



# Housing Authority of the City of Columbia, Missouri

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201 Switzler Street, Columbia MO 65203

Office: (573) 443-2556 ♦ Fax: (573) 443-0051 ♦ TTY: (800) 735-2966 ♦ [www.ColumbiaHA.com](http://www.ColumbiaHA.com)

## Open Meeting Notice

### CHA Board of Commissioners Meetings

**Date:** Wednesday, April 24, 2024

**Time:** 9:30 a.m.

**Place:** Columbia Housing Authority, 201 Switzler St.

This will be a virtual meeting held through the Zoom video conferencing application. Those with computers with cameras may join with video and audio. Those without video access may listen and participate by using computer audio or telephone. To receive an invitation to participate in the meeting, send an email request to: [dhamilton@columbiaha.com](mailto:dhamilton@columbiaha.com) at least four (4) hours prior to the start of the meeting.

- I. Call to Order/Introductions
- II. Roll Call
- III. Adoption of Agenda
- IV. Approval of Minutes
- V. Commissioner Comment
- VI. Public Comment (Limited to 5 minutes per speaker)

### SPECIAL ITEM

#### PUBLIC HEARINGS

Proposed issuance by the Authority of its exempt facility housing revenue bonds, in one or more series, in a principal amount of not to exceed \$8,000,000, for the purpose of financing a portion of the costs of the acquisition and construction of an approximately 34-unit qualified residential rental project under Section 142 of the Internal Revenue Code, to be located on the north side of E. Sexton Road between Grande Avenue on the east and N. Garth Avenue on the west, and south of the residential houses on 4th Avenue (with an approximate address of 7 East Sexton Road) in the City of Columbia, Missouri, to be known as Kinney Point Apartments (the "Project"), the principal user of which will be Kinney Point Housing Development Group, LP, a Missouri limited partnership.

#### RESOLUTIONS

- VII. **Resolution 2951:** Certified Resolution of the Housing Authority of the City of Columbia, Missouri authorizing it to enter into transactions to develop the Kinney Point Apartments project.

- VIII. Resolution 2952:** Authorizing the Housing Authority of the City of Columbia, Missouri to Issue Its Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) on Behalf of Kinney Point Housing Development Group, LP to Provide Funds to Finance a Portion of the Costs of the Acquisition and Construction of a 34-Unit Housing Project; Authorizing and Approving Certain Documents in Connection with the Issuance of the Bonds; and Authorizing Certain Other Actions in Connection with the Issuance of the Bonds.
- IX. Resolution 2953:** A Resolution Authorizing the Chief Executive Officer of the Housing Authority of the City of Columbia to execute an Agreement to enter into a Housing Assistance Payment Contract (AHAP) prior to construction, and a Housing Assistance Payment (HAP) contract upon construction completion and final inspection.

#### **REPORTS**

#### **PUBLIC AND COMMISSIONER COMMENT**

- X.** Public Comment (Limited to 5 minutes per speaker)
- XI.** Adjournment

If you wish to participate in the meeting and require specific accommodations or services related to disability, please contact Darcie Hamilton, Housing Development Coordinator at (573) 443-2556, extension 7035 or TTY Relay 800.735.2966, at least one working day prior to the meeting. You can also contact Ms. Hamilton by email at the following address: [dhamilton@columbiaha.com](mailto:dhamilton@columbiaha.com)

**Media Contact:** Randy Cole, CEO  
Phone: (573) 443-2556  
E-mail: [rcole@columbiaha.com](mailto:rcole@columbiaha.com)

A complete agenda packet is available for review at all CHA offices during regular business hours and posted on the CHA web site at: [www.ColumbiaHA.com](http://www.ColumbiaHA.com).

## NOTICE OF PUBLIC HEARING

Public notice is hereby given that Housing Authority of the City of Columbia, Missouri (the "Authority") will hold a public hearing in the board room of the offices of the Authority, 201 Switzler Street, Columbia, Missouri 65203, on Wednesday, April 24, 2024, commencing at 9:30 a.m., or soon thereafter, regarding the proposed issuance by the Authority of its exempt facility housing revenue bonds, in one or more series, in a principal amount of not to exceed \$8,000,000, for the purpose of financing a portion of the costs of the acquisition and construction of an approximately 34-unit qualified residential rental project under Section 142 of the Internal Revenue Code, to be located on the north side of E. Sexton Road between Grande Avenue on the east and N. Garth Avenue on the west, and south of the residential houses on 4<sup>th</sup> Avenue (with an approximate address of 7 East Sexton Road) in the City of Columbia, Missouri, to be known as Kinney Point Apartments (the "Project"), the principal user of which will be Kinney Point Housing Development Group, LP, a Missouri limited partnership.

Interested individuals may attend and participate in the hearing either in person at the address specified above or virtually via Zoom at the following URL: <https://us02web.zoom.us/j/87926841495>.

The hearing will be open to the public. All interested persons may attend the hearing and will have an opportunity to express their views with respect to the Project, including the location and nature of the proposed facilities and the issuance of bonds to pay a portion of the costs thereof. Written comments with respect to the Project may also be submitted to the undersigned prior to the hearing. Additional information regarding the proposed Project and the bond issue may be obtained in advance of the hearing from the undersigned. The Authority makes reasonable accommodations for any known disability that may interfere with a person's ability to participate in public meetings. Persons needing an accommodation must notify the Authority, by telephone at the number below or in writing, no later than five days prior to the hearing to allow adequate time to make needed arrangements.

Dated this 16th day of April, 2024.

Darcie Hamilton  
Housing Authority of the  
City of Columbia, Missouri  
201 Switzler Street  
Columbia, Missouri 65203  
(573) 443-2556 ext. 7035  
TTY Relay (800) 735-2966



# Housing Authority of the City of Columbia, Missouri

201 Switzler Street, Columbia MO 65203

Office: (573) 443-2556 ♦ Fax: (573) 443-0051 ♦ TTY: (800) 735-2966 ♦ www.ColumbiaHA.com

Department Source: CEO

To: CHA Board of Commissioners

From: CEO & Staff

CHA Board of Commissioners Meeting Date: April 24, 2024

Re: Resolution 2951: Certified Resolution of the Housing Authority of the City of Columbia, Missouri authorizing it to enter into transactions to develop the Kinney Point Apartments project.

## Executive Summary

Approval of this resolution authorizes the Columbia Housing Authority entity to enter into transactions for the development of the Kinney Point Apartments.

## Discussion

The proposed resolution authorizes the Columbia Housing Authority to enter into transactions necessary to carry out the development of the Kinney Point Apartments in accordance with Internal Revenue Code Section 42 . The project includes the following entities as a part of this transaction:

- Kinney Point Housing Development Group, LP, a Missouri limited partnership (the “Partnership”)
- Kinney Point Housing GP, LLC, a Missouri limited liability company (“Kinney Point Housing GP” or “General Partner”)
- CHA Affordable Housing Development, LLC, a Missouri limited liability company (the “Developer”)

The resolution authorizes the Housing Authority serving as the sole member (the “Member”) of the Developer of the Project, and the execution of associated documents. It also authorizes the sale of the land from CHA to the partnership, associated financing, and the developer fee to be earned by the Columbia Housing Authority upon completion of specific project milestones. The resolution also authorizes the Columbia Housing Authority to issue Multifamily Housing Revenue Bonds for both construction financing and long-term financing. Finally, the resolution authorizes CHA’s Board Chair and Chief Executive Officer to sign off on associated documents.

## Recommended Commission Action

Adopt the Resolution to Certify the Housing Authority of the City of Columbia, Missouri authorizing it to enter into transactions to develop the Kinney Point Apartments project.



# Housing Authority of the City of Columbia, Missouri

## Board Resolution

### RESOLUTION #2951

#### **CERTIFIED RESOLUTION OF THE HOUSING AUTHORITY OF THE CITY OF COLUMBIA, MISSOURI AUTHORIZING IT TO ENTER INTO TRANSACTIONS TO DEVELOP THE KINNEY POINT APARTMENTS PROJECT**

The undersigned hereby certifies that on April 24, 2024, at a meeting of the Board of Commissioners (the “Board”) of the Housing Authority of the City of Columbia, Missouri, a Missouri municipal corporation (the “Housing Authority”) at which a quorum was in attendance, acting pursuant to its Bylaws and Chapter 99 of the Revised Statutes of Missouri (the “Act”), the following resolutions were adopted:

**WHEREAS**, the Board has heretofore submitted a development proposal and application for federal and state low-income housing tax credits (“Tax Credits”) to the Missouri Housing Development Commission (“MHDC”), to build Kinney Point Apartments (hereinafter referred to as the “Project”) which has been approved by MHDC, at the vicinity of Garth and Sexton, Columbia, Missouri, having a general address of 609 North Garth Ave.;

**WHEREAS**, the Project will be owned by Kinney Point Housing Development Group, LP, a Missouri limited partnership (the “Partnership”);

**WHEREAS**, the general partner of the Partnership is Kinney Point Housing GP, LLC, a Missouri limited liability company (“Kinney Point Housing GP” or “General Partner”);

**WHEREAS**, the Project will be developed by CHA Affordable Housing Development, LLC, a Missouri limited liability company (the “Developer”);

**WHEREAS**, the Housing Authority desires to participate in the development of Project by serving as the sole member (the “Member”) of the Developer of the Project;

**WHEREAS**, the Housing Authority desires to sell certain real estate to the Partnership on which the Partnership will develop the Project;

**WHEREAS**, the Housing Authority, pursuant to the Act, has the power to prepare, develop, carry out, acquire, lease and operate the housing project; to obtain financing, provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof;

**WHEREAS**, the Housing Authority will be required to execute certain contracts, records, instruments, agreements, notices and other documents necessary or appropriate to evidence, effectuate, and consummate certain transactions undertaken for the purpose of developing the Project including the acquiring, developing, constructing and financing of the Project;



# Housing Authority of the City of Columbia, Missouri

## Board Resolution

**NOW THEREFORE BE IT RESOLVED**, that the Board of the Housing Authority authorizes the Housing Authority to serve as the sole member of the Developer.

**BE IT RESOLVED FURTHER**, that the Housing Authority agrees to execute and deliver such documents and to take such actions as may be necessary as the sole member, and/or desirable in connection with all matters relating, directly or indirectly, to the development, construction and rehabilitation of the Project.

**BE IT RESOLVED FURTHER**, that the Housing Authority be and it is hereby authorized and directed to sell the following parcels of real property on which the Project will be built to the Partnership for up to \$1,000,000 and to provide seller-financing to the Partnership to the extent necessary to facilitate the development of the Project:

A TRACT OF LAND CONTAINING 1.96 ACRES, MORE OR LESS, BEING LOT ONE-A (1-A) OF GRACE COVENANT CHURCH SUBDIVISION PLAT ONE-A (1-A) IN THE CITY OF COLUMBIA, BOONE COUNTY, MISSOURI, AS SHOWN BY THE PLAT THEREOF RECORDED IN PLAT BOOK 46, PAGE 12, RECORDS OF BOONE COUNTY, MISSOURI.

A TRACT OF LAND CONTAINING 2.95 ACRES, MORE OR LESS, BEING KINNEY POINT PLAT NUMBER ONE (1) IN THE CITY OF COLUMBIA, BOONE COUNTY, MISSOURI, AS SHOWN BY THE PLAT THEREOF RECORDED IN PLAT BOOK 57, PAGE 54, RECORDS OF BOONE COUNTY, MISSOURI.

**BE IT RESOLVED FURTHER**, that the Housing Authority be and it is hereby authorized and directed to enter into any and all loan and equity guarantees that may be required by any lender making a loan to the Partnership in connection with the development of the Project, including, but not by way of limitation, tax-exempt bond financing in which Legacy Bank & Trust is the bond purchaser, and a tax credit investor fund affiliated with Red Stone Equity Partners.

**BE IT RESOLVED FURTHER**, that the Housing Authority be and it is hereby authorized and directed to enter into any and all documents, instruments, agreements and notices deemed necessary or appropriate by an officer of the Housing Authority to qualify the Project for Federal Low-Income Housing Tax Credits under Internal Revenue Code (“Code”) Section 42.

**BE IT RESOLVED FURTHER**, that the Developer be and it is hereby authorized and directed to enter into a development services agreement with the Partnership for the provision of real estate development services for a development services fee of \$408,000, some portion of which may be deferred and paid out of Project cash flow.

**BE IT RESOLVED FURTHER**, that the Housing Authority, in its capacity as Issuer, is authorized to issue its Multifamily Housing Revenue Bonds (Kinney Point Apartments) Series 2024A in the principal amount of \$1,500,000 (the Series A Bonds) and its Multifamily Housing Revenue Bonds (Kinney Point Apartments) Series 202024B in the maximum principal amount of \$8,200,000 (the Series B Bonds”, together with the Series A Bonds, the “Bonds”), the proceeds of which will be loaned to the Partnership to partially finance the Project.



# Housing Authority of the City of Columbia, Missouri

## Board Resolution

**BE IT RESOLVED FURTHER** that the following officers are duly appointed and currently act as authorized signatories of the Housing Authority in the following capacity:

Randy Cole	Chief Executive Officer of the Housing Authority
Bob Hutton	Chair of the Board of the Housing Authority

**BE IT RESOLVED FURTHER**, that either one of Randy Cole as the Chief Executive Officer (“Chief Executive Officer”) or Bob Hutton as the Chair of the Board (“Chair”), is hereby authorized to sign for the Housing Authority and to take such other actions as he deems necessary and/or desirable in connection with all matters relating, directly or indirectly, to the development of the Project and to carry out these Resolutions.

**BE IT RESOLVED FURTHER**, that either the Chief Executive Officer or the Chair of the Board, is hereby authorized, on behalf of the Housing Authority, to enter into, execute and deliver all documents, instruments, agreements and notices necessary or appropriate to evidence, effectuate and consummate certain transactions undertaken for the purpose of acquiring, constructing, developing, securing the financing and maintaining of the Project.

**FINALLY RESOLVED**, that these Resolutions have not been amended, repealed or modified.

**IN WITNESS WHEREOF**, we have hereunto set our hands of the Housing Authority of the City of Columbia, Missouri as of April 24, 2024.

**HOUSING AUTHORITY OF THE CITY OF COLUMBIA, MISSOURI**,  
a Missouri municipal corporation

By: \_\_\_\_\_  
Bob Hutton, Chair

By: \_\_\_\_\_  
Randy Cole, Secretary



# Housing Authority of the City of Columbia, Missouri

201 Switzler Street, Columbia MO 65203

Office: (573) 443-2556 ♦ Fax: (573) 443-0051 ♦ TTY: (800) 735-2966 ♦ www.ColumbiaHA.com

Department Source: CEO

To: CHA Board of Commissioners

From: CEO & Staff

CHA Board of Commissioners Meeting Date: April 24, 2024

Re: Resolution 2952: Authorizing the Housing Authority of the City of Columbia, Missouri to Issue Its Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) on Behalf of Kinney Point Housing Development Group, LP to Provide Funds to Finance a Portion of the Costs of the Acquisition and Construction of a 34-Unit Housing Project; Authorizing and Approving Certain Documents in Connection with the Issuance of the Bonds; and Authorizing Certain Other Actions in Connection with the Issuance of the Bonds.

## Executive Summary

Approval of this resolution authorizes the Columbia Housing Authority to Issue Multifamily Housing Revenue Bonds to finance development costs associated with the development of 34 units at the Kinney Point Apartments.

## Discussion

The proposed resolution authorizes the Columbia Housing Authority to issue Multifamily Housing Revenue Bonds to finance associated costs of the development of Kinney Point Apartments. The resolution includes the following authorizations and approvals of the Columbia Housing Authority of its Board and Officers:

- Issuance and sale of bonds in a principal amount not to exceed \$8,000,000.
- Approval and execution of all bond issuance and associated documents.
- Includes the limited obligations of said bonds.
- Authorizes the Board Chair, Vice Chair and Chief Executive Officer of CHA to sign and execute documents.

## Recommended Commission Action

Adopt the Resolution Authorizing the Housing Authority of the City of Columbia, Missouri to Issue Its Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) on Behalf of Kinney Point Housing Development Group, LP to Provide Funds to Finance a Portion of the Costs of the Acquisition and Construction of a 34-Unit Housing Project; Authorizing and Approving Certain Documents in Connection with the Issuance of the Bonds; and Authorizing Certain Other Actions in Connection with the Issuance of the Bonds.





# Housing Authority of the City of Columbia, Missouri

## Board Resolution

### RESOLUTION #2952

**Authorizing the Housing Authority of the City of Columbia, Missouri to Issue Its Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) on Behalf of Kinney Point Housing Development Group, LP to Provide Funds to Finance a Portion of the Costs of the Acquisition and Construction of a 34-Unit Housing Project; Authorizing and Approving Certain Documents in Connection with the Issuance of the Bonds; and Authorizing Certain Other Actions in Connection with the Issuance of the Bonds.**

**WHEREAS**, the Housing Authority of the City of Columbia, Missouri (the “Authority”) is authorized and empowered under Sections 99.010 to 99.230 of the Revised Statutes of Missouri, as amended (the “Act”), to issue revenue bonds to finance housing projects (as defined in the Act), for the purposes set forth in the Act; and

**WHEREAS**, Kinney Point Housing Development Group, LP, a Missouri limited partnership, (the “Borrower”), has requested that the Authority issue its revenue bonds, the proceeds of which will be used, among other things, to finance a portion of the costs of the acquisition and construction of approximately 34 apartment units to be located at approximately 7 East Sexton Road and to be generally on the north side of E. Sexton Road between Grande Avenue on the east and N. Garth Avenue on the west, and south of the residential houses on 4<sup>th</sup> Avenue in the City of Columbia, Missouri and to be known as Kinney Point Apartments (the “Project”); and

**WHEREAS**, the Board of Commissioners of the Authority hereby finds and determines that it is within the authority and public purposes of the Act that the Authority issue its Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) in one or more series in an aggregate principal amount of not to exceed \$8,000,000 (the “Bonds”), the proceeds of which will be applied, at the request of the Borrower, to finance a portion of the costs of the Project; and

**WHEREAS**, the Board of Commissioners of the Authority further finds and determines that it is necessary and desirable in connection with the issuance of the Bonds that the Authority enter into certain documents, and that the Authority take certain other actions and approve the execution of certain other documents as herein provided; and

**WHEREAS**, the Authority is the sole member of CHA Affordable Housing Development, LLC, a Missouri limited liability company (the “Developer”);

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

Section 1. Authorization of Bonds. The Authority is hereby authorized to issue and sell the Bonds in one or more series in an aggregate principal amount of not to exceed \$8,000,000 for the purpose of providing funds to enable the Borrower to pay certain costs of the Project. The Bonds shall be issued and secured pursuant to the below-authorized Indenture and shall bear such dates, shall be in such

denominations, shall be in such forms, shall be subject to optional and mandatory redemption, shall have such other terms and provisions, shall be issued, executed, authenticated and delivered in such manner and shall be subject to such provisions, covenants and agreements, as are set forth in the Indenture. The Bonds will have a final maturity no later than November 1, 2045 (subject to extension as provided in the Indenture) and will bear interest at one or more rates not to exceed 8.5% per annum.

Section 2. Approval of Documents. The following documents are approved in substantially the forms presented to the Board of Commissioners of the Authority at this meeting, and the Authority is hereby authorized to enter into each of such documents to which the Authority is a party (the "Documents") with such changes therein as shall be approved by the officers of the Authority executing such documents, such officers' signatures thereon being conclusive evidence of their approval thereof:

- (a) the Trust Indenture (the "Indenture"), between the Authority and UMB Bank, N.A., as Trustee (the "Trustee");
- (b) the Loan Agreement, between the Authority and the Borrower;
- (c) the Land Use Restriction Agreement, among the Authority, the Trustee and the Borrower;
- (d) the Tax Compliance Agreement, among the Authority, the Trustee and the Borrower; and
- (e) the Bond Purchase Agreement, among the Authority, the Borrower and Legacy Bank & Trust Company, a Missouri chartered bank.

Section 3. Execution of Bonds and Documents.

(a) The Chair, the Vice Chair or the Chief Executive Officer of the Authority is hereby authorized and directed to execute and deliver, for and on behalf of and as the act and deed of the Authority, the Bonds and each of the Documents and to execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution. The Secretary or the Assistant Secretary of the Authority is hereby authorized and directed to attest to the execution of, and to affix the Authority's official seal to, the Bonds, the Documents and any other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.

(b) The Bonds shall be in substantially the forms as submitted to and considered by the Authority as set forth in the Indenture. Any changes as to the forms of the Bonds must be approved by the representatives of the Authority executing the Bonds. The signatures of the Authority's representatives on the Bonds, whether manual or facsimile, shall be conclusive evidence of their approval.

Section 4. Limited Obligations.

(a) The Bonds and the interest thereon are limited obligations of the Authority payable solely from the Bond proceeds, moneys from time to time paid by the Borrower pursuant to the terms of the Loan Agreement and the other documents to which the Borrower is a party and other moneys pledged thereto and held by the Trustee as provided in the Indenture, and are secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate (as defined in the Indenture) to the Trustee and in favor of the owners of the Bonds, as provided in the Indenture.

(b) The Bonds are not a debt of the City of Columbia, Missouri, the state of Missouri or any political subdivision thereof and none of the City of Columbia, Missouri, the state of Missouri or any political subdivision thereof shall be liable on the Bonds. The Bonds are not indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction and are not payable in any manner by taxation. The Authority has no taxing power.

(c) 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, provision, covenant or agreement contained in the Indenture against any past, present or future commissioner, director, trustee, officer, official, employee or agent of the Authority, or any commissioner, director, trustee, officer, official, employee or agent of any successor to the Authority, as such, either directly or through the Authority or any successor to the Authority, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such commissioner, director, trustee, officer, official, employee or agent as such is hereby expressly waived and released as a condition of and in consideration for the execution of the Indenture and the issuance of any of the Bonds. Neither the officers of the Authority nor any person executing the Bonds shall be personally liable on the Bonds by reason of the issuance thereof.

Section 5.      Further Authority.

(a) The Authority shall, and the officers, agents and employees of the Authority are hereby authorized and directed to, take such further action, and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution and to carry out, comply with and perform the duties of the Authority with respect to the Bonds and the Documents.

(b) The Chair, the Vice Chair or the Chief Executive Officer of the Authority is hereby authorized and directed to execute and deliver, and the Secretary or any Assistant Secretary of the Authority is hereby authorized and directed to affix and attest the corporate seal of the Authority to, any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, the Documents and the issuance of the Bonds.

Section 6.      Effective Date. This Resolution will be in full force and effect immediately upon its passage by the Board of Commissioners of the Authority.

Passed by the Board of Commissioners of the Housing Authority of the City of Columbia, Missouri  
this 24th day of April, 2024.

