrower nor any Related Person will obtain an ownership interest in the Project for federal income tax purposes. The parties hereto agree that they will execute and deliver any and all documents and instruments necessary to effectuate the provisions of this Section 7.

Section 8. Indemnification. The Borrower releases the Issuer and the Trustee from, and covenants and agrees that the Issuer shall not be liable for, and covenants and agrees, to the extent permitted by law, to indemnify and hold harmless the Issuer and the Trustee and each of its officers, employees and agents from and against, any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from or in any way connected with (1) the Project, or the conditions, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation, construction or equipping of the Project or any part thereof; (2) the offer, sale and issuance of the Bonds or any certifications or representations made in connection therewith and the carrying out of any of the transactions contemplated by the Trust Indenture, the Loan Agreement, the Bonds and this Agreement; (3) any untrue statement or alleged untrue

statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, in any official statement or other offering circular utilized by the Issuer or any underwriter or placement agent in connection with the sale of the Bonds; or (4) the presence, use, storage, release or disposal of any hazardous substances on or about the Project in violation of any applicable environmental law (for purposes of this Section, "hazardous substances" means any substances, pollutants or contaminants now or hereafter included in such (or any similar) term under any federal, state or local statute, law, ordinance or regulation now existing or hereafter enacted or amended); provided that the indemnity required by this Section shall not be required for damages that result from negligence or willful misconduct on the part of the party seeking such indemnity. The indemnity required by this Section shall be only to the extent that any loss sustained by the Issuer exceeds the net proceeds the Issuer receives from any insurance carried with respect to the loss sustained and/or liquidation of all or a portion of the Trust Estate (as defined in the Trust Indenture). The Borrower further covenants and agrees, to the extent permitted by law, to pay or to reimburse the Issuer and the Trustee and each of its respective officers, employees and agents for any and all costs, attorney's fees, liabilities, fees or expenses incurred in connection with investigating, defending against or otherwise in connection with any such losses, claims, damages, liabilities, fees, expenses or actions.

The Borrower shall undertake to defend, at its sole cost and expense, any and all suits, actions and proceedings brought against the Issuer, the Trustee or any of their respective officials, officers, agents or employees in connection with any of the matters indemnified against in this Section. The persons so indemnified may, if they reasonably conclude that there are defenses available to them which are different or in addition to those available to the Borrower, also retain separate counsel in connection with such actions, suits or proceedings, and the Borrower shall be responsible for the fees and expenses of such counsel. The Issuer and the Trustee shall give the Borrower, as the case may be, timely notice of and shall forward to the Borrower every demand, notice, summons or other process received with respect to any claim or legal proceedings within the purview hereof, but the failure of the Issuer or the Trustee to give such notice shall not affect its right to indemnification hereunder.

All acts, including any failure to act, relating to the Project and the Bonds by the Issuer or any agent, representative or designee of the Issuer are performed solely for the benefit of the Issuer, and the holders of the Bonds to assure retirement of the Bonds, maintenance of the tax status of the interest on the Bonds and the increase and maintenance of residential rental housing in the jurisdiction of the Issuer, and are not for the benefit of the Borrower or the benefit of any other person, unless, the failure to give notice shall have deprived the Borrower of a reasonable opportunity to contest any matter.

The obligations of the Borrower under this Section shall survive the termination of this Agreement and the payment and performance of all of the other obligations of the Borrower hereunder and under the Trust Indenture, the Loan Agreement, the Bonds and this Agreement.

Section 9. Agreement to Record. The Borrower hereby represents, warrants and covenants that it will cause this Agreement to be recorded with the Bureau of Conveyances of the State to the name of the Borrower as grantor and to the name of the Issuer as grantee. The Borrower shall pay all fees and charges incurred in connection with any such recording.