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Bob Hutton, Chair

Attest:

(SEAL)

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Randall Cole, Secretary

**TRUST INDENTURE**

**Dated as of May 1, 2024**

between

**HOUSING AUTHORITY OF  
THE CITY OF COLUMBIA, MISSOURI**

and

**UMB BANK, N.A.,  
as Trustee**

securing

**\$\_ PRINCIPAL AMOUNT A\_ ] Maximum Principal Amount  
Multifamily Housing Revenue Bonds  
(Kinney Point Apartments Project)  
Series 2024A**

and

**\$\_ PRINCIPAL AMOUNT B\_ ] Maximum Principal Amount  
Multifamily Housing Revenue Bonds  
(Kinney Point Apartments Project)  
Series 2024B**

of

**Housing Authority of  
the City of Columbia, Missouri**

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## TABLE OF CONTENTS

### Page

Parties .....	1
Recitals .....	1
Granting Clauses .....	2

### **ARTICLE I DEFINITIONS AND INTERPRETATION**

Section 101. Definitions .....	3
Section 102. Interpretation .....	16

### **ARTICLE II THE BONDS**

Section 201. Authorized Amount of Bonds .....	17
Section 202. Limited Obligations .....	20
Section 203. Execution .....	20
Section 204. Authentication .....	21
Section 205. Mutilated, Lost, Stolen or Destroyed Bonds .....	21
Section 206. Transfer and Exchange of Bonds; Persons Treated as Owners .....	21
Section 207. Limitation on Transfer and Exchange .....	23
Section 208. Delivery of Bonds .....	23

### **ARTICLE III REDEMPTION OF BONDS PRIOR TO MATURITY**

Section 301. Redemption of Bonds Prior to Maturity .....	25
Section 302. Selection of Bonds for Partial Redemption .....	27
Section 303. Notice of Redemption .....	27
Section 304. Cancellation .....	28

### **ARTICLE IV FUNDS AND INVESTMENTS**

Section 401. Establishment of Funds .....	29
Section 402. Initial Application of Proceeds and Other Moneys .....	29
Section 403. Project Fund .....	29
Section 404. Bond Fund .....	32
Section 405. [Reserved] .....	33
Section 406. Expense Fund .....	33
Section 407. [Reserved] .....	33
Section 408. Revenue Fund .....	33
Section 409. Retained Earnings Fund .....	34
Section 410. Rebate Fund .....	35
Section 411. Custody of Funds and Accounts; Moneys Held in Trust .....	35
Section 412. Nonpresentment of Bonds .....	35
Section 413. Investment of Funds .....	36
Section 414. Final Balances .....	37

**ARTICLE V  
GENERAL COVENANTS AND REPRESENTATIONS**

Section 501.	Payment of Principal and Interest .....	37
Section 502.	Instruments of Further Assurance.....	37
Section 503.	Inspection of Project Books .....	38
Section 504.	Recordation and Filing .....	38
Section 505.	No Modification of Security.....	39
Section 506.	Existence and Authority .....	39
Section 507.	Casualty or Condemnation .....	39
Section 508.	General Tax Covenants.....	40

**ARTICLE VI  
DEFAULT PROVISIONS AND REMEDIES**

Section 601.	Events of Default.....	41
Section 602.	Acceleration .....	42
Section 603.	Remedies .....	43
Section 604.	Rights of Bondowners.....	43
Section 605.	Waiver by Issuer.....	43
Section 606.	Application of Moneys.....	44
Section 607.	Remedies Vested in Trustee and Majority Owner .....	44
Section 608.	Limitation on Rights of Bondowners .....	45
Section 609.	Termination of Proceedings.....	45
Section 610.	Waivers of Events of Default .....	46
Section 611.	Majority Owner Controls Proceedings.....	46

**ARTICLE VII  
THE TRUSTEE**

Section 701.	Certain Duties and Responsibilities .....	46
Section 702.	Notice of Default.....	48
Section 703.	Certain Rights of Trustee.....	48
Section 704.	Trustee Required; Eligibility .....	51
Section 705.	Trustee May Hold Bonds.....	52
Section 706.	Fees, Charges and Expenses of Trustee and Rebate Analyst.....	52
Section 707.	Successor Trustee .....	52
Section 708.	Resignation by the Trustee .....	52
Section 709.	Removal of the Trustee.....	52
Section 710.	Appointment of Successor Trustee by the Bondowners; Temporary Trustee.....	53
Section 711.	Concerning Any Successor Trustee.....	53

**ARTICLE VIII  
SUPPLEMENTAL INDENTURES**

Section 801.	Supplemental Indentures Not Requiring Consent of Bondowners.....	54
Section 802.	Supplemental Indentures Requiring Consent of Bondowners.....	54
Section 803.	Amendment of Certain Documents .....	55
Section 804.	Opinion of Bond Counsel Required .....	55

**ARTICLE IX  
SATISFACTION AND DISCHARGE OF INDENTURE**

Section 901. Discharge of Lien .....56

**ARTICLE X  
MISCELLANEOUS**

Section 1001. Consents and Other Instruments of Bondowners .....57  
Section 1002. Limitation of Rights .....58  
Section 1003. Severability.....58  
Section 1004. Notices.....58  
Section 1005. Trustee as Paying Agent and Bond Registrar .....60  
Section 1006. Payments Due on Other than a Business Day .....60  
Section 1007. Counterparts .....60  
Section 1008. Laws Governing Indenture and Situs and Administration of Trust.....60  
Section 1009. No Recourse .....60  
Section 1010. Successors and Assigns .....60  
Section 1011. Electronic Transactions .....61

Signatures ..... S-1

EXHIBIT A-1 Form of Series A Bond  
EXHIBIT A-2 Form of Series B Bond  
EXHIBIT B Form of Disbursement Request – Project Fund  
EXHIBIT C-1 Form of Investor Letter (Purchaser)  
EXHIBIT C-2 Form of Investor Letter (Custodial or Trust Arrangement)  
EXHIBIT C-3 Form of Investor Letter (Participant)  
EXHIBIT D Mandatory Sinking Fund Redemption Schedule

\* \* \* \* \*



## TRUST INDENTURE

**THIS TRUST INDENTURE**, dated as of May 1, 2024 (this "**Indenture**"), is between the **HOUSING AUTHORITY OF THE CITY OF COLUMBIA, MISSOURI**, a municipal corporation organized and existing under the laws of the state of Missouri, and its successors and assigns (the "**Issuer**"), and **UMB BANK, N.A.**, a national banking association authorized to accept and execute trusts of the character herein set out, as Trustee (the "**Trustee**").

### RECITALS

1. The Issuer is empowered by Sections 99.010 to 99.230 of the Revised Statutes of Missouri (as supplemented and amended, the "**Act**"), to, among other things, issue revenue bonds to provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income (within the meaning of the Act).

2. The Issuer has agreed to assist in financing a portion of the costs of the acquisition and construction of 34 multifamily housing units to be located in the City of Columbia, Missouri to be known as Kinney Point Apartments (the "**Project**"), for Kinney Point Housing Development Group, LP, a Missouri limited partnership (the "**Borrower**").

3. Pursuant to the Act, the Issuer is authorized to issue its Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024A in the aggregate maximum principal amount of \$[\_PRINCIPAL AMOUNT A\_] (the "**Series A Bonds**") and its Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024B in the aggregate maximum principal amount of \$[\_PRINCIPAL AMOUNT B\_] (the "**Series B Bonds**," together with the Series A Bonds, the "**Bonds**"), the proceeds of which will be applied, at the request of the Borrower, to finance a portion of the costs of the Project.

4. The Issuer passed Resolution No. 2951 on April 24, 2024 (the "**Resolution**") authorizing the issuance of the Bonds pursuant to this Indenture for the above purposes.

5. Pursuant to the Resolution, the Issuer is authorized to enter into (a) this Indenture for the purpose of issuing and securing the Bonds as provided below; (b) the Loan Agreement, dated as of May 1, 2024 (the "**Loan Agreement**"), between the Issuer and the Borrower, under which the Issuer will loan the proceeds of each Series of Bonds to the Borrower (the "**Loan**") to finance the Project in part; and (c) the Land Use Restriction Agreement, dated as of May 1, 2024 (the "**Land Use Restriction Agreement**"), and the Tax Compliance Agreement, dated as of May 1, 2024 (the "**Tax Agreement**"), each among the Issuer, the Borrower and the Trustee, relating to compliance with certain federal requirements applicable to the Project.

6. The Trustee will apply the proceeds from the sale of the Bonds under the provisions of this Indenture and the Loan Agreement to finance the Project.

7. The respective right, title and interest of the Issuer in and to the Loan and the security therefor, including any payments made and expenses incurred in connection with the Loan, and all proceeds thereof and the security therefor (including all casualty insurance benefits and condemnation awards) and any interest, profits and other income derived from the investment of the foregoing is assigned to the Trustee under this Indenture.

8. The Bonds will be equally secured by the Security Documents (defined below).

9. The Bonds and the Trustee's Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the forms set forth in **Exhibit A-1** and **Exhibit A-2**, with necessary and appropriate variations, omissions and insertions as permitted or required by this Indenture.

10. All things necessary to make the Bonds, when authenticated by the Trustee and issued as provided in this Indenture, the valid, binding and legal obligations of the Issuer according to the import thereof, and to constitute this Indenture a valid lien on the properties, interests, revenues and payments herein pledged to the payment of the Bonds, have been done and performed, and the creation, execution and delivery of this Indenture, and the execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized.

## **GRANTING CLAUSES**

**NOW, THEREFORE**, the Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the owners thereof, and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure the payment of the principal of, premium, if any, 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 does hereby bargain, sell, convey, pledge, assign and grant a security interest, without recourse, unto the Trustee in and to the following, subject only to the provisions of this Indenture permitting the application thereof for or to the purposes and on the terms and conditions set forth herein (said property being herein referred to as the "**Trust Estate**"), to wit:

### **I.**

All right, title and interest of the Issuer in and to any moneys held under this Indenture by the Trustee in the Funds and Accounts (as defined below).

### **II.**

The Notes, the Basic Payments, the Security Documents 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 under this Indenture 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, including the proceeds of the above.

**TO HAVE AND TO HOLD** the Trust Estate with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee and its successors in said trust and to them and their assigns forever;

**IN TRUST NEVERTHELESS**, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all owners 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 others of the Bonds, except as otherwise provided herein;

**PROVIDED, HOWEVER**, that if the Issuer shall pay or cause to be paid to the owners of the Bonds the principal, interest and premium, if any, to become due thereon at the times and in the manner provided in **Article IX** and if the Issuer keeps, performs and observes, or causes to be kept, performed and observed, all its covenants, warranties and agreements contained herein, this Indenture and the estate and rights granted by this Indenture will, at the option of the Issuer, cease, determine and be void. The Trustee will then cancel and discharge the lien of this Indenture and execute and deliver to the Issuer such instruments in writing as are required to satisfy the lien of this Indenture, and re-convey to the Issuer any property at the time subject to the lien of this Indenture which may then be in its possession, except funds held by the Trustee for the payment of interest on, premium, if any, and principal of the Bonds; otherwise this Indenture will remain in full force and effect, and upon the trusts and subject to the covenants and conditions set forth below.

## **ARTICLE I DEFINITIONS AND INTERPRETATION**

**Section 101. Definitions.** The words and terms defined in this **Section 101** or the **Recitals** (except as otherwise expressly provided in this Indenture or unless the context otherwise requires) have the respective meanings specified in this **Section 101** and the **Recitals** for all purposes of this Indenture and any supplemental indenture. Terms not otherwise defined in this Indenture have the meanings set forth in the Loan Agreement.

"**Act**" means Sections 99.010 to 99.230, Revised Statutes of Missouri, as amended and supplemented from time to time.

"**Administrative Office**" means (a) with respect to the initial Trustee, for notice and administration purposes, initially, 928 Grand Boulevard, 12<sup>th</sup> Floor, Kansas City, Missouri, 64106, Attention: Corporate Trust Department, and (b) with respect to any successor Trustee, its office for notice and administration purposes designated as such by the successor Trustee.

"**Amortization Commencement Date**" means [\_\_December 1, 2025\_\_].

**"Annual Budget"** means the budget prepared by the Borrower or the General Partner with respect to the Project as required by, or amended in accordance with, Section 5.06 of the Loan Agreement.

**"Approved Investor"** means any investor that is (a) a "qualified institutional buyer" as defined in Rule 144A promulgated by the Securities Exchange Commission under the Securities Act of 1933, as amended, (b) an "accredited investor" as defined in Rule 501(a)(1), (2), (3), (4), (7) or (8) of Regulation D promulgated by the Securities Exchange Commission under the Securities Act of 1933, as amended, or (c) a custodial trust the sole beneficial owners of which are entities described in clauses (a) and (b).

**"Assignment of Architect Agreement"** means the Assignment of Architect Agreement dated as of [\_\_ May 1, 2024 \_\_], from the Borrower to the Trustee, as amended, modified, supplemented and restated from time to time.

**"Assignment of Construction Documents"** means the Assignment of Construction Documents dated as of [\_\_ May 1, 2024 \_\_], from the Borrower to the Trustee, as amended, modified, supplemented and restated from time to time.

**"Assignment of Deed of Trust"** means the Assignment of Deed of Trust and Loan Documents dated [\_\_ May \_\_, 2024 \_\_], from the Trustee to the Original Purchaser, as amended, modified, supplemented and restated from time to time.

**"Assignment of Development Agreement"** means the Assignment and Subordination of Development Services Agreement, dated as of [\_\_ May 1, 2024 \_\_], from the Borrower to the Trustee, as amended, modified, supplemented and restated from time to time.

[\_\_ **"Assignment of HAP Contract"** means the Assignment of HAP Contract, dated as of [\_\_ May \_\_, 2024 \_\_], from the Borrower to the Trustee, as amended, modified, supplemented and restated from time to time. \_\_]

**"Assignment of Management Agreement"** means the Assignment of Management Agreement and Subordination of Management Agreement, dated as of [\_\_ May 1, 2024 \_\_], from the Borrower to the Trustee, as amended, modified, supplemented and restated from time to time.

**"Authorized Borrower Representative"** means the person at the time designated to act on behalf of the Borrower as evidenced by written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person and signed on behalf of the Borrower by the General Partner. The certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties and exercise all powers of an Authorized Borrower Representative.

**"Authorized Denomination"** means, for each Series of Bonds, \$100,000 and any amount in excess thereof, but not in excess of the aggregate principal amount of such Series of Bonds then Outstanding.

**"Authorized Issuer Representative"** means the Chief Executive Officer, the Chair, or the Vice Chair of the Issuer, or such other person at the time designated to act on behalf of the Issuer, in each case as evidenced by a written certificate furnished to the Trustee and the Borrower containing the specimen signature of such person and signed on behalf of the Issuer by an Authorized Issuer Representative. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Issuer Representative.

**"Basic Payment"** means each payment required to be made by the Borrower under Section 4.02(a) of the Loan Agreement.

**"Beneficial Owner"** means (a) for any Bond that is held by a nominee, the beneficial owner of such Bond and (b) for any Bond that is not held by a nominee, the Bondowner.

**"Bond Counsel"** means Gilmore & Bell, P.C., as bond counsel, and any other attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to 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, selected to act in that capacity by the Issuer with the written consent of the Majority Owner.

**"Bond Fund"** means the Bond Fund established in **Section 401(b)**.

**"Bond Obligation"** means, as of the date of calculation, the principal amount of Bonds then Outstanding.

**"Bond Purchase Agreement"** means the Bond Purchase Agreement dated the Issue Date, among the Issuer, the Borrower and the Original Purchaser, as amended, modified, supplemented and restated from time to time.

**"Bond Register"** means the register and all accompanying records kept by the Bond Registrar evidencing the registration, transfer and exchange of Bonds.

**"Bond Registrar"** means the Trustee.

**"Bondowner," "owner" or "Owner"** of the Bonds means the person or persons in whose name any Bond is registered from time to time on the Bond Register.

**"Bonds"** means, collectively, the Series A Bonds and the Series B Bonds.

**"Borrower"** means Kinney Point Housing Development Group, LP, a Missouri limited partnership, and its successors and assigns.

**"Business Day"** means any day other than a Saturday, a Sunday or any other day on which banking institutions in the city in which the Administrative Office or Payment Office of the Trustee is located are authorized or required to be closed.

**"Casualty/Condemnation Account"** means the Casualty/Condemnation Account of the Project Fund, if established pursuant to **Section 507**.

**"CCHT"** means the Columbia Community Housing Trust, a Missouri non-profit corporation.

**"CCHT Loan"** means the loan made to the Borrower, by CCHT, in the principal amount of \$3,000,000, evidenced by a promissory note and secured by a fourth priority deed of trust.

**"Certificate of the Issuer," "Statement of the Issuer" and "Request of the Issuer"** means, respectively, a written certificate, statement or request signed in the name of the Issuer by its Authorized Issuer Representative or such other person as may be designated and authorized to sign for the Issuer. Any instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

**"City"** means the City of Columbia, Missouri.

**"City Loan"** means the loan made to the Borrower, by the City, in the principal amount of \$2,000,000, evidenced by a promissory note and secured by a fifth priority deed of trust.

**"Code"** means the Internal Revenue Code of 1986, as amended, and the Regulations.

**"Completion Certificate"** has the meaning set forth in Section 3.03(e) of the Loan Agreement.

**"Condemnation"** means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any governmental entity or other Person acting under governmental authority.

**"Conditions to Conversion"** means the conditions set forth in the Continuing Covenants Agreement.

**"Continuing Covenants Agreement"** means the Continuing Covenants Agreement to be executed by and between the Borrower and the Original Purchaser to be executed on or before the issuance of the Bonds, as amended, modified, supplemented and restated from time to time.

**"Conversion Date"** means the date upon which the Original Purchaser confirms in writing to the Trustee that all Conditions to Conversion have been satisfied.

**"Conversion Deadline"** means [\_\_ November 1, 2025 \_\_], unless extended in accordance with the terms of the Continuing Covenants Agreement.

**"Costs of Issuance"** means all expenses incurred in connection with the authorization, sale, issuance and delivery of the Bonds, including, without limitation, placement agent's fees and expenses, counsel fees (including Bond Counsel, placement agent's counsel, Trustee's counsel, Issuer's counsel and financial advisor, Borrower's counsel, and Original Purchaser's counsel as well as any other specialized counsel fees incurred in connection with the issuance of the Bonds), the Issuer's issuance fee and costs and accountant fees related to the issuance of the Bonds, printing costs (for the Bonds and preliminary and final offering materials), costs incurred in connection with the required public approval process and costs of engineering and feasibility studies necessary to the issuance of the Bonds (as opposed to studies related to completion of the Project, but not to the Bond financing), mortgage banking fees, initial Trustee, Bond Registrar and Paying Agent fees, title insurance fees, survey fees and recording and filing fees.

**"Deed of Trust"** means the Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of [\_\_ May 1, 2024 \_\_], from the Borrower for the benefit of the Trustee, securing the Notes and the Loan, as amended, modified, supplemented and restated from time to time.

**"Defeasance Securities"** means:

- (a) Government Obligations; and
- (b) obligations of the Resolution Funding Corporation or any successor, but only if the use of the obligations to pay and discharge Bonds under **Article IX** will cause the discharged Bonds to be rated in the highest long-term rating category by the Rating Agency.

**"Determination of Taxability"** means (a) a determination by the Commissioner or any District Director of the Internal Revenue Service, (b) a determination by any court of competent jurisdiction or (c) receipt by the Trustee, at the request of the Borrower or any Bondowner, of an Opinion of Bond Counsel that the interest on the Bonds is includable in gross income for federal income tax purposes of the Owners thereof or any former Owner thereof, other than an Owner who is a "substantial user" (as such term is defined in Section 147(a) of the Code) of the Project or a Related Person. However, (i) no Determination of Taxability under clause (a) or (b) shall be deemed to have occurred if the Borrower has been afforded the opportunity to contest such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (1) a final determination from which no appeal may be taken with respect to such determination, (2) abandonment of such appeal by the Borrower, or (3) two years from the date of initial determination, and (ii) no Determination of Taxability under clause (c) shall be deemed to have occurred if, within 45 days after the receipt by the Borrower of an opinion under clause (c), the Borrower delivers to the Trustee an Opinion of Bond Counsel that the interest on the Bonds is excludable from gross income for federal income tax purposes of the Owners thereof or any former Owner thereof, other than an Owner who is a "substantial user" (as such term is defined in Section 147(a) of the Code) of the Project or a Related Person.

**"Disbursed Amount"** means, with respect to a Series of Bonds, the sum of the installments of the purchase price of such Series of Bonds funded by the Original Purchaser in accordance with **Section 201(c)**.

**"Disbursement Request"** means a written request for disbursement in substantially the form of **Exhibit B**.

**"Disbursing Agent"** means First American Title Insurance Company, or any other title company selected by the Borrower, with the written consent of the Majority Owner, its successors and assigns.

**"Disbursing Agreement"** means the Escrow Disbursing Agreement, dated as of [\_\_ May 1, 2024 \_\_], among the [\_\_ Borrower, the Original Purchaser, the General Partner, the General Contractor (as hereinafter defined) [\_\_, the \_\_\_\_\_]\_\_] and the Disbursing Agent, as amended, modified, supplemented and restated from time to time.

**"Environmental Indemnity"** means the Environmental Indemnification and Release Agreement, dated as of [\_\_ May 1, 2024 \_\_], from the Borrower, for the benefit of the Trustee, the Issuer and the Original Purchaser, as amended, modified, supplemented and restated from time to time.

**"Event of Bankruptcy"** means, as to the Borrower or the General Partner, any of the following with regard to such party:

- (a) commencement by such party of a voluntary case under the United States Bankruptcy Code, as now in effect or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or similar laws, and, either an order of insolvency, relief or reorganization is entered against such party or the proceeding remains undismissed and unstayed for a 90-day period;
- (b) filing of a petition with a court having competent jurisdiction over such party to commence an involuntary case against such party under the United States Bankruptcy Code, as now in effect or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or similar laws, and, either an order of insolvency, relief or reorganization is entered against such party or the proceeding remains undismissed and unstayed for a 90-day period;
- (c) admission by such party in writing of its inability to pay its debts generally as they become due;
- (d) appointment of a receiver, trustee or liquidator of such party in any proceeding brought against such party;
- (e) assignment by such party for the benefit of its creditors; or
- (f) entry by such party into an agreement of composition with its creditors.

**"Event of Default"** means any event or occurrence set forth in **Section 601**.



**"Expense Fund"** means the Expense Fund established in **Section 401(c)**.

**"Extraordinary Fees and Expenses"** means the reasonable fees, expenses, disbursements and advances (including legal and accounting fees), payable to the Trustee in connection with any provision of this Indenture and the Loan Documents that are in excess of the Ordinary Trustee's Fees and which relate to extraordinary matters other than the anticipated administration of this Indenture and the Loan Documents. Extraordinary matters include, by way of example, any default or event of default, any litigation or threatened litigation and any requested amendment or supplement to this Indenture or any Loan Document.

**"Funds and Accounts"** means all funds and accounts created under **Section 401** hereof and held by the Trustee.

**"General Contractor"** means EM Harris Construction Company, a Missouri corporation, and its successors and assigns.

**"General Partner"** means Kinney Point Housing GP, LLC, a Missouri limited liability company, the general partner of the Borrower, and its permitted successors and assigns.

**"Government Obligations"** means direct obligations of, or obligations fully guaranteed as to the full and timely payment by, the United States of America.

**"Gross Revenues"** means, for any period, all receipts, revenues, income and other moneys received by or on behalf of the Borrower from the Project during the period, including: (a) all monthly lease revenues and all other revenues (excluding security and other similar deposits); (b) the proceeds of any insurance; (c) the proceeds of any sale, transfer, or other disposition of the Project; and (d) any condemnation or any other damage award received by or owing to the Borrower.

**"Guarantor"** means [ ] each of the following, jointly and severally: [ ] [ ] the Issuer, in its capacity as a guarantor under the Guaranty [ ], [ ] collectively, the **"Guarantors."** [ ]

**"Guaranty"** means the Guaranty Agreement, dated as of [ ] May 1, 2024 [ ], from the Guarantor, for the benefit of the Trustee, as amended, modified, supplemented and restated from time to time.

**"Indenture"** means this Trust Indenture, as amended, modified, supplemented and restated from time to time.

**"Insurance and Taxes Escrow Account"** means the Insurance and Taxes Escrow Account of the Project Fund, if established pursuant to **Section 403(g)**.

**"Interest Payment Date"** means (a) the first (1st) day of each month, commencing [ ] July [ ] 1, 2024, (b) the Rate Adjustment Date and (c) any other day on which the principal of and interest on the Bonds is due and payable, whether upon redemption or at maturity, whether scheduled or accelerated. In

any case where an Interest Payment Date is not a Business Day, then payment need not be made on such date, but may be made on the next succeeding day that is a Business Day with the same force and effect as if such payment was made on the originally scheduled date and no interest shall accrue for the period after the first (1st) day of the month through the date payment is actually made.

**"Investment Agreement"** means an investment agreement which represents the unconditional obligation of one or more banks, insurance companies or other financial institutions, or is guaranteed by a bank, insurance company or financial institution, in either case that has an unsecured senior debt rating by the Rating Agency no lower than "A-" (or equivalent).

**"Investor Letter"** means a letter substantially in the form set forth in Exhibit C-1, Exhibit C-2 or Exhibit C-3, as appropriate.

**"Investor Limited Partner"** means [\_\_\_\_\_], a [\_\_\_\_\_], and its successors and assigns.

**"Issue Date"** means [\_\_Closing Date\_\_], the date of initial issuance and delivery of the Bonds.

**"Issuer"** means the Housing Authority of the City of Columbia, Missouri, a municipal corporation organized and existing under the laws of the State, and its successors and assigns.

**"Land Use Restriction Agreement"** means the Land Use Restriction Agreement, dated as of May 1, 2024, among the Issuer, the Borrower and the Trustee, as amended, modified, supplemented and restated from time to time.

**"Loan"** means the loan of the proceeds the Bonds by the Issuer to the Borrower under the Loan Agreement.

**"Loan Agreement"** means the Loan Agreement, dated as of May 1, 2024, between the Borrower and the Issuer, as amended, modified, supplemented and restated from time to time.

**"Loan Agreement Payment Default"** means a default under Section 9.01(a)(i) of the Loan Agreement.

**"Loan Documents"** means the Loan Agreement, the Land Use Restriction Agreement, the Tax Agreement, the Disbursing Agreement and the Security Documents.

**"Majority Owner"** means any Beneficial Owner owning at least 50.01% of the Series A Bonds Outstanding that has certified to the Trustee's satisfaction that it is a Beneficial Owner of the required percentage of the Series A Bonds and the address to which information is to be sent (written notice of which, including the address, will be promptly given by the Trustee to the Borrower).

**"Notes"** means, collectively, the Series A Note and the Series B Note.

**"Operating Expenses"** means all operating expenses of the Borrower in connection with the Project, calculated on an annualized accrual basis, which are due and payable at any time during any consecutive 12-month period, including, but not by way of limitation, other debt of the Borrower (other than Basic Payments due under the Loan Agreement); the Replacement Reserve Deposit; municipal assessments; annualized monthly portion of real estate taxes and similar annual or otherwise aggregated costs; liability, fire and extended coverage insurance; loss or damage not covered by insurance; accounting, monitoring and audit fees, including attorneys' fees relating thereto; franchise or other taxes payable in respect of the capital of the Borrower; taxes assessed upon or payable in respect of personal and/or real property of the Borrower; and management and marketing or leasing fees.

**"Opinion of Bond Counsel"** means a written opinion of Bond Counsel addressed to the Issuer and to the Trustee, for the benefit of the Trustee and the Owners of the Bonds.

**"Opinion of Counsel"** means a written opinion of an attorney or firm of attorneys addressed to the Trustee, for the benefit of the Trustee and the Owners of the Bonds, who may (except as otherwise expressly provided in this Indenture) be counsel to the Issuer, the Borrower, the Majority Owner or the Trustee, and who is acceptable to the Trustee and the Majority Owner.

**"Ordinary Trustee's Fees"** means a \$[\_\_\_\_\_] acceptance fee payable to the Trustee on the Issue Date, a \$[\_\_\_\_\_] annual fee for the Bonds payable in arrears to the Trustee on the Issue Date and on each anniversary of the Issue Date thereafter.

**"Original Purchaser"** means Legacy Bank & Trust Company, a Missouri chartered bank, and its successors and assigns.

**"Outstanding,"** when used with respect to the Bonds, means all Bonds authenticated and delivered under this Indenture, *except*:

- (a) Bonds cancelled by the Trustee or delivered to the Trustee for cancellation;
- (b) Bonds redeemed pursuant to **Article III**;
- (c) Bonds for the payment or redemption of which moneys or obligations have been deposited with the Trustee in accordance with **Article IX**;
- (d) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under this Indenture; and
- (e) Bonds for which moneys have been made available for payment and which are being held by the Trustee pursuant to **Section 412**;

*provided*, however, that in determining whether the Owners of the requisite principal amount of Outstanding Bonds have been given any request, demand, authorization, direction, notice, consent or waiver hereunder, Bonds owned by the Issuer or the Borrower shall be disregarded and deemed not to be Outstanding (unless all of the Outstanding Bonds are held by the Issuer or the Borrower), except that in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be disregarded.

**"Partnership Agreement"** means the [\_\_ Amended and Restated Limited Partnership Agreement of Kinney Point Housing Development Group, LP \_\_], dated as of [\_\_ May \_\_, 2024 \_\_], among the [\_\_ General Partner, the Investor Limited Partner, and [\_\_\_\_\_] as the withdrawing limited partner \_\_], as amended, modified, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

**"Paying Agent"** means the Trustee acting as paying agent and not in its capacity as Trustee.

**"Payment Office"** means, (a) with respect to the initial Trustee, for payment, registration, maintenance of the Bond Register and exchange purposes, initially, UMB Bank, N.A., a national banking association, Attention: Corporate Trust Department, and (b) with respect to any successor Trustee, its office or offices for those purposes designated as such by the successor Trustee.

**"Person"** means an individual, partnership, corporation, limited liability company or unincorporated organization, and any governmental entity, agency or political subdivision thereof.

**"Project"** has the meaning set forth in the **Recitals**, the costs of which will be paid in whole or in part, or for which the Borrower will be reimbursed in whole or in part, from the proceeds of the sale of the Bonds.

**"Project Costs"** means those costs for the acquisition and construction of the Project or any portion thereof which are chargeable to the capital account of the Project 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 amounts and Costs of Issuance.

**"Project Fund"** means the Project Fund established pursuant to **Section 401(a)**.

**"Property"** means any interest of any kind in property or asset, whether real, personal or mixed, or tangible or intangible.

**"Property Manager"** means the property manager of the Project designated by the Borrower and/or the Investor Limited Partner in writing, initially the Issuer, and any successor or assign pursuant to Section 5.06(b) of the Loan Agreement.

**"Qualified Investments"** means any of the following if and to the extent permitted by law:

- (a) Government Obligations;
- (b) participation certificates and senior debt obligations of the Federal Home Loan Mortgage Corporation;
- (c) certificates of deposit, federal funds, U.S. denominated deposit accounts, time deposits and bankers' acceptances in any bank which (i) has outstanding, or which is the principal bank of a bank holding company (including without limitation, the Trustee or any bank affiliated with the Trustee) which has outstanding, an issue of unsecured debt obligations rated at the time of investment at least "A-1" (or equivalent) by the Rating Agency (with respect to Qualified Investments which have a term to maturity of 365 days or less) or at least as high as the current Rating Agency rating on the Bonds, but in no event rated lower than "A" (or equivalent) by the Rating Agency, or (ii) are continuously and fully insured by the Federal Deposit Insurance Corporation;
- (d) any Investment Agreement;
- (e) money market funds (i) registered under the Investment Company Act of 1940, whose shares are registered under the Securities Act of 1933, and (ii) which invests solely in securities described in one or more of clauses (a) through (d) above, and rated AAAM or AAAM-G by the Rating Agency, including an investment company managed by the Trustee or an affiliate of the Trustee;
- (f) the highest yielding Commercial Money Market accounts offered by the Original Purchaser; and
- (g) any other investment approved in writing by the Majority Owner.

*provided* that (1) the terms of the obligation shall have a predetermined, fixed principal amount due at maturity without variance or change, and (2) if any obligation (other than an obligation described in clause (e)) bears interest at a variable rate, the interest rate shall be tied to a single interest rate index plus a single fixed spread, if any, and shall move proportionately with such rate index. For purposes of this subparagraph, the fact that the Trustee or an affiliate of the Trustee is providing services to and receiving remuneration from the foregoing investment company or trust as an investment advisor, custodian, transfer agent, registrar, or otherwise shall not preclude the Trustee from investing in the securities of such investment company or investment trust.

**"Rate Adjustment Date"** means the Conversion Date.

**"Rating Agency"** means either S&P Global Ratings, a division of S&P Global Inc., or Moody's Investors Service, Inc. or their respective successors and assigns, and, if both corporations have been dissolved or liquidated or no longer perform the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the Majority Owner by written notice to the Trustee and the Borrower.

**"Rebate Analyst"** means Rebate Analyst as defined in the Tax Agreement.

**"Rebate Fund"** means the Rebate Fund established in **Section 401(d)**.

**"Record Date"** means the 15th day, whether or not a Business Day, of the calendar month preceding an Interest Payment Date.

**"Regulations"** means all regulations issued by the U.S. Treasury Department to implement the requirements of Code §§ 103 and 141 through 150 and applicable to the Bonds.

**"Related Person"** means a "related person" within the meaning of Section 147(a) of the Code.

**"Replacement Reserve Deposit"** means each deposit required to be made to the Replacement Reserve (as defined in the Partnership Agreement) pursuant to Section 6.5(e) of the Partnership Agreement.

**"Retained Earnings Fund"** means the Retained Earnings Fund established in **Section 401(f)**.

**"Revenue Fund"** means the Revenue Fund established in **Section 401(e)**.

**"Security Agreement"** means the Security Agreement, dated [\_\_ May \_\_, 2024 \_\_], among the Borrower, the General Partner and the Trustee for the benefit of the Original Purchaser.

**"Security Documents"** means the Deed of Trust, the Assignment of Deed of Trust, the Assignment of Architect Agreement, the Assignment of Construction Documents, the Assignment of Development Agreement, [\_\_ the Assignment of HAP Contract, \_\_] the Assignment of Management Agreement, the Assignment of Construction Documents, the Environmental Indemnity, the Guaranty, the Continuing Covenants Agreement, and the Security Agreement.

**"Seller"** means the Issuer, in its capacity as the seller of the land upon which the Project is to be constructed.

**"Seller Loan"** means the loan made to the Borrower, by Seller, in the principal amount of \$500,000, evidenced by a promissory note and secured by a second priority deed of trust.

**"Series A Bonds"** means the Issuer's Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024A in the maximum aggregate principal amount of \$[\_\_ PRINCIPAL AMOUNT A \_\_].

"**Series A Note**" means the Series A Promissory Note, dated the Issue Date, from the Borrower, payable to the order of the Issuer, which the Issuer has endorsed, without recourse, to the Trustee, in the form specified in Exhibit B to the Loan Agreement, evidencing the loan of the proceeds of the Series A Bonds to the Borrower.

"**Series B Bonds**" means the Issuer's Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024B in the maximum aggregate principal amount of \$[     PRINCIPAL AMOUNT B     ].

"**Series B Note**" means the Series B Promissory Note, dated the Issue Date, from the Borrower, payable to the order of the Issuer, which the Issuer has endorsed, without recourse, to the Trustee, in the form specified in Exhibit B to the Loan Agreement, evidencing the loan of the proceeds of the Series B Bonds to the Borrower.

"**Series of Bonds**" or "Series" means the Series A Bonds or the Series B Bonds, as applicable.

"**State**" means the state of Missouri.

[     "**Subordination Agreement**" means Subordination Agreement, dated [     May     , 2024     ], among [     the Trustee, the Original Purchaser, and the Subordinate Lenders     ], as amended, modified, supplemented and restated from time to time.     ]

"**Subordinate Lenders**" means, collectively, the Seller, the Veteran's Foundation Lender, CCHT, and the City.

"**Subordinate Loans**" means, collectively, the Seller Loan, the Veteran's Foundation Loan, the CCHT Loan, and the City Loan.

"**Target DSCR**" shall have the meaning assigned to such term in the Continuing Covenants Agreement.

"**Tax Agreement**" means the Tax Compliance Agreement, dated as of May 1, 2024, among the Issuer, the Borrower and the Trustee, as amended, modified, supplemented and restated from time to time.

"**Trust Estate**" has the meaning given such term in the **Granting Clauses** of this Indenture.

"**Trustee**" means UMB Bank, N.A., in its capacity as trustee under this Indenture until a successor has become Trustee pursuant to this Indenture, and thereafter the successor Trustee.

"**United States Bankruptcy Code**" means the Bankruptcy Reform Act of 1978, as amended, Title 11 United States Code, Section 101 *et seq.*

**"Veteran's Foundation Lender"** means the Issuer, in its capacity as the lender of certain proceeds from a grant from the Veteran's Foundation.

**"Veteran's Foundation Loan"** means the loan made to the Borrower, by the Veteran's Foundation Lender, in the principal amount of \$1,300,000, evidenced by a promissory note and secured by a third priority deed of trust.

**Section 102. Interpretation.**

(a) This Indenture shall be interpreted in accordance with and governed by the laws of the State.

(b) The words "herein", "hereof" and "hereunder" and words of similar import, without reference to any particular section or subdivision, refer to this Indenture as a whole rather than to any particular section or subdivision of this Indenture.

(c) References in this Indenture to any particular article, section or subdivision hereof are to the designated article, section or subdivision of this Indenture as originally executed.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles; and all computations provided for herein shall be made in accordance with generally accepted accounting principles consistently applied and applied on the same basis as in prior years.

(e) The Table of Contents and titles of articles and sections herein are for convenience of reference only and are not a part of this Indenture, and shall not define or limit the provisions of this Indenture.

(f) Unless the context hereof clearly requires otherwise, the singular shall include the plural and vice versa and the masculine shall include the feminine and vice versa.

(g) Words importing person shall include partnerships, limited liability companies, associations and corporations, including public bodies, as well as natural persons.

(h) Articles, sections, subsections and clauses mentioned by number only are those so numbered which are contained in this Indenture.

(i) Any opinion of counsel required under this Indenture shall be a written opinion of such counsel.

(j) If additional General Partners are admitted to the Borrower, references to the "General Partner" shall be deemed to refer to, and be binding upon, each General Partner of the Borrower.



(k) If the Borrower is a limited liability company, references in this Agreement to "General Partner" and "Investor Limited Partner" means "Manager" or "Managing Member" and "Member," respectively. If the Borrower is not a limited liability company, partnership or limited partnership, references in this Indenture to "General Partner" or "Investor Limited Partner" will be of no force or effect.

(l) Wherever an item or items are listed after the word "including," such listing is not intended to be a listing that excludes items not listed.

(m) When used in this Indenture, "day" means "calendar day."

(n) For purposes of this Indenture, "actual knowledge" of the Trustee means actual knowledge of any officer within the Corporate Trust Department (or any successor group) of the Trustee, including any vice president, assistant vice president, assistant secretary or any other officer or assistant officer of the Trustee customarily performing functions similar to those performed by the person who at the time shall be the officer, respectively, who is responsible for the administration of this Indenture.

## **ARTICLE II THE BONDS**

### **Section 201. Authorized Amount of Bonds.**

(a) Bonds may not be issued under this Indenture except in accordance with this Article. The Bonds shall be issued as fully registered bonds, without coupons. The Series A Bonds shall be issued in the maximum principal amount of \$[\_\_PRINCIPAL AMOUNT A\_\_] and shall be numbered from "R-A-1" consecutively upward. The Series B Bonds shall be issued in the maximum principal amount of \$[\_\_PRINCIPAL AMOUNT B\_\_] and shall be numbered from "R-B-1" consecutively upward.

(b) The Bonds shall be dated the Issue Date, shall mature on the dates and in the amounts set forth below and shall bear interest, computed on a 365/360 basis (that is by applying the ratio of the Interest Rate over a year of 360 days multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding), at the annual interest rates as provided below, subject to prior redemption, and are issuable only in Authorized Denominations; *provided*, however, that the Disbursed Amount with respect to a Series of Bonds may be an aggregate principal amount less than an Authorized Denomination.

## MATURITY SCHEDULE

<u>Series</u>	<u>Maturity Date</u>	<u>Interest Rate</u>
Series A Bonds	[__ November 1, 2040 __]	[__. __]% to, but not including, the Rate Adjustment Date; [__. __]% on and after the Rate Adjustment Date
Series B Bonds	[__ November 1, 2025 __] (subject to extension as set forth in Section 3.06 of the Continuing Covenants Agreement)	[__. __]%

(c) The Bonds are issued as draw-down Bonds. So long as no Event of Default under this Indenture or the Loan Agreement or event which, with the giving of notice or lapse of time or both, would constitute an Event of Default under this Indenture or the Loan Agreement has occurred and is then continuing, and all other requirements as set forth in Section 4 of the Bond Purchase Agreement are satisfied, the Original Purchaser shall fund, or cause to be funded, the purchase price of the Bonds in the amounts as provided in the Bond Purchase Agreement. The Original Purchaser shall pay, or cause to be paid, each purchase price installment by electronic transfer in immediately available funds to the Trustee. Each installment shall be deposited to the Project Fund unless the Original Purchaser provides other written directions to the Trustee and the Trustee receives an Opinion of Bond Counsel that compliance with the Original Purchaser's written directions would not cause interest on the Bonds to be includable in gross income for federal income tax purposes. The Trustee, promptly upon receipt of the payment of each installment and, if applicable, the written directions of the Original Purchaser and an Opinion of Bond Counsel, shall make the deposits pursuant to the written directions. Upon the Original Purchaser's payment of a purchase price installment to the Trustee, the amount paid shall constitute an addition to the Disbursed Amount with respect to such Series of Bonds. The Disbursed Amount funded in such manner shall be recorded in the records of the Trustee and, at the written request of the Owner of the applicable Bond, on the applicable Bond. The Trustee shall maintain on its records a complete account of all additions to the Disbursed Amount and all redemptions or other principal payments on each Series of Bonds. The Trustee's records, absent manifest error, shall be definitive as to the Disbursed Amount and the principal amount of the Outstanding Bonds of each Series. The Trustee shall provide the principal amount of the Outstanding Bonds of each Series, upon written request, to the Issuer, the Borrower, the Investor Limited Partner and the Majority Owner.

(d) Notwithstanding any provision in this Indenture to the contrary, in the event that the total proceeds of the Bonds advanced by the Original Purchaser as of [\_\_May 1, 2027\_\_] is less than \$[\_\_principal amount\_\_], the Borrower shall immediately submit a final Disbursement Request in substantially the form of **Exhibit B** for such difference, and shall take all actions necessary to satisfy the conditions set forth in Section 4 of the Bond Purchase Agreement; *provided*, however, that the Borrower shall not be required to take such action if either: (i) the Bonds are no longer Outstanding or (ii) the Borrower shall have certified in writing to the Issuer, the Trustee and the Original Purchaser that the Borrower will not submit any further Disbursement Requests with respect to the Bonds. In all events the Borrower shall submit all Disbursement Requests in sufficient time to allow the Original Purchaser to advance up to the full principal amount of the Bonds to the Trustee on or before the date that is the third anniversary of the Issue Date.

(e) Each Bond bears interest from the Interest Payment Date next preceding the date of registration unless it is registered after the Record Date next preceding any Interest Payment Date, inclusive, in which event it shall bear interest from the Interest Payment Date, or unless it is registered before the Record Date immediately preceding the first Interest Payment Date, in which event it shall bear interest from the Issue Date; *provided*, however, that if, at the time of registration of any Bond, interest is in default on Outstanding Bonds, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment on the Outstanding Bonds, or, if applicable, from the Issue Date. Notwithstanding the foregoing provisions of this subsection (e), during the period that additional purchase price installments are being made pursuant to this Section, interest will accrue on each purchase price installment from and including its date of receipt by the Trustee.

(f) Payment of principal, premium and interest shall be made by electronic transfer, check or draft in lawful money of the United States. Except with respect to mandatory sinking redemption payments pursuant to **Section 301(c)**, principal of and premium on the Bonds shall be paid only upon presentation and surrender thereof for cancellation at the Payment Office of the Trustee. Payment of the interest on any Bond shall be made to the person whose name appears on the Bond Register as the registered owner thereof as of the close of business of the Record Date next preceding an Interest Payment Date, whether or not such day is a Business Day, such interest to be paid by check or draft mailed to such registered owner at its address as it appears on the Bond Register. Notwithstanding the foregoing, the principal and redemption price of, and the interest on, the Bonds is payable by electronic transfer in immediately available federal funds pursuant to the written instructions from any Owner of the lesser of \$1,000,000 or the aggregate principal amount of a Series of Bonds then Outstanding. The electronic transfer instructions must describe the name, address and ABA routing number of the bank (located in the continental United States) and the account number and acknowledge a wire transfer fee payable by the Owner. The Trustee shall provide such information with each such payment by electronic transfer.

(g) The Bonds are subject to redemption as provided in **Article III**.

(h) The Bonds shall bear interest at the Default Rate on and after a Determination of Taxability.

## **Section 202. Limited Obligations.**

(a) The Bonds, together with interest thereon, are not general obligations of the Issuer and do not constitute an obligation, either general or special, of the State or any political subdivision thereof, but are limited obligations payable solely and only from amounts, moneys and securities held from time to time by the Trustee as part of the applicable Trust Estate. Such moneys are hereby pledged and assigned as security for the equal and ratable payment of the Bonds and shall be used for no other purpose than to pay the principal of and interest on the Bonds, except as may be otherwise expressly authorized in this Indenture. The Bonds do not constitute an obligation, either general or special, of the City of Columbia Missouri, the State, or any political subdivision thereof. THE BONDS ARE NOT A DEBT OF THE CITY OF COLUMBIA, MISSOURI, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF AND NONE OF THE CITY OF COLUMBIA, MISSOURI, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE ON THE BONDS. THE BONDS ARE NOT INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER DEBT LIMITATION OR RESTRICTION AND ARE NOT PAYABLE IN ANY MANNER BY TAXATION. THE ISSUER HAS NO TAXING POWER.

(b) 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, provision, covenant or agreement contained in this Indenture against any past, present or future commissioner, member, director, officer, official, employee or agent of the Issuer, or any commissioner, member, director, trustee, officer, official, employee or agent of any successor to the Issuer, as such, either directly or through the Issuer or any successor to the Issuer, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such commissioner, member, director, trustee, officer, official, employee or agent as such is hereby 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. Neither the officers of the Issuer nor any person executing the Bonds shall be personally liable on the Bonds by reason of the issuance thereof.

## **Section 203. Execution.**

(a) The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of its Chair, Vice Chair or Chief Executive Officer and attested by the manual or facsimile signature of its Secretary or Assistant Secretary under the official seal, or a facsimile thereof, of the Issuer. Facsimile signatures shall have the same force and effect as if said officers had manually signed the Bonds. Any reproduction of the official seal of the Issuer on the Bonds shall have the same force and effect as if the official seal of the Issuer had been impressed on the Bonds.

(b) In case any officer whose signature or facsimile of whose signature shall appear on any Bonds shall cease to be such officer before the delivery of any Bonds issued under this Indenture, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes as if such officer had remained in office until delivery. Any Bond may be signed and sealed on behalf of the Issuer by such persons as, at the actual time of the execution of such Bond, shall be duly authorized or hold the proper

office in or employment by the Issuer, although at the date of the Bonds such persons may not have been so authorized nor have held such office or employment.

**Section 204. Authentication.** Only Bonds that have endorsed thereon a certificate of authentication and registration substantially in the forms set forth in **Exhibit A**, duly executed by the Trustee, shall be entitled to any right or benefit under this Indenture. No Bond will be valid or obligatory for any purpose unless and until the certificate of authentication and registration has been duly executed by the Trustee; and such executed certificate 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 and registration on any Bond shall be deemed to have been executed by it if signed by an authorized signatory of the Trustee, but it shall not be necessary that the same person sign the certificate of authentication and registration on all Bonds.

**Section 205. Mutilated, Lost, Stolen or Destroyed Bonds.** If any Bond is mutilated, lost, stolen or destroyed, the Issuer will execute and the Trustee will authenticate and deliver a new Bond in lieu of such mutilated, lost, stolen or destroyed Bond, of like date, Series, number, maturity and denomination as that mutilated, lost, stolen or destroyed, if the provisions of this Section are satisfied. Any mutilated Bond shall first be surrendered to the Trustee; and in the case of any lost, stolen or destroyed Bond, there shall first be furnished to the Trustee evidence of such loss, theft or destruction satisfactory to it together with indemnity satisfactory to it. 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 Trustee may charge the holder or owner of such Bond with its reasonable fees and expenses.

**Section 206. Transfer and Exchange of Bonds; Persons Treated as Owners.**

(a) The Trustee is appointed Bond Registrar and as Bond Registrar shall keep the Bond Register at its Payment Office.

(b) The Trustee shall not register any transfer of any Bonds hereunder that are unrated or rated less than "A" or its equivalent by a Rating Agency, unless the transfer is made in compliance with **Section 207**.

(c) Any Bond may be transferred only in an Authorized Denomination and only upon the Bond Register upon surrender of the Bond to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the registered Owner or such Owner's attorney or legal representative in a form that is satisfactory to the Trustee. Upon any such transfer, the Issuer shall execute and the Trustee shall authenticate and deliver in exchange for such Bond a new Bond or Bonds in an equal aggregate principal amount of the Bonds of the same Series, registered in the name of the transferee, in an Authorized Denomination.

(d) Any Bonds, upon surrender thereof at the Payment Office of the Trustee, together with an assignment duly executed by the Owner or the Owner's attorney or legal representative in form satisfactory

to the Trustee, may, at the option of the Owner thereof, be exchanged for an equal aggregate principal amount of the Bonds of the same Series, in an Authorized Denomination.

(e) In all cases in which Bonds are exchanged or transferred, the Issuer will execute and the Trustee will authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Indenture. The Trustee will cancel all Bonds surrendered in any such exchange or transfer.

(f) The Issuer or the Trustee may make a charge against each Bondowner requesting a transfer or exchange of Bonds for every such transfer or exchange of Bonds sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such transfer or exchange, the cost of printing, if any, each new Bond issued upon any transfer or exchange and the reasonable expenses of the Issuer and the Trustee in connection therewith, and such charge shall be paid before any such new Bond shall be delivered.

(g) At reasonable times and under reasonable regulations established by the Trustee, the Bond Register may be inspected and copied by the Borrower, the Issuer or by the Owners (or a designated representative thereof) of 10% or more in aggregate principal amount of Bonds then Outstanding, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Trustee.

(h) The person in whose name any Bond shall be registered on the Bond Register shall be deemed and regarded as the absolute Owner of such Bond for all purposes, and payment of or on account of the principal of and redemption premium, if any, and interest on any such Bond shall be made only to or upon the order of the registered Owner thereof or such Owner's attorney or legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

(i) The Issuer or the Trustee may impose a corresponding charge against an owner for the reimbursement of any governmental charge required to be paid in the event that the Owner fails to provide a correct taxpayer identification number to the Trustee. The Trustee may deduct this amount from amounts otherwise payable to such Owner hereunder or under the Bonds.

(j) If a single person or entity owns 100% of either Series of the Outstanding Bonds, such person or entity may sell participations, receipts evidencing ownership or other participatory interests in the applicable Series of Bonds, without the consent of the Issuer or the Trustee, so long as any such sale is in compliance with all applicable securities laws and the owner of the Series of Bonds provides, and the Trustee has received, an Investor Letter signed by the person or entity that will acquire the participatory interest in the Series of Bonds prior to any such sale. Any subsequent sale or transfer of any such participatory interest in the Series of Bonds may be made only to an Approved Investor and only so long as such sale is in compliance with all applicable securities laws and the Trustee receives an Investor Letter signed by the person or entity that will acquire the participatory interest in the Series of Bonds prior to any such sale or transfer. ANY PARTICIPANT SHALL AGREE TO INDEMNIFY THE ISSUER AND THE TRUSTEE FROM AND AGAINST ANY AND ALL LIABILITY, COST OR EXPENSE (INCLUDING

ATTORNEYS' FEES AND EXPENSES) THAT MAY RESULT IF THE REPRESENTATIONS OF SUCH PARTICIPANT CONTAINED IN THE INVESTOR LETTER ARE FALSE IN ANY MATERIAL RESPECT.