Section 10. Default; Remedies. If the Borrower shall fail to observe or perform any covenant, condition or agreement contained herein on its part to be observed or performed, then and in such event, the Issuer, the Trustee, and, to the extent permitted by the Trust Indenture, any owners of the Bonds shall be entitled, individually or collectively, and in addition to all other remedies provided by law or in equity:

(a) To compel specific performance by the Borrower of its obligations under this Agreement, it being recognized that the beneficiaries of the Borrower's obligations hereunder cannot be adequately compensated by monetary damages in the event of the Borrower's default; and

(b) To cause the Borrower to pay to the Issuer on demand amounts equal to all rent payable to the Borrower with respect to any such non-compliant Low Income Units, if such units are knowingly or negligently rented to persons who do not comply with the requirements of such units, which payments shall not be applied to reduce the amount due under the Loan. Nothing in this subsection (b) shall create a security interest in rents received with respect to those Low Income Units in favor of the Issuer.

The Issuer and the Trustee shall have the right to enforce the obligations of the Borrower under this Agreement within shorter periods of time than are otherwise required hereby if necessary to insure compliance with the Act or with the Code.

Section 11. No Conflict with Other Documents. The Borrower warrants that it has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

Section 12. Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions hereof.

Section 13. Amendments. Subject to the limitations in this Section 13 and Section 18 and any other limitations in this Agreement, this Agreement may be amended, changed, modified, altered or terminated by written instrument executed and acknowledged by each of the parties hereto or their successors and duly recorded in the office in which this Agreement is recorded, but only if the Issuer has received a written opinion of Bond Counsel to the effect that such amendment, change, modification, alteration or termination will not conflict with the Act or cause interest on the Bonds to be included in gross income for federal income tax purposes. The party or parties requesting such amendment shall notify the other parties to this Agreement of the proposed amendment, with a copy of such requested amendment to Bond Counsel. The Trustee hereby agrees to enter into any amendment, change, modification,

alteration or termination of this Agreement if the requirements set forth in this Section are met, unless any of the Trustee's own rights, immunities, duties or liabilities would be affected thereby, in which event the Trustee may in its discretion consent thereto. Anything to the contrary notwithstanding, the Issuer, the Trustee and the Borrower hereby agree to amend this Agreement to the extent required, in the opinion of Bond Counsel, in order for interest on the Bonds to remain excluded from gross income for federal income tax purposes.

Section 14. Successors Bound. This Agreement and the covenants and conditions contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Borrower and its successors and assigns and all subsequent owners of the Project or any interest therein, and the Issuer and its successors and assigns and the Trustee and its successors and assigns, for the Qualified Project Period, or for such longer periods set forth in Section 6 hereof. Upon termination of this Agreement the covenants and conditions contained herein shall expire.

Section 15. Assignment of Issuer's Rights. Certain rights of the Issuer in this Agreement may be assigned to the Administrator and, if so assigned, shall be enforceable by the Administrator in accordance with their terms.

Section 16. Notices. All notices, certificates or other communications shall be sufficiently given and shall be deemed given on the second day following the date on which the same have been mailed by certified mail, postage prepaid, addressed as provided in the Trust Indenture. The Issuer, the Administrator, the Trustee and the Borrower may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 17. Governing Act. This Agreement shall be governed by the laws of the State of Hawaii.

[The next page is S-1]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and sealed by their respective duly authorized representatives, as of the day and year first written above.

CITY AND COUNTY OF HONOLULU,

By: _____

Name: _____

Title: _____

STATE OF HAWAII)
COUNTY OF HONOLULU) SS.

On _____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Further, I certify, as of this date, as follows:

☐ Date of Document: _____ ☐ undated at time of notarization
Number of Pages: _____ (if counterpart signature pages are subsequently
attached, the document may have a different number of pages)
Document Description: Regulatory Agreement and Declaration of Restrictive Covenants
Jurisdiction/Judicial Circuit Where Signed: First

Type or print name: _____
Date: _____
Notary Public, State of Hawaii
My commission expires: _____

[Signature Page to Regulatory Agreement – Maunakea Tower Apartments 2023]

U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION, as Trustee

By: _____
Name: Thomas S. Zrust
Title: Vice President

STATE OF _____)
) SS.
COUNTY OF _____)

On _____, before me personally appeared _____,
to me personally known, who, being by me duly sworn or affirmed, did say that such person
executed the foregoing instrument as the free act and deed of such person, and if applicable, in
the capacities shown, having been duly authorized to execute such instrument in such capacities.

Further, I certify, as of this date, as follows:

☐ Date of Document: _____ ☐ undated at time of notarization
Number of Pages: _____ (if counterpart signature pages are subsequently
attached, the document may have a different number of pages)
Document Description: Regulatory Agreement and Declaration of Restrictive Covenants
Jurisdiction/Judicial Circuit Where Signed: First

Type or print name: _____
Date: _____
Notary Public, State of _____
My commission expires: _____

[Signature Page to Regulatory Agreement – Maunakea Tower Apartments 2023]

KOMOHALE MAUNAKEA VENTURE LP,
a Hawaii limited partnership

By: Komohale Maunakea Manager LLC,
a Delaware limited liability company,
its General Partner

By: _____
Name: Bradley C. Martinson
Title: Authorized Representative

By: _____
Name: Stanford S. Carr
Title: Authorized Representative

STATE OF _____)
COUNTY OF _____) SS.

On _____, before me personally appeared _____,
to me personally known, who, being by me duly sworn or affirmed, did say that such person
executed the foregoing instrument as the free act and deed of such person, and if applicable, in
the capacities shown, having been duly authorized to execute such instrument in such capacities.

Further, I certify, as of this date, as follows:

☐ Date of Document: _____ ☐ undated at time of notarization
Number of Pages: _____ (if counterpart signature pages are subsequently
attached, the document may have a different number of pages)
Document Description: Regulatory Agreement and Declaration of Restrictive Covenants
Jurisdiction/Judicial Circuit Where Signed: First

Type or print name: _____
Date: _____
Notary Public, State of _____
My commission expires: _____

[Signature Page to Regulatory Agreement – Maunakea Tower Apartments 2023]

KOMOHALE MAUNAKEA VENTURE LP,
a Hawaii limited partnership

By: Komohale Maunakea Manager LLC,
a Delaware limited liability company,
its General Partner

By: _____
Name: Bradley C. Martinson
Title: Authorized Representative

By: _____
Name: Stanford S. Carr
Title: Authorized Representative

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared Bradley C. Martinson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

[Signature Page to Regulatory Agreement – Maunakea Tower Apartments 2023]

EXHIBIT A

DESCRIPTION OF REAL PROPERTY

[TO BE CONFIRMED PRIOR TO CLOSING]

FIRST: That certain residential apartment tower known as THE MAUNAKEA TOWER of that certain Condominium Project known as "THE BERETANIA NORTH" (the "Project"), as shown on Condominium Map No. 481, and described in the Amendment and Complete Restatement of the Declaration of Condominium Property Regime of The Beretania North dated September 16, 1996, and recorded in the Bureau of Conveyances, State of Hawaii as Document No. 96-137999, as amended by instruments recorded in the Bureau of Conveyances, State of Hawaii, on April 1, 2003 as Document No. 2003-060318, September 2, 2015 as Document No. A-57230578, and November 2, 2018 as Document No. A-68800318, as may be further amended (the "Declaration").

THE MAUNAKEA TOWER and the common elements of the Project shall have and be subject to the following easements:

- (A) Each apartment tower of the Project shall be subject to easements through such apartment tower appurtenant to the common elements for support and repair of the common elements, and for entry as may be necessary for the operation of the Project or for the making of repairs therein or the installation, repair or replacement of any common element.
- (B) Each apartment tower of the Project shall have appurtenant thereto non-exclusive easements in the common elements designed for such purposes for ingress to, egress from, utilities for, and support of such apartment tower, and in the other common elements for use according to their respective purposes.
- (C) If any part of the common elements encroaches upon any apartment tower of the Project or limited common element that is not a substantial encroachment, a valid easement for such encroachment and the maintenance thereof, so long as it continues shall and does exist. In the event any apartment tower of the Project shall be partially or totally destroyed and then rebuilt, minor encroachment upon any parts of the common elements due to such construction shall be permitted and valid easements for such encroachments and the maintenance thereof shall exist.
- (D) That portion of the stairway tower of each apartment tower of the Project situated adjacent to and serving as a connection between each apartment tower and the parking structure shall be subject to an easement in the common elements and in the other apartment tower for egress from the parking structure in case of any emergency.