**Section 207. Limitation on Transfer and Exchange.** Unless compliance with this Section is not required pursuant to the terms of **Section 206(b)**, all sales and transfers of the Bonds after the initial sale and delivery of the Bonds may be made by any Owner, in whole or in part, only to an Approved Investor. The Trustee shall not register any transfer or exchange of any Bonds unless an Owner's prospective transferee delivers to the Trustee an Investor Letter. The Trustee shall be entitled to rely, without any further inquiry, on the Investor Letter delivered to it and shall be fully protected in registering any transfer or exchange of any Bonds in reliance on the Investor Letter that appears on its face to be correct and of which the Trustee has no actual knowledge otherwise. For purposes of this Section, "actual knowledge" means the fact of knowledge without any duty to investigate. ANY OWNER DESIRING TO EFFECT A TRANSFER SHALL AGREE TO INDEMNIFY THE ISSUER AND THE TRUSTEE FROM AND AGAINST ANY AND ALL LIABILITY, COST OR EXPENSE (INCLUDING ATTORNEYS' FEES AND EXPENSES) THAT MAY RESULT IF THE REPRESENTATIONS OF SUCH OWNER CONTAINED IN THE INVESTOR LETTER ARE FALSE IN ANY MATERIAL RESPECT. THE TRUSTEE IS AUTHORIZED AND DIRECTED TO PUT A STOP ORDER ON THE BOND REGISTER IN REGARD TO THE FOREGOING RESTRICTIONS ON THE TRANSFER OF THE BONDS. The Trustee shall not authenticate or register a Bond unless the conditions of this Section have been satisfied.

**Section 208. Delivery of Bonds.**

(a) Upon the execution and delivery of this Indenture, the Issuer will execute and deliver to the Trustee and the Trustee shall authenticate the Bonds and deliver them to, or upon the order of, the Original Purchaser upon receipt by the Trustee of the following:

- (i) a certified copy of the resolution of the Issuer authorizing the execution and delivery of this Indenture, the Loan Agreement, the Land Use Restriction Agreement and the Tax Agreement and the issuance, sale and delivery of the Bonds;
- (ii) an Opinion of Bond Counsel to the effect that the Bonds have been duly and validly authorized, issued and delivered and constitute valid and binding obligations of the Issuer, and that the interest payable on the Bonds is excludable from gross income for federal and State income tax purposes except with respect to the interest on any Bond for any period during which such Bond is held by a "substantial user" of the Project or a "related person," as those terms are defined for purposes of Section 147(a) of the Code;
- (iii) an Opinion of Counsel for the Borrower, to the effect the Borrower is duly organized and validly existing and in good standing under the laws of the state in which it has been organized and in good standing under the laws of each other state

in which the Borrower transacts business and has full power and authority to enter into the agreements described herein to which it is a party, that its execution and delivery of and performance of its covenants in such agreements do not contravene law or any provision of any other agreement to which it is a party or by which it or such property is bound or affected, and that all such agreements are legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their respective terms;

- (iv) a request and authorization to the Trustee on behalf of the Issuer, signed by an Authorized Issuer Representative, to authenticate and deliver the Bonds to, or upon the order of, the Original Purchaser upon payment to the Trustee, for the account of the Issuer, of the net proceeds of the initial purchase price installments of the Bonds in the amounts set forth in **Section 402(a)**;
- (v) an executed copy of this Indenture, the Loan Agreement, the Land Use Restriction Agreement, the Tax Agreement and each Security Document;
- (vi) net proceeds of the initial purchase price installments of the Bonds from the Original Purchaser in the amounts set forth in **Section 402(a)**;
- (vii) confirmation from the Disbursing Agent that the First Installment (as defined in the Partnership Agreement) has been received by the Disbursing Agent and will be disbursed on the Issue Date in accordance with the Disbursing Agreement;
- (viii) an Opinion of Bond Counsel to the effect that the Bonds are exempt from registration under the Securities Act of 1933, as amended, and this Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended; and
- (ix) other certificates, statements, receipts, opinions and documents as Bond Counsel or the Trustee reasonably requires for the delivery of the Bonds.

(b) When the documents mentioned in subsection (a) of this Section have been filed with the Trustee, and when the Bonds have been executed, authenticated and registered as required by this Indenture, the Trustee shall deliver the Bonds to or upon the order of the Original Purchaser upon payment to the Trustee of the initial purchase price installments of the Bonds for deposit and application as provided in **Article IV**.



**ARTICLE III**  
**REDEMPTION OF BONDS PRIOR TO MATURITY**

**Section 301. Redemption of Bonds Prior to Maturity.**

(a) **Optional Redemption.** The Bonds are subject to redemption at the written direction of the Borrower, in whole or in part on any date on or after the Conversion Date, at a redemption price equal to 100% of the principal amount redeemed, plus premium (if applicable), plus accrued interest thereon to the date fixed for redemption. In the event the Bonds are optionally redeemed prior to [\_\_May \_\_], 2032, the Borrower shall be obligated to pay a prepayment fee equal to [\_\_the fee set forth in the Continuing Covenants Agreement\_\_].

(b) **Mandatory Redemption Upon Casualty or Condemnation.** The Bonds are subject to mandatory redemption in whole or in part, if the net proceeds of any casualty insurance or condemnation award are applied to the prepayment of the Loan as provided in **Section 507**, in an amount (rounded to the nearest \$5,000) equal to the amount of such prepayment of the Loan, on the earliest practicable date for which notice can be given pursuant to **Section 303**, at a redemption price equal to 100% of the principal amount redeemed, plus premium (if applicable), plus accrued interest thereon to the date fixed for redemption. In the event all or any portion of the Bonds are redeemed pursuant to this Section prior to [\_\_May \_\_], 2032, the Borrower shall be obligated to pay a prepayment fee equal to [\_\_the fee set forth in the Continuing Covenants Agreement\_\_].

(c) **Mandatory Sinking Fund Redemption – Series A Bonds.**

- (i) The Series A Bonds are subject to mandatory sinking fund redemption in part, in the amounts and at a redemption price equal to 100% of the principal amount redeemed, without premium, plus accrued interest to the redemption date, as set forth in **Exhibit D**, on each Interest Payment Date commencing with the Amortization Commencement Date.
- (ii) To the extent that the Series A Bonds have been previously called for redemption or purchased and retired otherwise than pursuant to the respective sinking fund installments of this **Section 301(c)**, each of the mandatory sinking fund installments set forth on **Exhibit D** and the final payment due on the maturity date of the Series A Bonds shall be adjusted on a pro-rata basis starting on the first Interest Payment Date following such partial redemption. The Majority Owner shall provide the Trustee with a new **Exhibit D** reflecting the revised mandatory sinking fund schedule. The revised **Exhibit D** shall be conclusive and binding on the Issuer, the Trustee, the Borrower and the Owners absent manifest error.

(d) **Mandatory Redemption Upon Conversion – Series B Bonds.** The Series B Bonds are subject to mandatory redemption in whole on the Interest Payment Date immediately following the Trustee's

receipt of written notice of the occurrence of the Conversion Date, at a redemption price equal to 100% of the principal amount thereof, without premium, plus accrued interest thereon to the redemption date.

(e) ***Mandatory Redemption to Satisfy Conditions to Conversion – Series A Bonds.*** The Series A Bonds are subject to mandatory redemption in part, at a redemption price equal to 100% of the principal amount thereof, without premium, plus accrued interest thereon to the redemption date, in a principal amount that the Majority Owner determines will result in the satisfaction of the Conditions to Conversion.

(f) ***Mandatory Redemption Upon Failure to Satisfy Conditions to Conversion – Series A Bonds.*** The Series A Bonds are subject to mandatory redemption in whole, at a redemption price equal to 100% of the principal amount thereof, without premium, plus accrued interest thereon to such redemption date, on the maturity date of the Series B Bonds if the Conditions to Conversion have not been satisfied prior to the date that is 10 days prior to such maturity date. In the event the Bonds are redeemed pursuant to this Section prior to [\_\_ May \_\_], 2032, the Borrower shall be obligated to pay a prepayment fee equal to [\_\_ the fee set forth in the Continuing Covenants Agreement \_\_].

(g) ***Mandatory Redemption from Moneys in Project Fund.*** The Bonds are subject to mandatory redemption in part, at a redemption price equal to 100% of the principal amount redeemed, without premium, plus accrued interest thereon to the date fixed for redemption, on the earliest practicable date for which notice can be given pursuant to **Section 303**, to the extent of moneys remaining on deposit in the Project Fund on the Completion Date and transferred to the Bond Fund under **Section 403(d)**.

(h) ***Mandatory Redemption Upon Certain Tax Events.***

(i) The Bonds are subject to mandatory redemption in whole at a redemption price equal to 100% of the principal amount redeemed, plus premium (if applicable), plus accrued interest to the date fixed for redemption, on the earliest practicable date for which notice can be given pursuant to **Section 303**, if a Determination of Taxability occurs.

(ii) The Bonds are subject to mandatory redemption in whole or in part at a redemption price equal to 100% of the principal amount redeemed, plus premium (if applicable), plus accrued interest to the date fixed for redemption, on the earliest practicable date for which notice can be given pursuant to **Section 303**, in accordance with Regulations § 1.142-2 (which action will be accompanied by an Opinion of Bond Counsel), as necessary to cause interest on the Bonds to remain excludable from gross income for federal income tax purposes.

(i) ***Purchase of Bonds in Lieu of Redemption in Whole.*** At the election of the Borrower, in lieu of the redemption of the Bonds in whole, by written notice to the Trustee and the Majority Owner given not less than five Business Days in advance of such redemption date, the Bonds will be deemed tendered for purchase on such date. The purchase price of such Bonds so purchased in lieu of redemption shall be the principal amount thereof, together with all accrued and unpaid interest to such redemption date, payable

on the redemption date. Bonds so purchased in lieu of redemption shall be registered to or upon the written direction of the Borrower.

**Section 302. Selection of Bonds for Partial Redemption.** If less than all the Bonds then Outstanding shall be called for redemption other than pursuant to the mandatory sinking fund redemption provisions of **Section 301(c)**, the Trustee will select principal amounts from each Series of Bonds to be redeemed based upon the ratio of the principal amount of the Bonds of each Series to the Bond Obligation. The Trustee will select the Bonds, or portions thereof, to be redeemed from each maturity (including upon mandatory sinking fund redemption) in such manner as it shall in its discretion determine. No Bond will be selected for redemption if, upon redemption, the remaining principal amount of the Bond would not be an Authorized Denomination, unless the Bond constitutes the entire aggregate principal amount of a Series then Outstanding.

**Section 303. Notice of Redemption.**

(a) Except for the redemption of Bonds in accordance with **Section 301(c)**, for which no notice is required, notice of the intended redemption of Bonds shall be given by the Trustee not less than 10 days prior to the date fixed for redemption by telephone, telex, facsimile transmission or other electronic means, promptly confirmed in writing, at the address of each Owner shown on the Bond Register; and a second notice of redemption shall be sent by first class mail, at such address to the Owner of any Bond who has not submitted his Bond to the Trustee for payment on or before the date 30 days following the date fixed for redemption of such Bond, in each case stating:

- (i) the complete official caption, including Series, of the issue of which the Bonds being redeemed are a part;
- (ii) the date of mailing of the notice of redemption;
- (iii) the date fixed for redemption;
- (iv) the redemption price or prices;
- (v) with respect to the redemption of the Bonds in part, the numbers of the Bonds to be redeemed, by giving the individual certificate number of each Bond to be redeemed (or stating that all Bonds between two stated certificate numbers, both inclusive, are to be redeemed or that all of the Bonds of one or more maturities have been called for redemption);
- (vi) in the case of a partial redemption of Bonds, the principal amount and maturity date of each Bond being redeemed;
- (vii) the date of issue of the Bonds as originally issued;

- (viii) the rate or rates of interest borne by each Bond being redeemed and the amount of accrued and unpaid interest to the redemption date;
- (ix) the maturity date of each Bond being redeemed;
- (x) the place or places (that is the Payment Office of the Trustee) where amounts due upon such redemption will be payable;
- (xi) the notice shall be void and of no effect if the Trustee does not have sufficient money to pay the redemption price of the Bonds on the redemption date;
- (xii) the conditions, if any, which must be satisfied in order for the redemption to take place on the schedule date of redemption;
- (xiii) that further interest on such Bond will not accrue from and after the redemption date provided the Trustee has on deposit sufficient funds to redeem the Bonds on such date; and
- (xiv) any other descriptive information needed to identify accurately the Bonds being redeemed.

(b) In addition to providing notice of redemption as set forth above, the Trustee shall send a second notice of redemption within 60 days following the redemption date, by certified mail, to the Owners of any Bonds called for redemption, at their addresses appearing on the Bond Register, who have not surrendered their Bonds for redemption within 30 days following the redemption date.

(c) Receipt of notice of redemption shall not be a condition precedent to such redemption, and failure so to notify any of such Owners shall not affect the validity of the proceedings for the redemption of the Bonds.

(d) Notice of redemption having been given in the manner provided above, and money sufficient for the redemption being held by the Trustee or Paying Agent for that purpose, thereupon the Bonds so called for redemption shall become due and payable on the redemption date, and interest thereon shall cease to accrue; and the owners of the Bonds so called for redemption shall thereafter no longer have any security or benefit under this Indenture except to receive payment of the redemption price for such Bonds.

**Section 304. Cancellation.** All Bonds that have been redeemed will be marked as cancelled and periodically destroyed by the Trustee in accordance with applicable retention requirements and will not be reissued. At the written request of the Issuer a counterpart of the certificate of destruction evidencing destruction will be furnished by the Trustee to the Issuer.

**ARTICLE IV  
FUNDS AND INVESTMENTS**

**Section 401. Establishment of Funds.** The following funds and accounts shall be established, held and maintained by the Trustee under this Indenture for the benefit of the owners of the Bonds:

- (a) Project Fund;
- (b) Bond Fund;
- (c) Expense Fund;
- (d) Rebate Fund;
- (e) Revenue Fund; and
- (f) Retained Earnings Fund.

The Trustee is authorized to establish separate accounts or subaccounts within such funds or otherwise segregate moneys within such funds, on a book-entry basis or in such other manner as the Trustee may deem necessary or convenient or as the Trustee is instructed by the Issuer.

**Section 402. Initial Application of Proceeds and Other Moneys.**

(a) On the Issue Date, the Trustee will deposit the initial purchase price installment of the Bonds in the amount of \$[ ] into the Project Fund.

(b) Moneys held by the Disbursing Agent with written instructions from the Borrower to transfer such amount to the Trustee will be deemed received by the Trustee for purposes of this Section.

**Section 403. Project Fund.**

(a) The Trustee will deposit the amounts required by **Sections 201(c)** and **402(a)** into the Project Fund.

(b) Except as otherwise provided in this Section, moneys in the Project Fund shall be disbursed for the payment of Project Costs. Moneys in the Project Fund shall be disbursed to the Disbursing Agent for disbursement in accordance with the Disbursing Agreement and the Loan Agreement after receipt by the Trustee of properly completed written Disbursement Requests of the Borrower, with the written approval of the Majority Owner, in substantially the form of **Exhibit B**; *provided*, however, that the Trustee shall make the initial disbursement from the Project Fund on the Issue Date upon receipt of, and pursuant to, a closing settlement statement signed by representatives of the Borrower and the Disbursing Agent identifying the amounts to be paid and the respective payees instead of in accordance with a Disbursement Request. Further, notwithstanding anything in this **Section 403(b)** to the contrary, the Trustee shall not

make any disbursement from the Project Fund in any amount if the Trustee has notice (or is deemed to have notice in accordance with **Section 703(i)**) that an Event of Default specified in **Section 601** has occurred and is continuing unless the Trustee has received the written consent of the Majority Owner. If an Event of Default has occurred and is continuing under this Indenture, the Trustee will apply moneys on deposit in the Project Fund in accordance with **Article VI**. Moneys shall not be disbursed from the Project Fund more frequently than monthly unless such disbursement is expressly consented to by the Majority Owner.

(c) In making payments pursuant to this Section, the Trustee may rely upon such written requests, which can be sent by electronic means to the Trustee, and shall not be required to make any independent investigation in connection therewith. If for any reason the Borrower should decide prior to the mailing or release of payment by the Trustee of any item not to pay such item, it shall give written notice of such decision to the Trustee and upon receipt thereof, if the Trustee has not released such payment, the Trustee shall cancel the request and not make such payment. The Borrower shall provide the Investor Limited Partner with a copy of each written Disbursement Request for the Project Fund at the time such request is filed with the Trustee. At the written request of the Issuer, a copy of each written Disbursement Request submitted to the Trustee for payment under this Section shall be promptly provided by the Trustee to the Issuer. The Trustee shall keep and maintain adequate records pertaining to the Project Fund and all disbursements therefrom, and shall file periodic statements of activity regarding the Project Fund with the Borrower, the Majority Owner and the Investor Limited Partner.

(d) Moneys remaining in the Project Fund after payment by the Trustee of all Disbursement Requests theretofore tendered to the Trustee under the provisions of this Section and after receipt by the Trustee of the Completion Certificate required by Section 3.03(e) of the Loan Agreement, will be deposited to the Bond Fund, for application to the mandatory redemption of the Bonds pursuant to **Section 301(g)**.

(e) If an Event of Default specified in **Section 601** has occurred and is continuing and the Bonds have been declared due and payable pursuant to **Section 602**, any balance remaining in the Project Fund will be applied in accordance with **Section 606** with notice to the Borrower and the Issuer of such action.

(f) If an amount is deposited to the Project Fund in accordance with **Section 507**, the Trustee will create a special account to be known as the "Casualty/Condemnation Account" within the Project Fund, into which that amount will be deposited.

(i) Moneys in the Casualty/Condemnation Account are to be applied to the costs of repairing or replacing the Project in accordance with the following procedures:

(1) the Trustee and the Majority Owner must receive, within 60 days after the date of casualty or condemnation,

(A) a written opinion (of an architect, engineer or firm of architects or engineers satisfactory to the Majority Owner who is not a full-time employee of the Issuer or the Borrower, has at least five years'

experience in its field and is licensed to operate in the State, a "**Project Engineer**"), based upon plans, specifications and cost estimates provided to the Project Engineer by the Borrower, that the Project can be restored within a period of 360 days after the date of casualty or condemnation to its condition immediately prior to such casualty, or in the case of condemnation, to a condition suitable for the continued operation of the remaining portion of the Project, prior to expiration of the rental loss or business interruption insurance; and

(B) a contract between the Borrower and a general contractor, whereby the general contractor agrees to restore the Project for a fixed price (the "**Construction Contract**");

(2) the Borrower must provide to the Majority Owner a construction statement itemizing the full cost of the repair or restoration and the time schedule for completion, sworn to by the Borrower or the general contractor (the "**Construction Statement**") unless an itemized list of the full cost of repair and restoration and the time schedule is set forth in the Construction Contract;

(3) the opinion of the Project Engineer required in this subsection must confirm the moneys in the Casualty/Condemnation Account to pay for such repair or restoration are sufficient to complete such repair or restoration, or the Borrower must deliver to the Trustee for deposit in the Casualty/Condemnation Account the net difference prior to commencing repair or restoration;

(4) the Trustee will retain in the Casualty/Condemnation Account 10% of each disbursement requested until disbursed in accordance with subparagraphs (iii) or (iv) below; and

(5) the Trustee will make disbursements from the Casualty/Condemnation Account for the costs of repair or restoration of the Project in accordance with the Loan Agreement after receipt by the Trustee of properly completed written Disbursement Requests of the Borrower, with the approval of the Majority Owner, in substantially the form of **Exhibit B**.

The Trustee will be fully protected and incur no liability in relying upon all statements made by the Borrower in the Disbursement Requests.

(ii) The Trustee shall not honor any Disbursement Request if an Event of Default under the Loan Agreement, any Security Document or this Indenture of which the Trustee has received notice or is deemed to have notice in accordance with **Section 703(i)** has occurred and is continuing nor will the Trustee honor any Disbursement Request to the extent the Trustee is notified in writing by the Borrower or Majority

Owner that the amount requested exceeds the cost allocated to or allowed for such work per the Construction Statement or as set forth in the Construction Contract. All Disbursement Requests and all other statements, orders, certifications and approvals received by the Trustee, as required by this subsection as conditions of payment from the Casualty/Condemnation Account, may be conclusively relied upon by the Trustee, and will be retained by the Trustee, subject at all reasonable times to examination by the Borrower, the Issuer, and their agents and representatives.

- (iii) If the Trustee is notified in writing that the Borrower has not completed the repair or replacement of the Project in accordance with the Construction Statement or as set forth in the Construction Contract as provided in this subsection, the Trustee will, after 30 days' written notice from the Trustee to the Borrower, the Majority Owner and the Investor Limited Partner of such failure and continuance of such failure at the end of such 30-day period, in accordance with the written direction of the Majority Owner, either disburse moneys in the Casualty/Condemnation Account, including retainage, for the payment of costs of repairing or replacing the Project, or disburse moneys in the Casualty/Condemnation Account to redeem Bonds pursuant to **Sections 507** and **301(b)**, to pay the principal of and interest on the Bonds upon the acceleration of the maturity thereof or when otherwise due, and to pay Additional Charges.
- (iv) Upon the completion of the repair or replacement of the Project and the delivery by the Borrower of a Completion Certificate in substantially the form required by subsection (d), the accumulated retainage will be disbursed to, or on the order of, the Borrower and the balance in the Casualty/Condemnation Account will be applied to any Additional Charges, and second, as directed in writing by the Borrower to be applied to the redemption of Bonds pursuant to **Sections 507** and **301(b)**.

(g) At the written direction of the Majority Owner, delivered to the Borrower and the Trustee, the Trustee will create a special account to be known as the "Insurance and Taxes Escrow Account" within the Project Fund. The Trustee will deposit amounts received from the Borrower in accordance with Section 4.03(f) of the Loan Agreement into the Insurance and Taxes Escrow Account. The Trustee will disburse moneys from the Insurance and Taxes Escrow Account for the payment of insurance premiums and property taxes at the written direction of the Borrower, with the written consent of the Majority Owner, or at the written direction of the Majority Owner.

#### **Section 404. Bond Fund.**

(a) The Trustee will deposit in the Bond Fund the Basic Payments and all amounts required to be transferred to the Bond Fund from the Project Fund. In addition, the Trustee will deposit all other



amounts in the Bond Fund that by this Indenture or the Loan Agreement are to be deposited to the Bond Fund.

(b) All amounts in the Bond Fund will be used and withdrawn by the Trustee solely for the purpose of paying the principal of, premium, if any, and interest on the Bonds when due and payable, whether by scheduled maturity or by earlier redemption of the Bonds, except as provided in **Section 414**.

**Section 405. [Reserved].**

**Section 406. Expense Fund.** The Trustee will deposit in the Expense Fund the moneys received from the Borrower as Additional Charges pursuant to Section 4.03(c) and (d) of the Loan Agreement. Moneys on deposit in the Expense Fund shall be applied by the Trustee, upon receipt of invoices, to the payment of the Ordinary Trustee's Fees, the Extraordinary Fees and Expenses (with notice to the Borrower if no Event of Default has occurred under this Indenture or the Loan Agreement), the expenses of the Issuer (pursuant to Section 4.03(d) of the Loan Agreement), and the fees and expenses of the Rebate Analyst.

**Section 407. [Reserved].**

**Section 408. Revenue Fund.**

(a) Upon a Loan Agreement Payment Default and the Trustee's receipt of the written direction from the Majority Owner that the provisions of this Section and **Section 409** are to be implemented, the Trustee will cause all Gross Revenues paid by the Borrower to the Trustee pursuant to Section 4.07 of the Loan Agreement and any other amounts available therefor and designated by the Issuer or the Borrower to be deposited in the Revenue Fund. Once initiated, the provisions of this Section will remain in effect until the Majority Owner notifies the Trustee in writing to terminate the provisions of this Section. At that time the balance in the Revenue Fund will be applied as the Borrower directs the Trustee in writing, with the written consent of the Majority Owner, or by the Majority Owner.

(b) After disbursing funds requisitioned pursuant to Section 4.07 of the Loan Agreement to the Borrower, the Trustee will disburse amounts from the Revenue Fund in the following order of priority:

*FIRST:* on the 10th day of each month, for deposit in the Bond Fund, an amount (less any investment earnings credit pursuant to **Section 413(c)** and amounts deposited to the Bond Fund pursuant to **Section 404**) equal to (i) the interest due on the Bonds on the next Interest Payment Date, plus (ii) amounts previously due under clause (i) that were not transferred because of insufficient moneys;

*SECOND:* on the 10th day of each month, for deposit in the Bond Fund, an amount equal to (i) the principal due on the Bonds on the next Interest Payment Date, plus (ii) amounts previously due under clause (i) that were not transferred because of insufficient moneys;

*THIRD:* on the dates required pursuant to the Tax Agreement, the amounts the Rebate Analyst determines are required to be deposited in the Rebate Fund;

*FOURTH:* on the 10th day of each month, to the Expense Fund (i) an amount equal to one-twelfth of the Ordinary Trustee's Fees, plus (ii) the Extraordinary Fees and Expenses, plus (iii) amounts previously due under clauses (i) and (ii) of this paragraph that were not transferred because of insufficient moneys;

*FIFTH:* upon receipt of an invoice from the Rebate Analyst, to the Rebate Analyst the amount, if any, due for the calculation of arbitrage rebate; and

*SIXTH:* on the 10th day of each month, to the Retained Earnings Fund, any amount remaining in the Revenue Fund.