SECOND: An undivided 50% interest in all common elements of the Project and in the land upon which said Project is located as established for said apartment by the Declaration, or such other percentage interest as hereinafter established for said apartment by any amendment of the Declaration as tenant in common with the other owners and tenants thereof.

Together also with an exclusive easement in and to the following:

THE MAUNAKEA TOWER shall have an easement for the exclusive use of the parking stalls within the parking structure as shown in said Declaration, as amended.

THE MAUNAKEA TOWER shall also have an easement for the exclusive use of the driveway and parking area situated at or near the entrance of THE MAUNAKEA TOWER, including the 5 unnumbered parking stalls located therein. All of the foregoing parking stalls are shown on said Condominium Map.

THE MAUNAKEA TOWER shall have as an appurtenance thereto to exclusive use of the concrete walkway leading from the entrance of the Maunakea Tower to Maunakea Street.

THE MAUNAKEA TOWER shall have as an appurtenance thereto the exclusive use of the electrical meter room and equipment and facilities therein located on the Northwest corner of the first floor of the parking structure, the water heater room, and the heaters and other facilities therein located on the Northwest corner of the eight floor of the parking structure, and all electrical, mechanical, and other equipment, wiring, pipes and other transmission facilities and installations which serve Maunakea Tower for services such as power, light, water gas, sewer, telephone and radio and television signal distribution.

Being the premises acquired by:

APARTMENT DEED

Recorded : _____ in the Bureau of Conveyances, State of Hawaii, as Document No. A-_____

Grantor : MAUNAKEA PALMS LIMITED PARTNERSHIP, a Hawaii limited partnership

Grantee : KOMOHALE MAUNAKEA VENTURE LP, a Hawaii limited partnership

The land upon which said Condominium Project "THE BERETANIA NORTH" is located is described as follows:

All of that certain parcel of land (being a portion of the land(s) described in and covered by R.P. 4484, L.C. Aw. 7712, Ap. 6, Part 3 of V. Kamamalu, R.P. 1971, L.C. Aw. 1700 to Liaikulani, Grant 5444 to Trustees of the B. P. Bishop Estate, R.P. 1985, L.C. Aw. 6245, Part 1, No. 4 to Kalaeokekoi no Kalakini) situate, lying and being at Honolulu, City and County of Honolulu, State of Hawaii, being LOT F-2, same being a portion of Block "F" and a portion of HRS Parcel D-F-2, and thus bounded and described as per survey of Kataichi Ninomiya, Registered Professional Land Surveyor, dated September 26, 1974, to-wit:

Beginning at the South corner of this piece of land and on the Northwesterly side of Nuuanu Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 258.45 feet North and 3,483.95 feet West, thence running by azimuths measured clockwise from True South:

1. 140° 00' 308.34 feet along the remainder of R.P. 4484, L.C. Aw. 7712, Ap. 6, Part 3 to V. Kamamalu;
2. 50° 00' 81.79 feet along the remainder of R.P. 4484, L.C. Aw. 7712, Ap. 6, Part 3 to V. Kamamalu and Grant 5444 to Trustees of the B. P. Bishop Estate;
3. 140° 00' 156.08 feet along the remainders of Grant 5444 to Trustees of the B. P. Bishop Estate and R.P. 1971, L.C. Aw. 1700 to Liaikulani;
4. 230° 00' 301.48 feet along the Southeasterly side of Maunakea Street;
Thence along the Southwesterly side of Kukui Street on a curve to the right with a radius of 30.00 feet, the direct azimuth and distance of the chord being:
5. 275° 50' 15" 43.04 feet;
6. 321° 40' 30" 372.73 feet along the Southwesterly side of Kukui Street;

Thence along the Southwesterly side of Kukui Street on a curve to the right with a radius of 30.00 feet, the direct azimuth and distance of the chord being:

7. 1° 32' 45" 38.46 feet;
8. 41° 25' 215.69 feet along the Northwesterly side of Nuuanu Avenue to the point of beginning and containing an area of 121,401 square feet, more or less.