#### **Section 409. Retained Earnings Fund.**

(a) Upon a Loan Agreement Payment Default and the Trustee's receipt of the written direction from the Majority Owner that the provisions of this Section and **Section 408** are to be implemented, the Trustee will implement this Section. Once initiated, the provisions of this Section will remain in effect until the Majority Owner notifies the Trustee in writing to terminate the provisions of this Section. At that time the balance in the Retained Earnings Fund will be applied as the Borrower directs the Trustee in writing, with the written consent of the Majority Owner, or as the Majority Owner directs the Trustee in writing.

(b) The Trustee will deposit to the Retained Earnings Fund the amounts as provided in **Section 408** and any other amount received from any other source with written directions that the amount is to be deposited in the Retained Earnings Fund.

(c) If moneys in the Revenue Fund are insufficient to make the transfers required by **Section 408(b)**, the Trustee will apply the amount in the Retained Earnings Fund in the amounts as provided in **Section 408(b)**.

(d) The Trustee, after making the transfers described in subsection (c), will transfer the remaining balance in the Retained Earnings Fund as provided in this subsection. At the written request of the Borrower and with the prior written consent of Majority Owner, the Trustee will transfer the amount on deposit in the Retained Earnings Fund in excess of the sum of \$10,000 plus the next Basic Payment, to the Borrower. The Borrower's request may only be given once each Fiscal Year within sixty (60) days after the Trustee's receipt of the financial statements required by Section 5.07 of the Loan Agreement and the written certification of the Borrower that the Target DSCR has been met for the Fiscal Year. The Trustee will provide written notice to the Majority Owner of the amount of any transfer from the Retained Earnings Fund.

**Section 410. Rebate Fund.**

(a) To the extent amounts are available for transfer from the Revenue Fund as provided in **Section 408** or from amounts provided by the Borrower, the Trustee will deposit in the Rebate Fund such amounts as it is notified in writing by the Rebate Analyst are required to be deposited therein pursuant to the Tax Agreement. Subject to the payment provisions provided in subsection (b) below, all amounts on deposit at any time in the Rebate Fund will be held by the Trustee in trust, to the extent required to pay arbitrage rebate to the United States of America, and the Issuer, the Borrower and the Bondowners shall not have any rights in or claim to such moneys. All amounts held in the Rebate Fund will be applied as provided in this Section and the Tax Agreement. From amounts on deposit therefor in the Expense Fund or at the expense of the Borrower, the Borrower shall engage the Rebate Analyst to make the calculations required by the Tax Agreement.

(b) Pursuant to the Tax Agreement, the Trustee will remit all arbitrage rebate and a final rebate payment to the United States of America in accordance with the written direction of the Borrower or the Rebate Analyst. The Trustee has no obligation to rebate any amounts required to be rebated pursuant to this Section and the Tax Agreement, other than from moneys held in the Funds and Accounts or from other moneys provided to the Trustee by the Borrower.

(c) Notwithstanding any other provision of this Indenture, including in particular **Article IX**, the obligation to pay the arbitrage rebate to the United States of America and to comply with all other requirements of this Section and the Tax Agreement shall survive the defeasance or payment in full of the Bonds.

(d) Upon the Trustee's receipt of written notice from the Rebate Analyst of payment of all arbitrage rebate to the United States of America under the Tax Agreement, all moneys remaining in the Rebate Fund will be remitted to the Borrower.

**Section 411. Custody of Funds and Accounts; Moneys Held in Trust.** The Trustee will hold the Funds and Accounts in trust for the benefit of the Bonds and the Owners thereof. The Issuer hereby authorizes and directs the Trustee to withdraw moneys from said Funds for the purposes specified herein, which authorization and direction the Trustee hereby accepts.

**Section 412. Nonpresentment of Bonds.** In the event any Bonds are not presented for payment when the principal thereof becomes due, either at maturity or at the date fixed for redemption thereof or otherwise, if funds sufficient to pay such Bonds have been made available to the Trustee for the benefit of the owner thereof, it shall be the duty of the Trustee to hold such funds for the Bondowners without liability for interest. If such funds shall have remained unclaimed for four years after such principal or interest has become due and payable, such funds shall be paid to the Borrower without liability for interest on the funds, provided all amounts owed to Trustee hereunder shall have been paid. All liability of the Trustee to the owner for the payment of such Bond will forthwith cease, determine and be completely discharged. The obligations of the Trustee under this Section to pay any such funds to the Borrower shall be subject to any provisions of law applicable to the Trustee or to such funds providing other requirements for disposition of

unclaimed property. Any moneys received by the Borrower will not be held in trust for the benefit of the Bondowner. The Borrower is not liable for interest on the Bonds from the due date if funds sufficient to pay such Bonds have been made available to the Trustee for the benefit of the owner thereof.

**Section 413. Investment of Funds.**

(a) Any moneys held by the Trustee as part of any fund created by this Article shall be invested or reinvested, from time to time, by the Trustee in Qualified Investments at the written direction of the Borrower with the approval of the Majority Owner. The Trustee may rely upon the written investment direction of the Borrower approved by the Majority Owner as to the suitability and legality of the directed investments. On the Issue Date the Borrower has delivered its written instructions approved by the Majority Owner to the Trustee for the investment of moneys. To the extent the Trustee has not received such written instructions by the Issue Date, the Trustee shall hold moneys un-invested until written investment instructions are received by the Trustee. The Trustee is specifically authorized to implement its automated cash investment system to invest cash and to charge its normal cash management fees, which may be deducted from earned income on investments. Qualified Investments (other than any Investment Agreement) will mature or be redeemable at the option of the holder thereof on the earlier of six months after acquisition or when needed for the purposes of this Indenture, including pursuant to the redemption provisions of **Article III**, except that moneys in the Project Fund shall be redeemable without penalty at the option of the Trustee immediately. The Qualified Investments will be held by the Trustee and shall be deemed at all times to be a part of the Fund in which such moneys were held; *provided* that, for the purpose of investment, moneys held in any of the Funds established under this Indenture may be commingled.

(b) The Trustee will apply all interest, profits or other income derived from the investment of any Fund or Account created by this Article (other than the Rebate Fund and the Bond Fund, for which the interest, profits or other income shall be retained therein) in the following order:

- (i) to pay the principal of and interest on the Bonds if the amount on deposit in the Bond Fund is not sufficient, and
- (ii) promptly after each Interest Payment Date,
  - (1) to make up any shortfall in an Additional Charge required to be made during the 6-month period ending on the Interest Payment Date, in the following order of priority (by reference to subparagraphs of Section 4.03 of the Loan Agreement): (a), (b), (c), (d), (e) and (f), and
  - (2) to deposit the balance to the Bond Fund as a credit against the next Basic Payment.

*Notwithstanding the foregoing provisions of this **Section 413**, prior to the Completion Date, interest, profits or other income derived from the investment of the Project Fund may be disbursed at the written request of the Borrower to the Disbursing Agent to be disbursed as provided in the Disbursing Agreement, or as*

*otherwise directed by the Borrower, and the Borrower shall be responsible for confirming that any such direction is in compliance with the requirements of the Tax Agreement.*

(c) The Trustee will give written notice to the Borrower on or before each Interest Payment Date of the amount to be applied as a credit against the Basic Payments due on such Interest Payment Date. The Trustee shall not be liable for any losses resulting from any such investments consistent with this Section. The Trustee may make investments through its own investment department or through any affiliate of the Trustee.

(d) The Trustee is directed to sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any Fund shall be insufficient to cover a proper disbursement from any Fund. The Trustee shall not be liable for any losses resulting from any such investments consistent with this Section. The Trustee may make investments through its own investment department or through any affiliate of the Trustee.

(e) Although the Issuer and the Borrower each recognize 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 if no activity occurred in such fund or account during such month.

(f) Any investments of moneys held in any fund or account established under this Indenture must meet all requirements set forth in the Tax Agreement.

**Section 414. Final Balances.** Upon the deposit with the Trustee of moneys sufficient to pay all principal of, premium, if any, and interest on the Bonds, and upon satisfaction of all claims against the Issuer under this Indenture, including all fees, charges and expenses of the Trustee and the Issuer which are properly due and payable under this Indenture, or upon the making of adequate provisions for the payment of such amounts as permitted hereby, all moneys remaining in all Funds and Accounts, *except* moneys held in the Rebate Fund under **Section 410** and in the Bond Fund under **Section 404**, will be remitted to the Borrower.

## ARTICLE V GENERAL COVENANTS AND REPRESENTATIONS

**Section 501. Payment of Principal and Interest.** The Issuer covenants and agrees that the Trustee is authorized to pay, solely from the Trust Estate, the principal of, premium, if any, and interest on, the Bonds at the place, on the dates and in the manner provided in this Indenture and in the Bonds.

**Section 502. Instruments of Further Assurance.**

(a) The Issuer, at the written request of the Trustee or the Majority Owner and at the sole expense of the Borrower, will do, execute, acknowledge and deliver or cause to be delivered or cause to be

done, executed, acknowledged and delivered, such indentures supplemental hereto, and such further acts, instruments and transfers as may be reasonably required for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Trustee its interest in the Trust Estate and the revenues, receipts and other amounts pledged by this Indenture to the payment of the principal of, premium, if any, and interest on the Bonds. Any and all interest in the Trust Estate hereafter acquired which is of any kind or nature herein provided to be and become subject to the lien hereof shall and without any further conveyance, assignment or act on the part of the Issuer or the Trustee, become and be subject to the lien of this Indenture as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Issuer under this Section. The Issuer covenants and agrees that, except as herein otherwise expressly provided, it has not and will not sell, convey, mortgage, encumber or otherwise dispose of any part of its interest in the Trust Estate or the revenues and receipts thereof. The Issuer will not incur any additional indebtedness that is senior to or on parity with the Trust Estate.

(b) The Issuer, at the written request of the Trustee or the Majority Owner and at the sole expense of the Borrower, shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, any supplemental indentures, and any further acts, instruments and transfers as the Trustee may reasonably require for the better assurance, transfer, conveyance, pledge, assignment and confirmation to the Trustee of its interest in the Trust Estate. This covenant will not result in the Issuer incurring any cost. Any and all interest in property acquired after the Issue Date which is of any kind or nature to become subject to the lien of this Indenture will, without any further conveyance, assignment or act on the part of the Issuer or the Trustee, become subject to the lien of this Indenture as fully and completely as though specifically described in this Indenture, but nothing contained in this sentence will be deemed to modify or change the obligations of the Issuer under this Section.

**Section 503. Inspection of Project Books.** The Issuer will open its books and documents relating to the financing of the Project, the Trust Estate and the Bonds, at all reasonable times, to inspection by any accountants or other agents as the Trustee, the Issuer, the Majority Owner, the Borrower and the Investor Limited Partner may from time to time reasonably designate. The Trustee will open its books and documents relating to the financing of the Project and the Bonds at all reasonable times to inspection by the Issuer, the Majority Owner, the Borrower, the Investor Limited Partner or accountants or agents as the Issuer, the Majority Owner, the Borrower or the Investor Limited Partner may from time to time reasonably designate.

**Section 504. Recordation and Filing.** The Trustee is not responsible for any original filings of financing statements. Provided that the Trustee timely receives a copy of the originally-filed financing statements, the Trustee shall cause to be filed continuation statements to the financing statements under the Uniform Commercial Code of the State, with the appropriate filing office of the State, in such manner as may be required by the Uniform Commercial Code of the State. The Borrower shall be responsible for the reasonable fees and costs, including fees and costs of counsel or other experts, incurred by the Trustee in the preparation and filing of all continuation statements. Notwithstanding anything to the contrary contained in this Indenture, except as expressly provided in the first sentence of this Section, the Trustee shall not be responsible for any initial, amendment, or other 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 or any amendments or other changes to Article 9 of the Uniform Commercial Code of the State. The Trustee shall be fully protected in relying on information with respect to such initial filing delivered to it by or on behalf of the Issuer or the Borrower, as applicable, and descriptions in filing any continuation statements required by this Section. The Trustee may seek advice of counsel at the sole expense of the Borrower if the collateral, the debtor or the jurisdiction with respect to the financing statement changes.

**Section 505. No Modification of Security.** The Issuer will not, without the written consent of the Trustee and the Majority Owner, alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement to which the Issuer is a party or assignee that relates to or affects the security for the Bonds.

**Section 506. Existence and Authority.** The Issuer has all necessary power and authority to execute and deliver this Indenture, to execute, deliver and issue the Bonds and to perform its duties and discharge its obligations under this Indenture and the Bonds. 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 a government instrumentality of the State. The Issuer has not otherwise pledged the revenues and assets pledged under this Indenture for the payment of the Bonds. The Trustee shall at all times, to the extent permitted by law and subject to the provisions of **Article VII**, defend and protect the pledge created under this Indenture against any and all claims whatsoever.

**Section 507. Casualty or Condemnation.**

(a) If the Project, or any part thereof, is damaged or destroyed as a result of fire or other casualty, or the Project, or any part thereof, shall be condemned or acquired for public use, and the amount of such loss is greater than \$100,000 per occurrence or \$200,000 aggregate per calendar year, the Trustee shall re-open the Project Fund and deposit any insurance proceeds or condemnation award received pursuant to [\_\_Section 4.4\_\_] of the Deed of Trust to the Project Fund. If the Project, or any part thereof, is damaged or destroyed as a result of fire or other casualty, or the Project, or any part thereof, shall be condemned or acquired for public use, and the amount of such loss is less than \$100,000 per occurrence or \$200,000 in the aggregate per calendar year, but the Borrower does not apply all of the insurance proceeds or condemnation award received in connection therewith to the restoration or repair of the Premises, the Trustee shall re-open the Project Fund and deposit any such unapplied insurance proceeds or condemnation award received pursuant to [\_\_Section 4.4\_\_] of the Deed of Trust to the Project Fund.

(b) Within 30 days after receiving actual notice of the damage, destruction or condemnation of the Project, the Borrower, by written notice to the Trustee, the Issuer and the Majority Owner, will select one of the following two courses of action:

- (i) ***Alternative A - Repair and Restoration.*** If, within 24 months of the occurrence of the damage, destruction or condemnation, the Project can be repaired or restored to substantially the same condition as it existed prior to the event causing such

damage or destruction without jeopardizing repayment of the principal of and interest on the Bonds and all applicable fees, all in accordance with the opinion of an expert or experts selected as referred to below, the Borrower may repair and restore the Project. Moneys in the Project Fund will be disbursed, in accordance with the procedures set forth in **Section 403(f)**. Upon damage, destruction or condemnation with respect to the Project wherein the amount of the loss is greater than \$100,000 per occurrence or \$200,000 in the aggregate per calendar year, the Borrower may only elect this *Alternative A* with the prior written consent of the Majority Owner, which consent the Majority Owner may withhold in its sole discretion.

- (ii) ***Alternative B - Prepayment.*** The Borrower may direct the Trustee in writing to apply the net proceeds of any insurance proceeds or condemnation award to the prepayment of the Loan by applying such amount to the mandatory redemption of the Bonds pursuant to **Section 301(b)**. The balance of the net proceeds will be applied to the prepayment of the Notes. Any moneys remaining in the Project Fund after redemption of the Bonds pursuant to this *Alternative B* will be deposited in the Bond Fund.

(c) Proceeds of income protection insurance or rental value insurance received by the Trustee pursuant to the Deed of Trust will be deposited to the Bond Fund.

#### **Section 508. General Tax Covenants.**

(a) The Issuer shall at all times do and perform all acts and things necessary or desirable in order to assure that interest paid on the Bonds shall be excludable from gross income for federal and State income tax purposes, except in the event where such owner of the Bonds is a "substantial user" of the Project or a Related Person thereto.

(b) To the extent within its power and control, the Issuer will not take any action which if taken, or fail to take any action which if not taken, would cause the Bonds to violate any of the restrictions contained in the Code which could affect the excludability of the interest on the Bonds from the gross income of the owners thereof for purposes of federal income taxation pursuant to Section 103 of the Code.

(c) To the extent within its power and control, the Issuer will not use, or permit to be used, any proceeds of the Bonds or any other moneys of the Issuer, directly or indirectly, to acquire any securities, obligations or other investment property, the acquisition of which would cause any Bond to be an "arbitrage bond" as defined in Section 148(a) of the Code.

(d) The Issuer agrees that, to the extent within its power, it will require the Borrower, pursuant to the terms and provisions of the Tax Agreement, not to commit any act or not to make any use of the proceeds of the Bonds, or any other moneys which may be deemed to be proceeds of the Bonds pursuant to the Code, which would cause the Bonds to be "arbitrage bonds" within the meaning of the Code, and to



comply with the requirements of the Code throughout the term of the Bonds. The Trustee covenants that should the Issuer file with the Trustee, or should the Trustee receive, an Opinion of Bond Counsel to the effect that any proposed investment or other use of proceeds of the Bonds would cause the Bonds to become "arbitrage bonds," then the Trustee will comply with any written instructions of the Issuer or Bond Counsel regarding such investment or use so as to prevent the Bonds from becoming "arbitrage bonds," and the Trustee will bear no liability to the Borrower or the Bondowners for investments made in accordance with such instructions.

(e) The Trustee will invest funds held under this Indenture in accordance with the terms of this Indenture. The Borrower agrees that any investment instructions given to the Trustee will be in accordance with the Tax Agreement. The Trustee further covenants and agrees that should the Issuer, the Borrower or the Majority Owner file with the Trustee (it being understood that none of the Issuer, the Borrower or the Majority Owner has an obligation to so file), or should the Trustee receive, an Opinion of Bond Counsel to the effect that any proposed investment or other use of proceeds of the Bonds would cause the Bonds to become "arbitrage bonds," then the Trustee will comply with any written instructions of the Majority Owner, the Borrower or Bond Counsel regarding such investment or use of proceeds to prevent the Bonds from becoming "arbitrage bonds," and the Trustee shall bear no liability to the Issuer or the Bondowners for investments made in accordance with such instructions. Notwithstanding the foregoing, the Trustee has no responsibility or liability with respect to the tax status of the Bonds. Notwithstanding any provision of this Indenture or the Tax Agreement to the contrary, the Trustee shall not be liable or responsible for any calculation or determination which may be required in connection with, or for the purpose of complying with, § 148 of the Code, or any successor statute or any regulation, ruling or other judicial or administrative interpretation thereof, including, without limitation, the calculation of amounts required to be paid to the United States of America or the determination of the maximum amount which may be invested in non-purpose obligations having a yield higher than the yield on the Bonds, it being acknowledged and agreed that the sole obligation of the Trustee with respect to the investment of moneys held under any fund or account created under this Indenture shall be to invest such moneys in accordance with instructions received by it as set forth in **Section 413**.

## **ARTICLE VI**

### **DEFAULT PROVISIONS AND REMEDIES**

**Section 601. Events of Default.** Each of the following shall be an "Event of Default" with respect to a Series of Bonds:

- (a) default in the payment of any interest on such Series of Bonds when due and such default continues for five Business Days;
- (b) default in the payment of the principal of or premium, if any, on such Series of Bonds, whether at the stated maturity thereof, upon proceedings for redemption thereof, or upon the maturity thereof by acceleration, and such default continues for five Business Days;

- (c) default (other than default under subsections **(a)** and **(b)** above) in the performance or observance of any of the covenants, agreements or conditions on the part of the Issuer contained in this Indenture or in the Bonds and the continuation thereof for a period of 30 days following receipt by the Issuer, the Borrower and the Investor Limited Partner and of written notice from the Trustee or the Majority Owner; *provided*, however, that if the default be such that it cannot be corrected within such thirty day period, it shall not constitute an Event of Default if corrective action is instituted by the Borrower (or its Investor Limited Partner) or the Issuer within such period and diligently pursued (as determined by the Trustee) until the default is corrected; or
- (d) (i) default under the Land Use Restriction Agreement or the Tax Agreement and any applicable period for remedying the default has expired, and (ii) default under the Loan Agreement or a Security Document and any applicable period for remedying the default has expired.

The Trustee will promptly notify the Majority Owner and the Investor Limited Partner in writing upon the occurrence of any event that would, but for the giving of notice or passage of time, or both be an Event of Default of which the Trustee has received notice or is deemed to have notice pursuant to **Section 703(i)**. The Issuer, the Trustee and the Majority Owner agree that any cure of an Event of Default, or of any act or failure to act that will, with the passage of time or otherwise, constitute an Event of Default, made or tendered by one or more of the Borrower's partners or their respective Affiliates shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

#### **Section 602. Acceleration.**

(a) If an Event of Default occurs and is continuing, the Trustee may, and if so directed by the Majority Owner, shall declare, by notice in writing delivered to the Issuer, the Borrower and the Investor Limited Partner, the principal of the affected Series of Bonds then Outstanding and the interest accrued thereon immediately due and payable without premium, and such principal and interest shall thereupon become and be immediately due and payable.

(b) Subsection **(a)** is subject to the condition that if, at any time after the principal of a Series of Bonds has been declared due and payable, and before any judgment or decree for the payment of the money due has been obtained or entered as provided below, the Issuer or the Borrower (or any of the Borrower's partners) pays to or deposits with the Trustee a sum sufficient to pay (i) all principal on such Series of Bonds then due (other than principal due as a result of such acceleration) and all installments of interest (if any) on such Bonds, (ii) interest, at the rate borne by such Series of Bonds, on overdue principal and (to the extent legally enforceable) on overdue installments of interest and (iii) the reasonable and necessary fees and expenses of the Trustee and the Issuer, then the Trustee may, and upon the written request of Majority Owner will, rescind and annul the declaration and its consequences. No rescission and annulment will extend to or affect any subsequent default, nor will it impair or exhaust any right or power consequent thereon.

### **Section 603. Remedies.**

(a) In addition to the remedy of acceleration as provided in **Section 602**, upon the occurrence of an Event of Default the Trustee, in accordance with the written direction of the Majority Owner, may proceed forthwith to protect and enforce its rights and the rights of the Owners under the Act, the Bonds and this Indenture by such suits, actions or proceedings as the Majority Owner, in its sole discretion, shall deem expedient. The Trustee shall have the power to proceed with any right or remedy granted by the constitution and laws of the State, as it may deem best, including any suit, action or special proceeding in equity or at law for the specific performance of any covenant or agreement contained herein or for the enforcement of any proper legal or equitable remedy as the Trustee shall deem most effectual to protect the rights aforesaid, insofar as such may be authorized by law.

(b) No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Bondowners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and, except as expressly limited under this Indenture, shall be in addition to any other remedy given to the Trustee or to the Bondowners under this Indenture or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default under this Indenture, whether by the Trustee or by the Bondowners, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereto.

(c) When the Trustee incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium reorganization or other debtor relief law.

**Section 604. Rights of Bondowners.** If any Event of Default has occurred and if requested so to do by the owners of a majority of the Bond Obligation of the affected Series of Bonds with respect to which there is an Event of Default, and if indemnified as provided in this Indenture, the Trustee is obligated to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, deems most beneficial for the interest of the Bondowners of the affected Series. Subject to the provisions of **Section 610**, the owners of a majority of the Bond Obligation of the affected Series have the right at any time, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings under this Indenture, in accordance with the provisions of law and of this Indenture.

**Section 605. Waiver by Issuer.** Upon the occurrence of an Event of Default, to the extent that such right may then lawfully be waived, neither the Issuer nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or

hereinafter in force, in order to prevent or hinder the enforcement of the Indenture or any Loan Document; and the Issuer, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisal and redemption to which it may be entitled under the laws of the State and the United States of America.

**Section 606. Application of Moneys.**

(a) If an Event of Default exists with respect to a Series of Bonds, any moneys received by the Trustee pursuant to this Article together with funds held by the Trustee in the Funds and Accounts (other than the Rebate Fund), after deducting the Ordinary Trustee's Fees and Extraordinary Fees and Expenses, and all other reasonable fees, costs, charges and expenses (including court costs and attorneys' fees), advances and liabilities incurred or imposed by the Trustee in connection with the exercise of the remedies under this Article and the creation of a reasonable reserve for anticipated fees, costs and expenses, shall be applied in the following order, at the date or dates fixed by the Trustee and, in the case of the distribution of such money on account of principal, or premium, if any, or interest, upon presentation of Bonds of the affected Series, and notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

- (i) to the payment of all amounts then due on the Bonds of the affected Series for principal, premium, if any, and interest, in respect of which or for the benefit of which, money has been collected (other than Bonds of such Series which have matured or otherwise become payable prior to such event of default and money for the payment of which is held in the Bond Fund), ratably without preference or priority of any kind, according to the amounts due and payable on such Bonds, for principal, premium, if any, and interest respectively, provided that if payment is due on the Series B Bonds in addition to the Series A Bonds, payments due on the Series A Bonds will be made prior to the payments on the Series B Bonds; and
- (ii) to the payment of all amounts due the Issuer.