EXHIBIT B

OCCUPANCY CERTIFICATE

(To be filed with the Issuer and the Trustee along with a Verification of Income upon the rental of a unit to any Low Income Tenant.)

Project: Maunakea Tower Apartments

The tenant identified in the attached Verification of Income has entered into a lease with respect to a unit in the above-described Project.

Such tenant is/is not (circle one) a Low Income Tenant.

Such tenant is/is not (circle one) a full-time student.

The rental of a unit to such tenant will not result in a violation of any of the requirements of the Regulatory Agreement and Declaration of Restrictive Covenants to which the Borrower is a party.

Witness

Borrower

Date: _____

EXHIBIT B (CONTINUED)

OWNER'S CERTIFICATION OF COMPLIANCE
WITH TENANT ELIGIBILITY AND
RENT PROCEDURES

[HUD Form 50059]

EXHIBIT C

[FORM OF CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE]

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Witnesseth that on this _____ day of _____, _____, the undersigned, having borrowed certain funds from the City and County of Honolulu (the “Issuer”) for the purpose of acquiring and rehabilitating a multifamily rental housing development known as the Maunakea Tower Apartments (the “Project”), does hereby certify that during the preceding quarter (i) such Project was continually in compliance with the Regulatory Agreement and Declaration of Restrictive Covenants executed in connection with such loan from the Issuer, and (ii) _____ % of the units in the Project were occupied by Low Income Tenants; and does hereby further certify that the representations set forth herein are true and correct to the undersigned’s actual knowledge and belief.

Set forth below are the names of Low Income Tenants who commenced or terminated occupancy during the preceding quarter.

Commenced Occupancy	Terminated Occupancy
1.	1.
2.	2.
3.	3.

The units occupied by Low Income Tenants are of similar size and quality to other units and are dispersed throughout the Project.

Attached is a separate sheet listing the number of each unit and indicating which units are occupied by Low Income Tenants, the size, the number of bedrooms of such units and the number of Low Income Tenants who commenced occupancy of units during the preceding quarter.

Witness

Borrower

Date: _____

<u>Unit No.</u>	<u>Low Income Unit</u>	<u>No. of Bedrooms</u>	<u>Rent</u>	<u>Total Eligible Income (for Low Units)</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Total Number of Units: _____

Percentage of Low Income Units: _____

Number of Low Income Tenants commencing occupancy this quarter: _____

FORM OF STATISTICAL REPORT TO ISSUER

3764351.3 046547 DRFT

EXHIBIT E

CERTIFICATION CONCERNING QUALIFIED PROJECT PERIOD

Komohale Maunakea Venture LP., a Hawaii limited partnership (the “Borrower”), hereby certifies to the City and County of Honolulu, in connection with a certain loan for a certain project known as Maunakea Tower Apartments, located in Honolulu, Hawaii (the “Project”), as follows:

1. The Qualified Project Period shall begin on the first date on which 10% of the total number of residential units in the Project were occupied, which date the Borrower certifies to be _____, 20__.
2. The Qualified Project Period shall end on the latest of the following dates to occur:
 - (i) Fifteen (15) years after the first date 50% of the residential units in the Project are occupied, which date the Borrower certifies to be _____, 20__, and fifteen (15) years after such date being _____, 20__;
 - (ii) the first date on which no tax exempt private activity note or bond issued with respect to the Project is outstanding;
 - (iii) the date on which all assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates.

[signature on following page]

EXHIBIT F

HUD RIDER TO REGULATORY AGREEMENT

This RIDER is attached to and forms part of the Regulatory Agreement and Declaration of Restrictive Covenants dated as of [May] 1, 2023 (the “Agreement”), by and among the City and County of Honolulu (the “Issuer”), U.S. Bank Trust Company, National Association, a national banking association duly existing under the laws of the United States of America, as Trustee, and Komohale Maunakea Venture LP, a Hawaii limited partnership (the “Borrower”).

WHEREAS, Borrower has obtained financing from PNC Bank, N.A. (“Lender”) for the benefit of the project known as Maunakea Tower (“Project”), which loan is secured by a Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement (“Security Instrument”) dated [May] 1, 2023, and recorded in the Bureau of Conveyances of the State of Hawaii (“Records”) concurrently herewith, and is insured by the United States Department of Housing and Urban Development (“HUD”);

WHEREAS, Borrower has received tax-exempt bond financing from the Issuer, which Issuer is requiring certain restrictions be recorded against the Project; and

WHEREAS, HUD requires as a condition of its insuring Lender’s financing to the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Issuer has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan (defined below) in accordance with the terms of this Rider.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) **In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Rider, the provision contained in this Rider shall govern and be controlling in all respects as set forth more fully herein.**

(b) The following terms shall have the following definitions:

“Code” means the Internal Revenue Code of 1986, as amended.

“HUD” means the United States Department of Housing and Urban Development.

“HUD Regulatory Agreement” means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

“Lender” means PNC Bank, N.A., its successors and assigns.

“Mortgage Loan” means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

“Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

“National Housing Act” means the National Housing Act, 12 USC § 1701 et seq., as amended.

“Program Obligations” has the meaning set forth in the Security Instrument.

“Residual Receipts” has the meaning specified in the HUD Regulatory Agreement.

“Security Instrument” means the Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

“Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, except the requirements in 26 U.S.C. 42(h)(6)(E)(ii), to the extent applicable, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “HUD Requirements”). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Issuer’s ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower’s knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In accordance with 26 U.S.C. 42(h)(6)(E)(i)(1), in the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, with the exception of the requirements of 26 U.S.C. 42(h)(6)(E)(ii) above, to the extent applicable, or as otherwise approved by HUD.

(e) Borrower and the Issuer acknowledge that Borrower’s failure to comply with the covenants provided in the Restrictive Covenants will not and does not serve as a basis for default under the HUD Requirements, unless a separate default also arises under the HUD Requirements.

(f) Except for the Issuer’s reporting requirement in enforcing the Restrictive Covenants, the Issuer will not file any claim against the Project, the Mortgage Loan proceeds,

any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available surplus cash, if the Borrower is a for-profit entity;
- ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- iii. Available residual receipts authorized for release by HUD, if the Borrower is a non-profit entity; or
- iv. A HUD-approved collateral assignment of any HAP contract.

(g) For so long as the Mortgage Loan is outstanding, Borrower and Issuer shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Issuer may require the Borrower to indemnify and hold the Issuer harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Issuer relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Issuer harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

(i) Notwithstanding anything to the contrary contained herein, it is not the intent of any of the parties hereto to cause a recapture of the Low Income Housing Tax Credits or any portion thereof related to any potential conflicts between the HUD Requirements and the Restrictive Covenants. Borrower represents and warrants that to the best of Borrower's knowledge the HUD Requirements impose no requirements which may be inconsistent with full compliance with the Restrictive Covenants. The acknowledged purpose of the HUD Requirements is to articulate requirements imposed by HUD, consistent with its governing statutes, and the acknowledged purpose of the Restrictive Covenants is to articulate requirements imposed by Section 42 of the Code. In the event an apparent conflict between the HUD Requirements and the Restrictive Covenant arises, the parties and HUD will work in good faith to determine which federally imposed requirement is controlling. It is the primary responsibility of the Borrower, with advice of counsel, to determine that it will be able to comply with the HUD Requirements and its obligations under the Restrictive Covenants. No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds, or prohibiting the owner from taking any action that might jeopardize the tax-exemption, except in strict accord with Program Obligations.

The statements and representations contained in this rider and all supporting documentation thereto are true, accurate, and complete. This certification has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring a multifamily loan, and may be relied upon by HUD as a true statement of the facts contained therein.

Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.