(b) Notwithstanding anything contained in this Section to the contrary, the Majority Owner, by written notice to the Trustee, may direct the application of funds other than in the manner set forth above (except that the priority of payment of Trustee's fees, costs and expenses shall not be altered), including, without limitation, the application of funds between the principal of or interest on the Bonds. Any such determination by the Majority Owner shall be deemed conclusive, and the Issuer, the Borrower, the Guarantor and the Trustee shall have no liability for the tax consequences of that determination.

**Section 607. Remedies Vested in Trustee and Majority Owner.** All rights of action, including the right to file proof of claims, under this Indenture or under any of the Bonds may be enforced by the Trustee and the Majority Owner without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto. Subject to the rights of the Majority Owner to direct proceedings under this Indenture, any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any owners of the Bonds,

and any recovery of judgment shall be for the benefit as provided herein of the owners of the Outstanding Bonds of the affected Series.

**Section 608. Limitation on Rights of Bondowners.**

(a) No Bondowner, other than the Majority Owner, shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust under this Indenture or for the appointment of a receiver or any other remedy under this Indenture, unless:

- (i) a default shall have occurred of which the Trustee has been notified as provided in this Indenture;
- (ii) the default has become an Event of Default;
- (iii) the Owners of a majority of the Bond Obligation of the affected Series shall have made written request to the Trustee and shall have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name;
- (iv) the Owners of the affected Series have offered to the Trustee indemnity as provided herein; and
- (v) the Trustee did, within 60 days thereafter, fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding.

(b) No one or more owners of the Bonds will have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture or the rights of any other owners of Bonds or to obtain priority or preference over any other owners or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all owners of Bonds with respect to which there is a default. Nothing contained in this Indenture will, however, affect or impair the right of any Bondowner to enforce the payment of the principal of, the premium, if any, and interest on any Bond as the same becomes due or the obligation of the Issuer to pay the principal of, premium, if any, and interest on the Bonds issued under this Indenture to the respective owners thereof, at the time, in the place, from the sources and in the manner provided in this Indenture and the Bonds.

**Section 609. Termination of Proceedings.** If the Trustee has proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry or otherwise, and such proceedings has been discontinued or abandoned for any reason, or has been determined adversely, then and in every such case the Issuer, the Borrower, the Trustee and the Bondowners shall be restored to their former positions and rights under this Indenture with respect to the Trust Estate herein conveyed, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

**Section 610. Waivers of Events of Default.** The Trustee may, and upon the written request of the Owners of a majority of the Bond Obligation of the affected Series for which there is an Event of Default shall, waive any Event of Default under this Indenture and its consequences and rescind any declaration of maturity of principal of and interest on the Bonds; *provided*, however, that there shall not be waived (a) any Event of Default in the payment of the principal of any Bonds at the date of maturity specified therein, or upon proceedings for mandatory redemption, or (b) any default in the payment when due of the interest or premium on any such Bonds, unless prior to such waiver or rescission all arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds in respect of which such default shall have occurred on overdue installments of interest or all arrears of payments of principal or premium, if any, when due (whether at the stated maturity thereof or upon proceedings for mandatory redemption) as the case may be, and all expenses of the Trustee and the Issuer, in connection with such default has been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default has been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee, the Borrower and the Bondowners shall be restored to their former positions and rights under this Indenture respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

**Section 611. Majority Owner Controls Proceedings.** If an Event of Default has occurred and is continuing, notwithstanding anything in this Indenture to the contrary, the Majority Owner shall have the right, at any time, by an instrument in writing executed and delivered to the Trustee, to direct the method and place of conducting any proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture or any other proceedings under this Indenture and subject to the provisions of **Section 703** relating to the indemnification of the Trustee; *provided*, however, that such direction is in accordance with law and the provisions of this Indenture. Nothing in this Section shall impair the right of the Trustee in its discretion to take any other action under this Indenture which it may deem proper and which is not inconsistent with such written direction by the Majority Owner.

## ARTICLE VII THE TRUSTEE

### **Section 701. Certain Duties and Responsibilities.**

- (a) Except during the continuance of an Event of Default:
  - (i) the Trustee undertakes to perform the duties and only the duties specifically set forth in this Indenture, and no implied covenants or obligations against the Trustee will be read into this Indenture; and
  - (ii) 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 therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; *provided*, that in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished

to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not such certifications or opinions conform on their face to the provisions of this Indenture which required such certification or opinion.

(b) In case an Event of Default has occurred (and has not been cured within any applicable grace period) and is continuing and subject to the rights of the Majority Owner with respect to control of remedies following an Event of Default, the Trustee shall exercise such of the rights and powers vested in it by this Indenture 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.

(c) No provision of this Indenture will be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

- (i) this subsection (c) will not be construed to limit the effect of subsection (a) of this Section;
- (ii) the Trustee will not be liable for any error of judgment made in good faith by a responsible officer of the Trustee, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and
- (iii) the Trustee will not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of a majority of the Bond Obligation relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

(d) No provision of this Indenture requires the Trustee to expend or risk its own funds or otherwise incur 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.

(e) Whether or not expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or conveying rights and duties or affording protection to the Trustee, whether in its capacities as Trustee, Paying Agent, Bond Registrar or in any other capacity, is subject to the provisions of this Article.

(f) The Trustee shall cooperate fully with the Majority Owner in the enforcement and protection of the rights of the Owners of the Bonds to the fullest extent possible under this Indenture, the Loan Documents and applicable law. Toward this end, the Trustee shall, subject to its receipt of indemnity satisfactory to it, take such action as directed in writing by the Majority Owner, including foreclosure under the Deed of Trust, suit for specific performance of the Loan Documents or for damages for nonperformance thereof and assignment of the Loan Documents to the Owners of the Bonds for purposes of enforcing the rights of the Owners of the Bonds.

(g) The Trustee shall not take any discretionary action under the Loan Documents (although the disbursement of proceeds of the Bonds and investment earnings thereon shall be made in accordance with the terms of Article IV) without the written approval of the Majority Owner and shall take such discretionary action permitted or required under the Loan Documents, subject to receipt of indemnity satisfactory to it, as may be directed in writing by the Majority Owner.

**Section 702. Notice of Default.** Promptly, and in any event within five Business Days, after the occurrence of any Event of Default under this Indenture of which the Trustee has received notice or is deemed to have notice pursuant to **Section 703(i)** under this Indenture, the Trustee shall transmit by certified mail, to the registered owners of all Bonds then Outstanding, the Issuer, the Borrower and the Investor Limited Partner, notice of the Event of Default under this Indenture known to the Trustee, unless such Event of Default has been cured or waived.

**Section 703. Certain Rights of Trustee.** Except as otherwise provided in **Section 701**:

(a) The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) Any request or order of the Issuer mentioned herein shall be sufficiently evidenced by an order signed by an Authorized Issuer Representative and any resolution of the governing body of the Issuer may be sufficiently evidenced by a certificate of the Secretary of the Issuer.

(c) Any notice, request, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by the General Partner (unless other evidence in respect thereof be herein specifically prescribed), and any resolution or certification of the Borrower may be evidenced to the Trustee by a copy thereof certified by the General Partner.

(d) 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 under this Indenture, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a Certificate of the Issuer.

(e) The Trustee may consult with counsel, architects and engineers and other experts, and the written advice of such counsel, architects or engineers and other experts shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it under this Indenture in good faith and in reliance thereon.

(f) Notwithstanding any provision of this Indenture to the contrary, the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture other than the deposit of moneys received for deposit into the Funds and Accounts under this Indenture and the payment of debt



service on the Bonds from moneys in the Bond Fund, whether at the request or direction of any of the Bondowners pursuant to this Indenture or otherwise, unless the Bondowners shall have offered to the Trustee reasonable security or indemnity acceptable to it against the fees, advances, costs, expenses and liabilities (except as may result from the Trustee's own negligence or willful misconduct) which might be incurred by it in connection with such rights or powers, including, without limitation, in connection with environmental contamination and the cleanup thereof.

(g) The Trustee will 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 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 Issuer relating to the Project, personally or by agent or attorney.

(h) The Trustee may execute any of the trusts or powers under this Indenture or perform any duties under this Indenture either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it under this Indenture.

(i) The Trustee shall not be required to take notice or be deemed to have notice of any default under this Indenture, except (1) an Event of Default under **Section 601(a)** or **(b)** and (2) the occurrence of any default, of which an officer of the Trustee with responsibility for administration of this Indenture has actual knowledge under the documents described in **Section 601(d)** or otherwise, unless the Trustee is notified in writing of the default by the Issuer, the Borrower or the Owners of at least 25% of the Bond Obligation.

(j) All notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the Administrative Office of the Trustee at the address set forth in **Section 1004**.

(k) The Trustee may elect not to proceed in accordance with the directions of the Bondowners without incurring any liability to the Bondowners if in the opinion of the Trustee such direction may result in environmental liability to the Trustee, in its individual capacity for which the Trustee has not received indemnity pursuant to this Section from the Bondowners, and the Trustee may rely upon an Opinion of Counsel addressed to the Issuer and the Trustee in determining whether any action directed by Bondowners may result in such liability.

(l) The Trustee may inform the Bondowners of environmental hazards that the Trustee has reason to believe exist, and the Trustee has the right to take no further action and, in such event no fiduciary duty exists which imposes any obligation for further action with respect to the Trust Estate or any portion thereof if the Trustee, in its individual capacity, determines that any such action would materially and adversely subject the Trustee to environmental liability for which the Trustee has not received indemnity pursuant to this Section.

(m) The permissive right of the Trustee to do things enumerated in the Indenture shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful misconduct.

(n) The Trustee shall not be required to give any bond or security in respect of the execution of the said trusts and powers or otherwise in respect to the premises.

(o) The Trustee assumes no responsibility for the correctness of the recitals contained in this Indenture and in the Bonds, except the certificate of authentication on the Bonds. The Trustee makes no representations as to the value or condition of the Trust Estate or any part thereof, or as to the title thereto or as to the security afforded thereby or hereby, or as to the validity or sufficiency of this Indenture or of the Bonds, or as to the excludability of interest on the Bonds from gross income for federal income tax purposes. The Trustee shall not be accountable for the use or application by the Issuer or the Borrower of any of the Bonds or the proceeds thereof or of any money paid to or upon the order of the Issuer or the Borrower under any provision of this Indenture or the Loan Agreement. The Trustee's immunities and protections from liability and 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 and right to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the discharge of this Indenture and final payment of the Bonds.

(p) The Trustee, in its individual or any other capacity, may become the Owner or pledgee of Bonds and may otherwise deal with the Issuer or the Borrower with the same rights it would have if it were not the Trustee.

(q) The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to Bonds, except for any information provided by the Trustee.

(r) The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Bonds.

(s) Notwithstanding any other provision of this Indenture to the contrary, any provision relating to the conduct of the Trustee, or intended to provide authority to act, right to payment of fees and expenses, protection, immunity or indemnification to the Trustee, shall be interpreted to include any action of the Trustee, whether it is deemed to be in its capacity as Trustee, Bond Registrar or Paying Agent.

(t) The Trustee shall be entitled to file proofs of claim in bankruptcy. Fees and expenses of the Trustee are intended to constitute administrative expenses in bankruptcy.

(u) The Trustee's immunities and protections from liability and 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 and rights to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the discharge of this Indenture, and final payment of the Bonds.

(v) All of the provisions of this Indenture related to the duties, obligations, standard of care, protections and immunities from liability afforded the Trustee under this Indenture shall apply to the Trustee in the performance of its duties and obligations under any of the other documents or instruments relating to the Bonds.

(w) The Trustee shall not be responsible or liable for the environmental condition or any contamination of any property which secures the Bonds or is owned or leased by the Issuer or the Borrower or for any diminution in value of any such property as a result of any contamination of the property by any hazardous substance, hazardous material, pollutant or contaminant. The Trustee shall not be liable for any claims by or on behalf of the Issuer or the Borrower or any other person or entity arising from contamination of the property by any hazardous substance, hazardous material, pollutant or contaminant, and shall have no duty or obligation to assess the environmental condition of any such property or with respect to compliance of any such property under state or federal laws pertaining to the transport, storage, treatment or disposal of, hazardous substances, hazardous materials, pollutants, or contaminants or regulations, permits or licenses issued under such laws.

(x) In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, pandemics, epidemics, recognized public emergencies, quarantine restrictions, hacking or cyber-attacks, or other use or infiltration of the Trustee's technological infrastructure exceeding authorized access, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Bond Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

**Section 704. Trustee Required; Eligibility.** There shall at all times be a Trustee under this Indenture which shall be a trust institution or bank with an office in the State and qualified to accept such trust either (a) has at the time of appointment capital and surplus of not less than \$50,000,000, (b) is owned by a company that has at the time of appointment capital and surplus of not less than \$50,000,000 or (c) has assets under corporate trust management of not less than \$50,000,000. If such institution publishes reports of conditions at least annually pursuant to law or regulation, then for the purposes of this Section the capital, surplus and undivided profits of such institution shall be deemed to be its capital, surplus and undivided profits as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner provided in **Section 708**. No resignation or removal of the Trustee and no appointment of a successor Trustee shall become effective until the successor Trustee has accepted its appointment under **Sections 710 and 711**.

**Section 705. Trustee May Hold Bonds.** The Trustee in its individual or any other capacity may become the owner or pledgee of Bonds and may otherwise deal with the Issuer with the same rights it would have if it were not Trustee.

**Section 706. Fees, Charges and Expenses of Trustee and Rebate Analyst.** The Trustee shall be entitled to the Ordinary Trustee's Fees, its expenses and the Extraordinary Fees and Expenses of the Trustee (which compensation shall not be limited by any provision of law in regard to compensation of a trustee of an express trust). The Issuer shall have no responsibility or liability whatsoever to pay any of the fees and expenses of the Trustee other than from amounts available in the Expense Fund. Upon the occurrence of an Event of Default and during its continuance, the Trustee shall have a lien with right of payment before payment on account of principal of or interest on any Bond, upon all moneys in its possession under any provision hereof for the foregoing reasonable advances, fees, costs and expenses incurred. The Rebate Analyst shall be entitled to receive its fees and expenses. The Issuer shall have no responsibility or liability whatsoever to pay any of the fees and expenses of the Rebate Analyst. The Borrower has covenanted in the Loan Agreement to make such payments.

**Section 707. Successor Trustee.** Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any conversion, sale, merger, consolidation or transfer to which it is a party will be and become successor Trustee under this Indenture and vested with all the title to the whole property or Trust Estate, including all trusts, powers, options, immunities, privileges and all other matters without the execution or filing of any instruments or any further act, deed or conveyance on the part of the Issuer, the predecessor Trustee or the Borrower.

**Section 708. Resignation by the Trustee.** The Trustee and any successor Trustee may at any time resign from the trusts created by this Indenture by giving written notice to the Issuer, the Borrower, and by giving notice by certified mail, postage prepaid, to each Bondowner. Notice to the Issuer and to the Borrower may be served personally or sent by registered or certified mail. No resignation will take effect until a successor Trustee has been appointed and has accepted that appointment as provided in **Sections 710 and 711**. If no successor Trustee has been appointed and has accepted appointment within 30 days following delivery or publication of all required notices of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

**Section 709. Removal of the Trustee.** The Trustee may be removed for cause at any time or without cause upon 30 days written notice by an instrument or concurrent instruments in writing delivered to the Trustee and the Issuer and signed by the Borrower (if the Borrower is not in default under the Loan Agreement), the Issuer (if the Borrower is in default under the Loan Agreement) or the Owners of a majority of the Bond Obligation. Removal shall not be effective until such time as a successor Trustee has been appointed and has accepted such appointment. The Issuer, the Borrower or any Bondowner may at any time petition any court of competent jurisdiction for the removal for cause of the Trustee. If no successor Trustee has been appointed and has accepted appointment within 30 days following delivery of the required

notices of removal, the removed Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

**Section 710. Appointment of Successor Trustee by the Bondowners; Temporary Trustee.** If the Trustee shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting under this Indenture, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the Owners of a majority of the Bond Obligation, by an instrument or concurrent instruments in writing signed by such owners, or by their duly authorized attorneys; *provided*, nevertheless, that in case of vacancy the Issuer may, at the direction of the Borrower, by an instrument executed and signed by the Authorized Borrower Representative, appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed by such Bondowners in the manner above provided; and any such temporary Trustee so appointed by the Issuer shall immediately and without further act be superseded by the Trustee so appointed by such Bondowners. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust institution or bank with an office in the State and qualified to accept such trust and either (i) has at the time of appointment capital and surplus of not less than \$50,000,000, (ii) is owned by a company that has at the time of appointment capital and surplus of not less than \$50,000,000, or (iii) has assets under corporate trust management of not less than \$50,000,000 if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

**Section 711. Concerning Any Successor Trustee.** Every successor Trustee appointed under this Indenture shall execute, acknowledge and deliver to its predecessor and also to the Issuer an instrument in writing accepting such appointment under this Indenture and accepting assignment of the Trustee's right, title and interest in and to the Trust Estate, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor and the duties and obligations of such predecessor hereunder shall thereafter cease and terminate; but such predecessor shall, nevertheless, and upon the receipt of any outstanding fees and/or expenses owed to it, on the written request of the Issuer, or of its successor, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor under this Indenture; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee under this Indenture to its successor. Should any instrument in writing from the Issuer be required by a successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor under this Indenture, together with all other instruments provided for in this Article, shall be filed and/or recorded by the successor Trustee in each recording office where the Indenture has been filed and/or recorded. In the event of a change in the Trustee, the predecessor Trustee which has resigned or been removed shall cease to be Trustee, Paying Agent and Bond Registrar, and the successor Trustee shall become the Trustee, Paying Agent and Bond Registrar.

**ARTICLE VIII**  
**SUPPLEMENTAL INDENTURES**

**Section 801. Supplemental Indentures Not Requiring Consent of Bondowners.** Subject to Section 802(c), the Issuer and the Trustee may, without the consent of or notice to any Bondowner (other than the Majority Owner), and with the prior written consent of the Majority Owner, enter into an indenture or indentures supplemental to this Indenture as shall not be inconsistent with the terms and provisions hereof or materially adverse to the interests of the owners of the Bonds for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in this Indenture;
- (b) to subject to the lien and pledge of this Indenture additional revenues, properties or collateral;
- (c) to grant to or confer upon the Trustee for the benefit of the Bondowners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondowners or the Trustee or any of them;
- (d) at the written request of the Borrower, to qualify the Bonds as book-entry only; and
- (e) to modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification of this Indenture under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect or under any state securities laws.

**Section 802. Supplemental Indentures Requiring Consent of Bondowners.**

(a) The Owners of at least a majority of the Bond Obligation shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such indenture or indentures supplemental hereto for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; *provided*, however, that nothing in this Section contained shall permit, or be construed as permitting: (i) an extension of the stated maturity or reduction in the principal amount or reduction in the rate, or extension of time of payment of interest on, or reduction of any premium payable on the redemption of, any Bond, without the consent of the owner of such Bond; (ii) the creation of any lien prior to, on a parity with, or subordinate to, the lien of this Indenture; (iii) a reduction on the aforesaid Bond Obligation the owners of which are required to consent to any such supplemental indenture, without the consent of the owners of all the Bonds at the time Outstanding that would be affected by the action to be taken; (iv) the modification of the rights, duties or immunities of the Trustee, without the consent of the Trustee; or (v) a privilege or priority of any Bond of a Series over any other Bond of that Series.

(b) If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice to be mailed, postage prepaid, to all Bondowners of the affected Series. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the designated corporate trust office of the Trustee for inspection by all Bondowners of the affected Series. If, within 60 days or such longer period that is prescribed by the Issuer following the final mailing of such notice, the owners of a majority of the Bond Obligation of the affected Series at the time of execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no owner of any Bonds of such Series shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this Section permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith. The Trustee may rely upon a written opinion of counsel addressed and delivered to the Trustee as conclusive evidence that execution and delivery of a supplemental indenture has been effected in compliance with the provisions of this Article.

(c) Anything herein to the contrary notwithstanding, a supplemental indenture under this Article shall not become effective unless and until the Borrower and the Investor Limited Partner consent to the execution and delivery of such supplemental indenture.

**Section 803. Amendment of Certain Documents.** The Trustee shall not make or consent to any amendment, change or modification of any Loan Document, other than 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 documents, as is necessary or desirable and not inconsistent with any Loan Document or this Indenture and which shall not adversely affect the interests of the owners of the Bonds, unless the Trustee receives the consent of the applicable percentage of Bondowners of the affected Series as provided in **Section 802** for supplemental indentures. In determining whether any such modifications under this **Section 803** is consistent with the Loan Documents and this Indenture or would adversely affect the interest of the owners of the Bonds, the Trustee is entitled to receive and rely upon an Opinion of Counsel.

**Section 804. Opinion of Bond Counsel Required.** Prior to execution and delivery of a supplemental indenture or consent to an amendment, change or modification of any Loan Document, the Issuer and the Trustee may request an Opinion of Bond Counsel that any amendment or supplement to which the Issuer is a party has been authorized by the Issuer and upon its execution will constitute a valid and binding obligation of the Issuer in accordance with its terms, the amendment or supplement is in conformance with this Article and the Act and the amendment or supplement will not cause interest on the Bonds to be includable in gross income for purposes of federal income taxation.

**ARTICLE IX**  
**SATISFACTION AND DISCHARGE OF INDENTURE**

**Section 901. Discharge of Lien.**

(a) If the principal, premium, if any, and interest on the Bonds is paid to the Bondowners at the times and in the manner stipulated in this Indenture, all fees and expenses of the Trustee, each Paying Agent and the Issuer have been paid, all arbitrage rebate with respect to the Bonds has been paid and if the Issuer has kept, performed and observed the covenants in the Bonds and in this Indenture, then these presents and the applicable Trust Estate and rights granted by this Indenture will, at the option of the Issuer, cease, determine and be void. The Trustee will then cancel and discharge the lien of this Indenture and execute and deliver to the Issuer any instruments required to release the Trust Estate and will assign and deliver to the Issuer any interest in property included in the Trust Estate at the time subject to the lien of this Indenture which may then be in its possession, except amounts held by the Trustee for the payment of principal of and interest and premium, if any, on the Bonds. Any final balances will be remitted in accordance with **Section 414**.

(b) All Outstanding Bonds of a Series will be deemed to have been paid within the meaning and with the effect expressed in paragraph (a) of this Section prior to the applicable maturity or redemption date if:

- (i) the Issuer has given to the Trustee irrevocable instructions, in form satisfactory to the Trustee, to mail notice of redemption of such Series of Bonds to be redeemed on any date prior to their maturity;
- (ii) the Trustee has received moneys or Defeasance Securities which are non-callable, except at the election of the holder, in an amount sufficient, together with the interest thereon, to pay when due the principal or redemption price, if applicable, and interest on such Series of Bonds on and prior to the applicable maturity or redemption date;
- (iii) the Issuer and the Trustee have received an Opinion of Bond Counsel that the conditions of this Section have been satisfied and the deposit with the Trustee and consequent defeasance of such Series of Bonds does not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes;
- (iv) the Trustee has received an amount equal to the Ordinary Trustee's Fees due prior to the applicable maturity or redemption date and any outstanding Extraordinary Fees and Expenses of the Trustee, and the fees, costs and expenses payable to the Issuer under the Loan Agreement (as certified by the Issuer); and



- (v) if the entire amount necessary to pay Outstanding Bonds of a Series under this Section has not been deposited with the Trustee, the Trustee has received a verification report of a firm of independent certified public accountants that the moneys and Defeasance Securities deposited with the Trustee are sufficient to pay when due the principal or redemption price, if any, and interest on such Bonds on or prior to the applicable redemption or maturity date.

## ARTICLE X MISCELLANEOUS

**Section 1001. Consents and Other Instruments of Bondowners.** Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Bondowners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondowners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds (except for assignment of ownership of a Bond), if made in the following manner, shall be sufficient for any of the purposes of this Indenture except for the assignment of the ownership of any Bond which proof shall be made by signature guaranty, and will be conclusive in favor of the Trustee with regard to any action taken, suffered or omitted under any such instrument, namely:

- (a) The fact and date of the execution by any person of any such instrument may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such instrument acknowledged to him the execution thereof; *provided* that the execution of the assignment of a Bond shall include the signature of an officer of a bank, trust company or other depository, as required in the form of Bond. Where execution is by an officer of a corporation or association or a partner of a partnership on behalf of such corporation, association or partnership, such affidavit or certificate shall also constitute sufficient proof of his authority.
- (b) The ownership of Bonds shall be proved by the Bond Register.
- (c) Any request, consent or vote of the owner of any Bond shall bind every future owner of the same Bond and the owner of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or permitted to be done by the Trustee or the Issuer pursuant to such request, consent or vote.
- (d) In determining whether the owners of the requisite Bond Obligation have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned by the Issuer or the Borrower shall be disregarded and deemed not to be Outstanding (unless all Outstanding Bonds are so owned) for the purpose of determining whether the Trustee shall be protected in

relying on any such demand, request, direction, consent or waiver. Only Bonds that the Trustee knows to be so owned shall be disregarded. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel will be full protection to the Trustee.

**Section 1002. Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any person other than the parties hereto, the Borrower and the owners of the Bonds, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions of this Indenture.

**Section 1003. Severability.** If any provision of this Indenture shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions of this Indenture or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections in this Indenture contained shall not affect the remaining portions of this Indenture or any part thereof.

**Section 1004. Notices.** All notices, certificates or other communications hereunder shall be in writing (except as otherwise expressly provided herein), shall be deemed to have been properly given when delivered by hand delivery or served by depositing the same with the United States Postal Service, or any official successor thereto, designated as registered or certified mail, return receipt requested, bearing adequate postage, or delivery by reputable private carrier such as FedEx, United Parcel Service or similar overnight delivery service, or by electronic mail (with the original delivered via overnight delivery service) and addressed as hereinafter provided. Notices, except to the Trustee, shall be deemed given when mailed as provided herein. Notices to the Trustee shall be deemed given only when received by the Trustee. All parties listed below may, by written notice given to the others, designate any address or addresses to which notices, certificates or other communications to them shall be sent when required as contemplated by this Indenture. Any notice, certificate, report, financial statement or other communication properly provided by legal counsel on behalf of any party hereunder shall be deemed properly provided by the party represented by such counsel. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

To the Issuer:	Housing Authority of the City of Columbia, Missouri 201 Switzler Street Columbia, Missouri 65203 Attention: Randy Cole Email: rcole@columbiaha.com
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To the Trustee: UMB Bank, N.A.  
928 Grand Boulevard, 12th Floor  
Kansas City, Missouri 64106  
Attention: Corporate Trust Department  
Email: liz.angotti@umb.com

To the Borrower: Kinney Point Housing Development Group, LP  
c/o CHA Affordable Housing Development, LLC  
201 Switzler Street  
Columbia, Missouri 65203  
Attention: Randy Cole  
Email: rcole@columbiaha.com

with a copy to: Rosenblum Goldenhersh, P.C.  
7733 Forsyth Boulevard, Suite 400  
St. Louis, Missouri 63105  
Attention: Thomas A. Duda, Esq.  
Email: tduda@rgsz.com

To the Investor Limited Partner: [ \_\_ INVESTOR \_\_ ]  
c/o Red Stone Equity Partners  
[ \_\_ 5800 Armada Drive, Suite 235  
Carlsbad, California 92008 \_\_ ]  
Attention: [ \_\_\_\_\_ ]  
Email: [ \_\_\_\_\_ ]

with a copy to: [ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
Attention: [ \_\_\_\_\_ ]  
Email: [ \_\_\_\_\_ ]

To the Lender Legacy Bank & Trust Company  
3250 East Sunshine Street  
Springfield, Missouri 65804  
Attention: Eric Leonard  
Email: eleonard@legacybankandtrust.com

with a copy to: Polsinelli PC  
201 East Las Olas Boulevard, Suite 2250B  
Fort Lauderdale, Florida 33301  
Attention: S. Shawn Whitney  
Email: swhitney@polsinelli.com

Except as otherwise provided in this Indenture, notice to Bondowners will be given by first class mail, postage prepaid, to the addresses then shown on the Bond Register. Each party may change its address or facsimile number by giving written notice of the new address or facsimile number to the other parties. Any notice to the Borrower will also be provided to the Investor Limited Partner.

**Section 1005. Trustee as Paying Agent and Bond Registrar.** The Trustee is hereby designated and agrees to act as Paying Agent, separate and apart from its duties as Trustee under this Indenture, and as Bond Registrar for and in respect to the Bonds.

**Section 1006. Payments Due on Other than a Business Day.** In any case where the date of maturity of interest on or principal of the Bonds, or the date fixed for redemption of any Bonds, shall be a day other than a Business Day, then the date for such payment of interest or principal shall be the next succeeding day which is a Business Day, and payment on such Business Day shall have the same force and effect as if made on the nominal date of payment.

**Section 1007. Counterparts.** This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 1008. Laws Governing Indenture and Situs and Administration of Trust.** The effect and meanings of this Indenture and the rights of all parties under this Indenture shall be governed by and construed according to the laws of the State.

**Section 1009. No Recourse.** No recourse under or upon any obligation, covenant, warranty, or agreement contained in this Indenture or in any Bond, or under any judgment obtained against the Issuer, or the enforcement of any assessment, or any legal or equitable proceedings by virtue of any constitution or statute or otherwise, or under any circumstances under or independent of the Indenture, shall be had against any of the directors, officers or employees of the Issuer, as such, past, present or future of the Issuer, either directly or through the Issuer or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the owner of any Bond, or otherwise, of any sum that may be due and unpaid by the Issuer upon any such Bond. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such director, officer or employee, as such, by reason of any act or omission on his or her part or otherwise, for the payment for or to the owner of any Bond or otherwise of any sum that may remain due and unpaid upon the Bonds hereby secured or any of them is, by the acceptance thereof, expressly waived and released as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

**Section 1010. Successors and Assigns.** All the covenants and representations contained in this Indenture, by or on behalf of the Issuer, shall bind and inure to the benefit of its successors and assigns, whether so expressed or not.

**Section 1011. Electronic Transactions.**

(a) The transactions described in this Indenture and the other Loan Documents may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law. Unless otherwise specifically instructed in an Opinion of Bond Counsel or to the extent otherwise provided in this Indenture, the Trustee shall retain and maintain these records until three years following the final maturity of (i) the Bonds or (ii) any obligation issued to refund the Bonds. Any records maintained electronically must comply with Section 4.01 of Revenue Procedure 97-22.

(b) The Trustee, the Paying Agent and the Bond Registrar agree to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured email, facsimile transmission or other similar unsecured electronic methods and the understanding of the Trustee, the Paying Agent and the Bond Registrar of such instructions shall be deemed controlling; *provided*, however, that the Borrower shall immediately mail the original instructions or directions to the Trustee, the Paying Agent and the Bond Registrar. The Borrower shall provide to the Trustee, the Paying Agent and the Bond Registrar an incumbency certificate listing designated persons authorized to provide such instructions, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. The Trustee, the Paying Agent and the Bond Registrar shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's, the Paying Agent's and the Bond Registrar's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Borrower agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, the Paying Agent and the Bond Registrar, including, without limitation, the risk of the Trustee, the Paying Agent and the Bond Registrar acting on unauthorized instructions and the risk of interception and misuse by third parties.

*[Remainder of page intentionally left blank]*

**IN WITNESS WHEREOF**, the Housing Authority of the City of Columbia, Missouri, has caused this Indenture to be signed in its name and behalf by its duly authorized officer, and to evidence its acceptance of the trusts hereby created, UMB Bank, N.A., as Trustee, has caused this Indenture to be signed in its name and behalf by its duly authorized officer, all as of the date first above written.

**HOUSING AUTHORITY OF THE CITY OF  
COLUMBIA, MISSOURI**

By \_\_\_\_\_

Name: Randy Cole

Title: Chief Executive Officer

**UMB BANK, N.A., as Trustee**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A-1**

**FORM OF SERIES A BOND**

**ANY BOND MAY BE SOLD OR TRANSFERRED ONLY TO AN APPROVED INVESTOR UPON DELIVERY OF AN INVESTOR LETTER AS PROVIDED IN THE INDENTURE.**

No. R-A-\_\_

Not to exceed \$[\_\_ PRINCIPAL AMOUNT A\_\_]

**UNITED STATES OF AMERICA  
STATE OF MISSOURI**

**HOUSING AUTHORITY OF  
THE CITY OF COLUMBIA, MISSOURI**

**MULTIFAMILY HOUSING REVENUE BOND  
(KINNEY POINT APARTMENTS PROJECT)  
SERIES 2024A**

Interest Rate:

[\_\_. \_\_]% to, but not including, the  
Rate Adjustment Date; [\_\_. \_\_]%  
on and after the Rate Adjustment  
Date

Maturity Date:

[\_\_ November 1, 2040 \_\_]

Dated Date:

[\_\_ May \_\_,  
2024 \_\_]

**REGISTERED OWNER:** \_\_\_\_\_

**MAXIMUM PRINCIPAL AMOUNT:** [\_\_\_\_\_] **DOLLARS**

**THE HOUSING AUTHORITY OF THE CITY OF COLUMBIA, MISSOURI** (the "**Issuer**"), a municipal corporation of the state of Missouri, for value received, promises to pay, from the sources hereinafter referred to, to the Registered Owner identified above or registered assigns, upon the presentation and surrender of this Bond, the Principal Amount specified above (or the amount then outstanding under the terms of the below-defined Indenture) on the Maturity Date specified above, unless this Bond is called for earlier redemption, and to pay from those sources interest thereon on the Interest Payment Dates specified below, at the Interest Rate specified above until the Principal Amount is paid or provision for payment has been duly made, computed on a 365/360 basis (that is by applying the ratio of the Interest Rate over a year of 360 days multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding) payable on each Interest Payment Date. As used herein, "**Interest Payment Date**" means the 1st day of each month, commencing [\_\_ July \_\_] 1, 2024. In any case where an Interest Payment Date is not a Business Day, then payment need not be made on such date, but may be made on the next succeeding day that is a Business Day with the same force and effect as if such payment was made on the originally scheduled date and no interest shall accrue for the period after the 1st day of the month through the date payment is actually made.

This is a draw-down Bond. The principal amount of this Bond as of any given date shall be equal to (i) the total amount of principal advanced by the Original Purchaser less (ii) any payment of principal on the Bonds received by the Owners thereof. Principal amounts advanced by the Original Purchaser shall be



noted on the principal draw-down schedule attached as **Schedule A** to this Bond and acknowledged thereon by the Trustee.

Except as otherwise provided in the Indenture, this Bond will bear interest from the Interest Payment Date next preceding the date of registration of this Bond (unless this Bond is registered after the 15th day, whether or not a Business Day, of the calendar month preceding any Interest Payment Date (the "**Record Date**"), in which event it shall bear interest from the Interest Payment Date, or unless it is registered before the Record Date immediately preceding the first Interest Payment Date, in which event it shall bear interest from the Issue Date; *provided*, however, that if, at the time of registration of any Bond, interest is in default on Outstanding Bonds, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment on the Outstanding Bonds, or, if applicable, from the Issue Date. Notwithstanding the foregoing provision, during the period that additional purchase price installments are being made pursuant to the Indenture, interest will accrue on each purchase price installment from and including its date of receipt by the Trustee.

The principal of and any premium on this Bond are payable upon presentation and surrender hereof at the payment office of UMB Bank, N.A., its successors and assigns (the "**Trustee**"). The principal of and interest and any premium on this Bond are payable by wire transfer, check or draft in lawful money of the United States of America, without deduction for the services of the paying agent.

Notwithstanding the foregoing, the principal of, redemption price of, and the interest on the Bonds is payable by electronic transfer in immediately available federal funds pursuant to instructions given by any Owner of the lesser of \$1,000,000 or the aggregate principal amount of Bonds then Outstanding pursuant to the Indenture.

This Bond is one of a duly authorized issue of bonds of the Issuer known as its Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024A in the maximum principal amount of \$[           PRINCIPAL AMOUNT A] (the "**Series A Bonds**"), pursuant to the provisions, restrictions and limitations of the Constitution and statutes of the state of Missouri, particularly Sections 99.010 to 99.230, Revised Statutes of Missouri, as amended and supplemented, and pursuant to a resolution of the Issuer. The Series A Bonds are being issued contemporaneously with the Issuer's Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024B in the maximum principal amount of \$[           PRINCIPAL AMOUNT B] (the "**Series B Bonds**" and, together with the Series A Bonds, the "**Bonds**"). The Bonds are issued under the Trust Indenture dated as of May 1, 2024, between the Issuer and the Trustee (the "**Indenture**"), to which Indenture and all supplemental indentures (copies of which are on file at the office of the Trustee) reference is hereby made for a description of the trust estate for the Bonds under the Indenture (the "**Trust Estate**"), the nature and extent of the security, the terms and conditions upon which the Bonds are issued and secured, and the rights of the registered owners thereof. Terms not otherwise defined in this Bond shall have the respective meanings as set forth in the Indenture.

The Bonds and the interest thereon are limited obligations of the Issuer payable solely out of the revenues and other moneys pledged thereto and held by the Trustee as provided in the Indenture. The Bonds are equally and ratably secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate to the Trustee and in favor of the Owners of the Bonds, as provided in the Indenture. The Bonds do not constitute an obligation, either general or special, of the City of Columbia, Missouri, the State or any political subdivision thereof. **THE BONDS ARE NOT A DEBT OF THE CITY OF COLUMBIA, MISSOURI, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF AND NONE OF THE CITY OF COLUMBIA, MISSOURI, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE ON THE BONDS. THE BONDS ARE NOT INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER DEBT**

**LIMITATION OR RESTRICTION AND ARE NOT PAYABLE IN ANY MANNER BY TAXATION. THE ISSUER HAS NO TAXING POWER.**

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, provision, covenant or agreement contained in the Indenture against any past, present or future commissioner, member, director, officer, official, employee or agent of the Issuer, or any commissioner, member, director, trustee, officer, official, employee or agent of any successor to the Issuer, as such, either directly or through the Issuer or any successor to the Issuer, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such commissioner, member, director, trustee, officer, official, employee or agent as such is hereby expressly waived and released as a condition of and in consideration for the execution of the Indenture and the issuance of any of the Bonds. Neither the officers of the Issuer nor any person executing the Bonds shall be personally liable on the Bonds by reason of the issuance thereof.

The Issuer is loaning the proceeds of each Series of Bonds (the "**Loan**") to Kinney Point Housing Development Group, LP, a Missouri limited partnership (the "**Borrower**") pursuant to a Loan Agreement, dated as of May 1, 2024 (the "**Loan Agreement**"), by and between the Issuer and the Borrower. The Bonds are issued for the purpose of providing funds to the Borrower to finance a portion of the costs of the acquisition and construction of a multifamily housing project in the City of Columbia, Missouri (the "**Project**"). The Borrower's obligation to repay the Loan is a nonrecourse obligation of the Borrower.

**REDEMPTION PROVISIONS**

***Optional Redemption.*** The Bonds are subject to redemption at the written direction of the Borrower, in whole or in part on any date on or after the Completion Date, at a redemption price equal to 100% of the principal amount redeemed, plus premium (if applicable), plus accrued interest thereon to the date fixed for redemption. In the event the Bonds are optionally redeemed prior to [\_\_ May \_\_], 2032, the Borrower shall be obligated to pay a prepayment fee equal to [\_\_ the fee set forth in the Continuing Covenants Agreement \_\_].

***Mandatory Redemption Upon Casualty or Condemnation.*** The Bonds are subject to mandatory redemption in whole or in part if the net proceeds of any casualty insurance or condemnation award are applied to the prepayment of the Loan as provided in the Indenture, in an amount (rounded to the nearest \$5,000) equal to the amount of such prepayment of the Loan, on the earliest practicable date for which notice can be given as provided in the Indenture, at a redemption price equal to 100% of the principal amount redeemed, plus premium (if applicable), plus accrued interest thereon to the date fixed for redemption.

***Mandatory Sinking Fund Redemption.*** The Series A Bonds are subject to mandatory sinking fund redemption in part on the dates and in the amounts specified in the Indenture at a redemption price equal to 100% of the principal amount redeemed, without premium, plus accrued interest to the redemption date. To the extent that the Series A Bonds have been previously called for redemption or purchased and retired otherwise than pursuant to the respective sinking fund installments of the Indenture, the mandatory sinking fund schedule set forth on Exhibit D to the Indenture shall be revised to provide for level debt service on the remaining outstanding principal amount of the Series A Bonds over the remaining term of the Series A Bonds starting on the first Interest Payment Date following such partial redemption. The Majority Owner shall provide the Trustee with a new Exhibit D reflecting the revised mandatory sinking fund schedule. The revised Exhibit D shall be conclusive and binding on the Issuer, the Trustee, the Borrower and the Owners absent manifest error.

***Mandatory Redemption to Satisfy Conditions to Conversion.*** The Series A Bonds are subject to mandatory redemption in part, at a redemption price equal to 100% of the principal amount thereof, without premium, plus accrued interest thereon to such redemption date, in a principal amount that will result in the satisfaction of the Conditions to Conversion.

***Mandatory Redemption Upon Failure to Satisfy Conditions to Conversion.*** The Series A Bonds are subject to mandatory redemption in whole, at a redemption price equal to 100% of the principal amount thereof, without premium, plus accrued interest thereon to such redemption date, on the maturity date of the Series B Bonds if the Conditions to Conversion have not been satisfied prior to the date that is 10 days prior to such maturity date.

***Mandatory Redemption of Bonds from Moneys Remaining in Project Fund.*** The Bonds are subject to mandatory redemption in part, at a redemption price equal to 100% of the principal amount redeemed, without premium, plus accrued interest thereon to the date fixed for redemption, on the earliest practicable date for which notice can be given pursuant to the Indenture, to the extent of moneys remaining on deposit in the Project Fund on the Completion Date and transferred to the Bond Fund under the Indenture.

***Mandatory Redemption Upon Certain Tax Events:***

- (1) The Bonds are subject to mandatory redemption in whole at a redemption price equal to 100% of the principal amount redeemed, plus premium (if applicable), plus accrued interest to the date fixed for redemption, on the earliest practicable date for which notice can be given pursuant to the Indenture, if a Determination of Taxability occurs.
- (2) The Bonds are subject to mandatory redemption in whole or in part at a redemption price equal to 100% of the principal amount redeemed, plus premium (if applicable), plus accrued interest to the date fixed for redemption, on the earliest practicable date for which notice can be given pursuant to the Indenture, in accordance with Regulations § 1.142-2 (which action will be accompanied by an Opinion of Bond Counsel), as necessary to cause interest on the Bonds to remain excludable from gross income for federal income tax purposes.

***Selection of Bonds for Redemption.*** If the Bonds are to be redeemed in part, other than pursuant to the mandatory sinking fund redemption provisions above, the Trustee will select the maturities and the principal amounts of the Bonds to be redeemed on a proportionate basis as provided in the Indenture. The Trustee will select the Bonds, or portions thereof, to be redeemed from each maturity (including upon mandatory sinking fund redemption), in such manner as it shall in its discretion determine. No Bond will be selected for redemption if, upon redemption, the remaining principal amount of the Bond would not be an Authorized Denomination, unless the Bond constitutes the entire aggregate principal amount of a Series then Outstanding.

***Notice of Redemption.*** Except for the redemption of the Series A Bonds in accordance with the paragraph entitled "*Mandatory Sinking Fund Redemption*" above, for which no notice is required, notice of the intended redemption of Series A Bonds shall be given by the Trustee not less than 10 days prior to the date fixed for redemption by telephone, telex, facsimile transmission or other electronic means, promptly confirmed in writing, at the address of each Owner shown on the Bond Register; and a second notice of redemption shall be sent by first class mail, at such address to the Owner of any Series A Bond who has not submitted his Series A Bond to the Trustee for payment on or before the date 30 days following the date fixed for redemption of such Series A Bond. Receipt of notice of redemption shall not be a condition

precedent to such redemption, and failure so to notify any of such Owners shall not affect the validity of the proceedings for the redemption of the Series A Bonds.

Notice of redemption having been given in the manner provided above, and money sufficient for the redemption being held by the Trustee for that purpose, thereupon the Series A Bonds so called for redemption shall become due and payable on the redemption date, and interest thereon shall cease to accrue; and the owners of the Series A Bonds so called for redemption shall thereafter no longer have any security or benefit under the Indenture except to receive payment of the redemption price for such Series A Bonds.

## **OTHER PROVISIONS**

The owner 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 event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

No single Beneficial Owner of Bonds is authorized to own a Bond in an amount less than an Authorized Denomination, unless the Bond constitutes the entire aggregate principal amount of a Series of Bonds then Outstanding.

This Bond is transferable only in an Authorized Denomination and only upon the Bond Register upon surrender of the bond to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the registered Owner or such Owner's attorney or legal representative in a form satisfactory to the Trustee, subject to the limitations and upon payment of the charges provided in the Indenture. Upon such transfer, a new registered Bond or Bonds in an equal aggregate principal amount of the Bonds of the same Series, registered in the name of the transferee, in an Authorized Denomination, will be issued to the transferee in exchange therefor.

**BONDS MAY ONLY BE PURCHASED BY OR TRANSFERRED TO APPROVED INVESTORS, AS DEFINED IN THE INDENTURE, UPON DELIVERY OF AN INVESTOR LETTER.**

The Issuer and the Trustee may deem and treat the registered owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

The Bonds of each Series are issuable only as fully registered Bonds without coupons in denominations of \$100,000 or any amount in excess thereof, but not in excess of the aggregate principal amount of the Series of Bonds then Outstanding. Subject to the limitations and upon payment of the charges provided in the Indenture, Bonds may be exchanged for an equal aggregate principal amount of Bonds of the same maturity, in any Authorized Denomination.

The principal hereof may be declared or may become due on the conditions and in the manner and at the time set forth in the Indenture upon the occurrence of an event of default as provided in the Indenture.

No provision, covenant or agreement contained in 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 upon its general credit. In making the agreements, provisions and covenants set forth in the Indenture, the Issuer has not obligated itself except with respect to the Project and the application of the payments, revenues and receipts derived by the Issuer under the Loan Agreement as hereinabove provided. Neither the governing body of the Issuer nor any person executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond, do exist, have happened and have been performed in due time, form and manner as required by law; and that the issuance of this Bond, together with all other obligations of the Issuer, does not exceed or violate any constitutional or statutory limitation.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until such Bond has been authenticated by the certificate of the Trustee endorsed hereon.

**IN WITNESS WHEREOF**, the Housing Authority of the City of Columbia, Missouri has caused this Bond to be executed in its name by the manual or facsimile signature of its Chair, Vice Chair, or Chief Executive Officer and attested by the manual or facsimile signature of its Secretary or Assistant Secretary, and its seal affixed hereto or imprinted hereon, and has caused this Bond to be dated as of the Dated Date shown above.

**HOUSING AUTHORITY OF THE CITY OF  
COLUMBIA, MISSOURI**

[SEAL]

**ATTEST:**

By \_\_\_\_\_  
Name: Randy Cole  
Title: Chief Executive Officer

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

Date of Registration and Authentication: \_\_\_\_\_

This Bond is one of the Bonds described in the within mentioned Indenture.

**UMB BANK, N.A.**, as Trustee

By \_\_\_\_\_  
Authorized Signatory

**SCHEDULE A**

**PRINCIPAL DRAW-DOWN SCHEDULE**

to

**HOUSING AUTHORITY OF  
THE CITY OF COLUMBIA, MISSOURI  
MULTIFAMILY HOUSING REVENUE BOND  
(KINNEY POINT APARTMENTS PROJECT)  
SERIES 2024A**

Date	Amount of Installment	Disbursed Amount	Signature of Trustee*

\* Authorized signatory of the Trustee

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**ASSIGNMENT**

**FOR VALUE RECEIVED** the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
(Please Print or Typewrite Name, Address and Social Security Number or  
Taxpayer Identification Number of Transferee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints

\_\_\_\_\_  
Attorney

to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
**NOTICE:** The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

**Medallion Signature Guarantee:**



**EXHIBIT A-2**

**FORM OF SERIES B BOND**

**ANY BOND MAY BE SOLD OR TRANSFERRED ONLY TO AN APPROVED INVESTOR UPON DELIVERY OF AN INVESTOR LETTER AS PROVIDED IN THE INDENTURE.**

No. R-B-\_\_

Not to exceed \$[\_\_ PRINCIPAL AMOUNT B \_\_]

**UNITED STATES OF AMERICA  
STATE OF MISSOURI**

**HOUSING AUTHORITY OF  
THE CITY OF COLUMBIA, MISSOURI**

**MULTIFAMILY HOUSING REVENUE BOND  
(KINNEY POINT APARTMENTS PROJECT)  
SERIES 2024B**

Interest Rate

Maturity Date

Dated Date

[\_\_. \_\_]%

[\_\_ November 1, 2025 \_\_]  
(subject to extension as provided  
in Section 3.06 of the Continuing  
Covenants Agreement)

[\_\_ May \_\_, 2024 \_\_]

**REGISTERED OWNER:**

**MAXIMUM PRINCIPAL AMOUNT: [ \_\_\_\_\_ ] DOLLARS**

**THE HOUSING AUTHORITY OF THE CITY OF COLUMBIA, MISSOURI** (the "Issuer"), a municipal corporation of the state of Missouri, for value received, promises to pay, from the sources hereinafter referred to, to the Registered Owner identified above or registered assigns, upon the presentation and surrender of this Bond, the Principal Amount specified above (or the amount then outstanding under the terms of the below-defined Indenture) on the Maturity Date specified above, unless this Bond is called for earlier redemption, and to pay from those sources interest thereon on the Interest Payment Dates specified below, at the Interest Rate specified above until the Principal Amount is paid or provision for payment has been duly made, computed on a 365/360 basis (that is by applying the ratio of the Interest Rate over a year of 360 days multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding) payable on each Interest Payment Date. As used herein, "**Interest Payment Date**" means the 1st day of each month, commencing [\_\_ July \_\_] 1, 2024. In any case where an Interest Payment Date is not a Business Day, then payment need not be made on such date, but may be made on the next succeeding day that is a Business Day with the same force and effect as if such payment was made on the originally scheduled date and no interest shall accrue for the period after the Interest Payment Date through the date payment is actually made.

This is a draw-down Bond. The principal amount of this Bond as of any given date shall be equal to (i) the total amount of principal advanced by the Original Purchaser, less (ii) any payment of principal

on the Bonds received by the Owners thereof. Principal amounts advanced by the Original Purchaser shall be noted on the principal draw-down schedule attached as **Schedule A** to this Bond and acknowledged thereon by the Trustee.

Except as otherwise provided in the Indenture, this Bond will bear interest from the Interest Payment Date next preceding the date of registration of this Bond (unless this Bond is registered after the 15th day, whether or not a Business Day, of the calendar month preceding any Interest Payment Date (the "**Record Date**"), in which event it shall bear interest from the Interest Payment Date, or unless it is registered before the Record Date immediately preceding the first Interest Payment Date, in which event it shall bear interest from the Issue Date; *provided*, however, that if, at the time of registration of any Bond, interest is in default on Outstanding Bonds, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment on the Outstanding Bonds, or, if applicable, from the Issue Date. Notwithstanding the foregoing provision, during the period that additional purchase price installments are being made pursuant to the Indenture, interest will accrue on each purchase price installment from and including its date of receipt by the Trustee.

The principal of and any premium on this Bond are payable upon presentation and surrender hereof at the payment office of UMB Bank, N.A., its successors and assigns (the "**Trustee**"). The principal of and interest and any premium on this Bond are payable by wire transfer, check or draft in lawful money of the United States of America, without deduction for the services of the paying agent.

Notwithstanding the foregoing, the principal of, redemption price of, and the interest on the Bonds is payable by electronic transfer in immediately available federal funds pursuant to instructions given by any Owner of the lesser of \$1,000,000 or the aggregate principal amount of Bonds then Outstanding pursuant to the Indenture.

This Bond is one of a duly authorized issue of bonds of the Issuer known as its Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024B in the maximum principal amount of \$[PRINCIPAL AMOUNT B] (the "**Series B Bonds**"), pursuant to the provisions, restrictions and limitations of the Constitution and statutes of the state of Missouri, particularly Sections 99.010 to 99.230, Revised Statutes of Missouri, as amended and supplemented, and pursuant to a resolution of the Issuer. The Series B Bonds are being issued contemporaneously with the Issuer's Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024A in the maximum principal amount of \$[PRINCIPAL AMOUNT A] (the "**Series A Bonds**" and, together with the Series B Bonds, the "**Bonds**"). The Bonds are issued under the Trust Indenture dated as of May 1, 2024, between the Issuer and the Trustee (the "**Indenture**"), to which Indenture and all supplemental indentures (copies of which are on file at the office of the Trustee) reference is hereby made for a description of the trust estate for the Bonds under the Indenture (the "**Trust Estate**"), the nature and extent of the security, the terms and conditions upon which the Bonds are issued and secured, and the rights of the registered owners thereof. Terms not otherwise defined in this Bond shall have the respective meanings as set forth in the Indenture.

The Bonds and the interest thereon are limited obligations of the Issuer payable solely out of the revenues and other moneys pledged thereto and held by the Trustee as provided in the Indenture. The Bonds are equally and ratably secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate to the Trustee and in favor of the Owners of the Bonds, as provided in the Indenture. The Bonds do not constitute an obligation, either general or special, of the City of Columbia, Missouri, the State or any political subdivision thereof. **THE BONDS ARE NOT A DEBT OF THE CITY OF COLUMBIA, MISSOURI, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF AND NONE OF THE CITY OF COLUMBIA, MISSOURI, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE ON THE BONDS. THE BONDS ARE NOT**

**INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER DEBT LIMITATION OR RESTRICTION AND ARE NOT PAYABLE IN ANY MANNER BY TAXATION. THE ISSUER HAS NO TAXING POWER.**

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, provision, covenant or agreement contained in the Indenture against any past, present or future commissioner, member, director, officer, official, employee or agent of the Issuer, or any commissioner, member, director, trustee, officer, official, employee or agent of any successor to the Issuer, as such, either directly or through the Issuer or any successor to the Issuer, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such commissioner, member, director, trustee, officer, official, employee or agent as such is hereby expressly waived and released as a condition of and in consideration for the execution of the Indenture and the issuance of any of the Bonds. Neither the officers of the Issuer nor any person executing the Bonds shall be personally liable on the Bonds by reason of the issuance thereof.

The Issuer is loaning the proceeds of each Series of Bonds (the "**Loan**") to Kinney Point Housing Development Group, LP, a Missouri limited partnership (the "**Borrower**"), pursuant to a Loan Agreement dated as of May 1, 2024 (the "**Loan Agreement**"), by and between the Issuer and the Borrower. The Bonds are issued for the purpose of providing funds to the Borrower to finance a portion of the costs of the acquisition and construction of a multifamily housing project in the City of Columbia, Missouri (the "**Project**"). The Borrower's obligation to repay the Loan is a nonrecourse obligation of the Borrower.

**REDEMPTION PROVISIONS**

***Optional Redemption.*** The Bonds are subject to redemption at the written direction of the Borrower, in whole or in part on any date on or after the Completion Date, at a redemption price equal to 100% of the principal amount redeemed, plus premium (if applicable), plus accrued interest thereon to the date fixed for redemption. In the event the Bonds are optionally redeemed prior to [\_\_May \_\_], 2032, the Borrower shall be obligated to pay a prepayment fee equal to [\_\_the fee set forth in the Continuing Covenants Agreement \_\_].

***Mandatory Redemption Upon Casualty or Condemnation.*** The Bonds are subject to mandatory redemption in whole or in part if the net proceeds of any casualty insurance or condemnation award are applied to the prepayment of the Loan as provided in the Indenture, in an amount (rounded to the nearest \$5,000) equal to the amount of such prepayment of the Loan, on the earliest practicable date for which notice can be given as provided in the Indenture, at a redemption price equal to 100% of the principal amount redeemed, plus premium (if applicable), plus accrued interest thereon to the date fixed for redemption.

***Mandatory Redemption Upon Conversion.*** The Series B Bonds are subject to mandatory redemption in whole on the Interest Payment Date immediately following the Conversion Date, at a redemption price equal to 100% of the principal amount thereof, without premium, plus accrued interest thereon to the redemption date.

***Mandatory Redemption of Bonds from Moneys Remaining in Project Fund.*** The Bonds are subject to mandatory redemption in part, at a redemption price equal to 100% of the principal amount redeemed, without premium, plus accrued interest thereon to the date fixed for redemption, on the earliest practicable date for which notice can be given pursuant to the Indenture, to the extent of moneys remaining on deposit in the Project Fund on the Completion Date and transferred to the Bond Fund under the Indenture.

***Mandatory Redemption Upon Certain Tax Events:***

- (1) The Bonds are subject to mandatory redemption in whole at a redemption price equal to 100% of the principal amount redeemed, plus premium (if applicable), plus accrued interest to the date fixed for redemption, on the earliest practicable date for which notice can be given pursuant to the Indenture, if a Determination of Taxability occurs.
- (2) The Bonds are subject to mandatory redemption in whole or in part at a redemption price equal to 100% of the principal amount redeemed, plus premium (if applicable), plus accrued interest to the date fixed for redemption, on the earliest practicable date for which notice can be given pursuant to the Indenture, in accordance with Regulations § 1.142-2 (which action will be accompanied by an Opinion of Bond Counsel), as necessary to cause interest on the Bonds to remain excludable from gross income for federal income tax purposes.

***Selection of Bonds for Redemption.*** If the Bonds are to be redeemed in part other than pursuant to the mandatory sinking fund redemption provisions above, the Trustee will select the maturities and the principal amounts of the Bonds to be redeemed on a proportionate basis as provided in the Indenture. The Trustee will select the Bonds, or portions thereof, to be redeemed from each maturity (including upon mandatory sinking fund redemption), in such manner as it shall in its discretion determine. No Bond will be selected for redemption if, upon redemption, the remaining principal amount of the Bond would not be an Authorized Denomination, unless the Bond constitutes the entire aggregate principal amount of a Series then Outstanding.

***Notice of Redemption.*** Except for the redemption of the Series B Bonds in accordance with the paragraph entitled "Mandatory Redemption Upon Conversion" above, for which no notice is required, notice of the intended redemption of Series B Bonds shall be given by the Trustee not less than 10 days prior to the date fixed for redemption by telephone, telex, facsimile transmission or other electronic means, promptly confirmed in writing, at the address of each Owner shown on the Bond Register; and a second notice of redemption shall be sent by first class mail, at such address to the Owner of any Series B Bond who has not submitted his Series B Bond to the Trustee for payment on or before the date 30 days following the date fixed for redemption of such Series B Bond. Receipt of notice of redemption shall not be a condition precedent to such redemption, and failure so to notify any of such Owners shall not affect the validity of the proceedings for the redemption of the Series B Bonds.

Notice of redemption having been given in the manner provided above, and money sufficient for the redemption being held by the Trustee for that purpose, thereupon the Series B Bonds so called for redemption shall become due and payable on the redemption date, and interest thereon shall cease to accrue; and the owners of the Series B Bonds so called for redemption shall thereafter no longer have any security or benefit under the Indenture except to receive payment of the redemption price for such Series B Bonds.

**OTHER PROVISIONS**

The owner 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 event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

No single Beneficial Owner of Bonds is authorized to own a Bond in an amount less than an Authorized Denomination, unless the Bond constitutes the entire aggregate principal amount of a Series of Bonds then Outstanding.

This Bond is transferable only in an Authorized Denomination and only upon the Bond Register upon surrender of the bond to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the registered Owner or such Owner's attorney or legal representative in a form satisfactory to the Trustee, subject to the limitations and upon payment of the charges provided in the Indenture. Upon such transfer, a new registered Bond or Bonds in an equal aggregate principal amount of the Bonds of the same Series, registered in the name of the transferee, in an Authorized Denomination, will be issued to the transferee in exchange therefor.

**BONDS MAY ONLY BE PURCHASED BY OR TRANSFERRED TO APPROVED INVESTORS, AS DEFINED IN THE INDENTURE, UPON DELIVERY OF AN INVESTOR LETTER.**

The Issuer and the Trustee may deem and treat the registered owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

The Bonds of each Series are issuable only as fully registered Bonds without coupons in denominations of \$100,000 or any amount in excess thereof, but not in excess of the aggregate principal amount of the Series of Bonds then Outstanding. Subject to the limitations and upon payment of the charges provided in the Indenture, Bonds may be exchanged for an equal aggregate principal amount of Bonds of the same maturity, in any Authorized Denomination.

The principal hereof may be declared or may become due on the conditions and in the manner and at the time set forth in the Indenture upon the occurrence of an event of default as provided in the Indenture.

No provision, covenant or agreement contained in 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 upon its general credit. In making the agreements, provisions and covenants set forth in the Indenture, the Issuer has not obligated itself except with respect to the Project and the application of the payments, revenues and receipts derived by the Issuer under the Loan Agreement as hereinabove provided. Neither the governing body of the Issuer nor any person executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond, do exist, have happened and have been performed in due time, form and manner as required by law; and that the issuance of this Bond, together with all other obligations of the Issuer, does not exceed or violate any constitutional or statutory limitation.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until such Bond has been authenticated by the certificate of the Trustee endorsed hereon.

**IN WITNESS WHEREOF**, the Housing Authority of the City of Columbia, Missouri has caused this Bond to be executed in its name by the manual or facsimile signature of its Chair, Vice Chair or Chief Executive Officer and attested by the manual or facsimile signature of its Secretary or Assistant Secretary, and its seal affixed hereto or imprinted hereon, and has caused this Bond to be dated as of the Dated Date shown above.

**HOUSING AUTHORITY OF THE CITY OF  
COLUMBIA, MISSOURI**

[SEAL]

By \_\_\_\_\_  
Name: Randy Cole  
Title: Chief Executive Officer

**ATTEST:**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

Date of Registration and Authentication: \_\_\_\_\_

This Bond is one of the Bonds described in the within mentioned Indenture.

**UMB BANK, N.A.**, as Trustee

By \_\_\_\_\_  
Authorized Signatory

**SCHEDULE A  
PRINCIPAL DRAW-DOWN SCHEDULE**

to

**HOUSING AUTHORITY OF  
THE CITY OF COLUMBIA, MISSOURI  
MULTIFAMILY HOUSING REVENUE BOND  
(KINNEY POINT APARTMENTS PROJECT)  
SERIES 2024B**

Date	Amount of Installment	Disbursed Amount	Signature of Trustee*

\* Authorized signatory of the Trustee



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**ASSIGNMENT**

**FOR VALUE RECEIVED** the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
(Please Print or Typewrite Name, Address and Social Security Number or  
Taxpayer Identification Number of Transferee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints

\_\_\_\_\_  
Attorney

to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
**NOTICE:** The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

**Medallion Signature Guarantee:**

## EXHIBIT B

### FORM OF DISBURSEMENT REQUEST

Request No: \_\_\_\_\_

Date: \_\_\_\_\_

#### DISBURSEMENT REQUEST (§ 403 – PROJECT FUND)

To: UMB Bank, N.A., as Trustee  
Corporate Trust Department  
928 Grand Boulevard, 12th Floor  
Kansas City, Missouri 64106

Re: Housing Authority of the City of Columbia, Missouri Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024A and Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024B

Reference is made to the Trust Indenture, dated as of May 1, 2024 (the "**Indenture**"), between the Housing Authority of the City of Columbia, Missouri and you, as Trustee. The Borrower certifies and represents to you as follows:

- (1) The undersigned is an Authorized Borrower Representative.
- (2) The undersigned has read the definitions in the Indenture. All capitalized terms used in this Request but not defined in this Disbursement Request (see **Schedule C**) have the meanings given to them in the Indenture. This Request is being delivered in accordance with Section 403 of the Indenture.
- (3) The amount and general nature and the name and address of the payee of each item of Project Costs heretofore paid by the Borrower, and hereby requested to be reimbursed to the Borrower, are shown on the attached **Schedule A**, together with supporting statements from each payee and evidence of payment by the Borrower.
- (4) The amount and general nature and the name and address of the payee of each item of Project Costs due and payable and hereby requested to be paid to a Contractor are shown on the attached Schedule B, together with supporting statements from each payee.
- (5) Each item of cost for which payment is hereby requested is or was necessary in connection with the Project, qualifies as a Project Cost and, if for construction, was made or incurred in accordance with the plans and specifications currently in effect for the Project.
- (6) There has not been filed with or served upon the Borrower any notice of any lien, right to a lien or attachment upon or claim affecting the right of any such Person to receive payment of the amount stated in this Request that has not been released or will not be released simultaneously with the payment of such obligation, except for liens arising from indebtedness then being diligently contested in good faith by the Borrower.
- (7) No item of cost requested to be paid by this Request has formed the basis for any previous payment from the Project Fund.

(8) The Project Costs are subject to capitalization for federal income tax purposes and payment thereof will not result in less than substantially all (not less than 95%) of the proceeds of the Bonds, will be expended for Project Costs incurred on or after the Official Action Date, to purchase, construct and equip the Project to the extent such costs are chargeable to the capital account of the Project 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 Regulations Section 1.103-8(a)(1), as the same may be amended or supplemented from time to time.

(9) All remaining unpaid Project Costs, with respect to each trade or category set forth on the Sworn Construction Cost Statement, do not exceed the sum of the aggregate balance on hand in the Project Fund, capital contributions expected to be received pursuant to the Partnership Agreement and applied to the payment of Project Costs, and other funds of the Borrower available for the payment of Project Costs.

(10) No Event of Default, or event which with the passage of time or giving of notice, or both, would constitute an Event of Default under the Loan Agreement, the Land Use Restriction Agreement, the Tax Agreement or the Deed of Trust, has occurred and is continuing as of the date of this Disbursement Request. [Except as follows: here describe the Event of Default or other event.]

(11) All representations and warranties made by the Borrower in the Loan Agreement, the Land Use Restriction Agreement, the Tax Agreement and the Deed of Trust are true and correct in all material respects on and as of the date of this Disbursement Request with the same effect as if made on this date.

(12) The Project has not been damaged by fire or other casualty in a manner that, if not repaired or replaced, would materially impair the ability of the Borrower to meet its obligations under the Loan Agreement or the Deed of Trust.

(13) With respect to this disbursement, the Borrower (i) certifies it has reviewed any wire instructions set forth herein to confirm such wire instructions are accurate and (ii) agrees it will not seek recourse from the Trustee as a result of losses incurred by it for making the disbursements in accordance with its instructions herein.

You are hereby requested to disburse from the Project Fund the amounts shown on Schedules A and B and to make payment to the Persons entitled to receipt thereof as shown on said schedules.

**KINNEY POINT HOUSING DEVELOPMENT GROUP, LP**, a Missouri limited partnership

By \_\_\_\_\_  
Authorized Borrower Representative

Approved by:

**LEGACY BANK & TRUST COMPANY**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**SCHEDULE A**

Items of Project Costs to be Reimbursed  
to the Borrower

Amount

Original Payee

Description of Expense

**SCHEDULE B**

Items of Project Costs

Amount

Payee

Description of Expense

## SCHEDULE C

### Disbursement Request Definitions

"*Construction Contract*" means the construction contract between the Borrower and the Contractor attached as Exhibit A to the Assignment of Construction Documents dated as of [\_\_ May 1, 2024 \_\_], from the Borrower to the Trustee, and any amendment, supplement, replacement or other modification with any Person providing for construction, equipping or installation of any part of the Project.

"*Contractor*" means the General Contractor and any other Person with whom the Borrower or the General Contractor enters into a Construction Contract.

"*General Contractor*" means EM Harris Construction Company, a Missouri corporation, and its successors and assigns.

"*Official Action Date*" means the date that is 60 days prior to December 12, 2022, the date of the Issuer's resolution of intent.

"*Project*" means the work, material, equipment, and services described in the Construction Contract.

"*Project Costs*" means the cost of any items of work, material, equipment, and/or services comprising the "Total Project Costs" identified in the Sworn Construction Cost Statement.

"*Sworn Construction Cost Statement*" means AIA Form G702 and G703 duly completed and signed on behalf of the Borrower and the General Contractor.

**EXHIBIT C-1**

**FORM OF INVESTOR LETTER  
(PURCHASER)**

Housing Authority of the City of Columbia, Missouri  
201 Switzler Street  
Columbia, Missouri 65203  
Attention: Chief Executive Officer

UMB Bank, N.A., as Trustee  
928 Grand Boulevard, 12th Floor  
Kansas City, Missouri 64106  
Attention: Corporate Trust Department

Re: Housing Authority of the City of Columbia, Missouri Multifamily Housing Revenue Bonds  
(Kinney Point Apartments Project) Series 2024[A][B]

Ladies and Gentlemen:

The undersigned [authorized signatory for] \_\_\_\_\_ (the "*Purchaser*"), the purchaser of \$ \_\_\_\_\_ aggregate principal amount of Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024[A][B] (the "*Bonds*"), does hereby certify, represent and warrant for the benefit of the Housing Authority of the City of Columbia, Missouri (the "*Issuer*") and UMB Bank, N.A., as trustee (the "*Trustee*"), that the Purchaser is either a "qualified institutional buyer" as defined in Rule 144A under the Securities Act of 1933, as amended (a "*QIB*"), or an "accredited investor" (as defined in Rule 501(a)(1), (2), (3), (4), (7) or (8) of Regulation D promulgated under the Securities Act of 1933) (an "*Accredited Investor*"). Terms not otherwise defined in this letter have the respective meanings set forth in the below-defined Indenture.

The Purchaser hereby acknowledges, represents, and warrants to, and agrees with, the Issuer and the Trustee, as follows:

(1) The Purchaser is purchasing the Bonds with its own funds (or with funds from accounts over which it has sole investment authority) and not the funds of any other person, and for its own account (or for accounts over which it has sole investment authority) and not as nominee or agent for the account of any other person and not with a view to any distribution thereof, other than the deposit or sale of the Bonds in or to a custodial or trust arrangement each of the beneficial owners of which shall be required to be a QIB or an Accredited Investor; *provided*, however, that the Purchaser may sell participations, receipts evidencing ownership or other participatory interests in the Bonds upon the terms and conditions set forth in the Indenture.

(2) The Purchaser has such knowledge and experience in business and financial matters, including (i) the evaluation of residential real estate developments such as the Project, (ii) the evaluation of the capabilities of persons such as Kinney Point Housing Development Group, LP, a Missouri limited partnership (the "*Borrower*"), and the Property Manager to operate and maintain the Project, and (iii) the analysis, purchase and ownership of multifamily housing revenue bonds, tax-exempt securities and other investment vehicles similar in character to the Bonds, so as



to enable it to understand and evaluate the risks of such investments and form an investment decision with respect thereto, the Purchaser has no need for liquidity in such investment and the Purchaser is (or any account for which it is purchasing is) able to bear the risk of such investment for an indefinite period and to afford a complete loss thereof.

(3) The Purchaser acknowledges that it has been provided with, and has had the opportunity to review, the Loan Agreement, dated as of May 1, 2024 (the "*Loan Agreement*"), between the Issuer and the Borrower, the Trust Indenture, dated as of May 1, 2024 (the "*Indenture*"), between the Issuer and the Trustee, and all other documents relating to the issuance of the Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024A in the maximum principal amount of \$[     PRINCIPAL AMOUNT A     ] and the Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024B in the maximum principal amount of \$[     PRINCIPAL AMOUNT B     ]. The Purchaser has conducted its own investigation of the Project, the Borrower, the General Partner, the Guarantor, the Property Manager, the Bonds, the Indenture, the Loan Agreement and related documents and the transactions relating thereto, to the extent it deemed necessary. The Purchaser has been offered an opportunity to have made available to it any and all such information it might request from the Issuer, the Borrower, the General Partner, the Guarantor and the Property Manager. On this basis, it is agreed by the Purchaser that the Purchaser is not relying on the Issuer or any other party or person to undertake the furnishing or verification of information related to the referenced transaction.

(4) In connection with the purchase of the Bonds, the Purchaser has been advised that (i) the Issuer has not undertaken steps to ascertain the accuracy, completeness or truth of any statements made or omitted to be made to the undersigned concerning any of the facts relating to the business, operations, financial condition, or future prospects of the Borrower, the General Partner, the Guarantor and the Property Manager, and (ii) the Issuer has not made any representations concerning the accuracy or completeness of any information supplied to the undersigned by the Borrower, the General Partner, the Guarantor and the Property Manager.

(5) THE PURCHASER UNDERSTANDS THAT:

**A. THE BONDS AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY OUT OF THE REVENUES AND OTHER MONEYS PLEDGED THERETO AND HELD BY THE TRUSTEE AS PROVIDED IN THE INDENTURE;**

**B. THE BONDS ARE EQUALLY AND RATABLY SECURED BY A TRANSFER, PLEDGE AND ASSIGNMENT OF AND A GRANT OF A SECURITY INTEREST IN THE TRUST ESTATE TO THE TRUSTEE AND IN FAVOR OF THE OWNERS OF THE BONDS, AS PROVIDED IN THE INDENTURE;**

**C. THE BONDS ARE NOT A DEBT OF THE CITY OF COLUMBIA, MISSOURI, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF AND NONE OF THE CITY OF COLUMBIA, MISSOURI, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE ON THE BONDS;**

**D. THE BONDS ARE NOT INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER DEBT LIMITATION OR RESTRICTION AND ARE NOT PAYABLE IN ANY MANNER BY TAXATION; AND**

**E. THE ISSUER HAS NO TAXING POWER.**

(6) The Purchaser understands that in connection with any proposed transfer or exchange of Bonds, there must be delivered to the Trustee a letter of the transferee to substantially the same effect as this letter or otherwise as permitted under the Indenture.

(7) The Purchaser understands that, in connection with any proposed transfer of the Bonds, such transfer must be limited to an Eligible Purchaser. "*Eligible Purchaser*" means a prospective transferee that the Purchaser has clear grounds to believe and does believe can make representations with respect to itself to substantially the same effect as the representations set forth herein, or if the transferee is the custodian or trustee for a custodial or trust arrangement contemplated by paragraph (1), the representations in the letter attached as Exhibit C-2 to the Indenture.

(8) The Purchaser also understands that it shall indemnify the Issuer and the Trustee as set forth in the Indenture which states: "ANY BONDHOLDER DESIRING TO EFFECT SUCH TRANSFER SHALL AGREE TO INDEMNIFY THE ISSUER AND THE TRUSTEE FROM AND AGAINST ANY AND ALL LIABILITY, COST OR EXPENSE (INCLUDING ATTORNEYS' FEES) THAT MAY RESULT IF THE REPRESENTATIONS OF SUCH BONDHOLDER CONTAINED IN THE INVESTOR LETTER ARE FALSE IN ANY MATERIAL RESPECT."

This letter and the representations and agreements contained herein are made for your benefit.

**IN WITNESS WHEREOF**, I have hereunto set my hand the \_\_\_\_\_ day of \_\_\_\_\_.

**[PURCHASER]**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MUST BE SIGNED BY ACTUAL  
PURCHASER. MAY NOT BE SIGNED  
BY NOMINEE OR AGENT.**

## EXHIBIT C-2

### FORM OF INVESTOR LETTER (CUSTODIAL OR TRUST ARRANGEMENT)

Housing Authority of the City of Columbia, Missouri  
201 Switzler Street  
Columbia, Missouri 65203  
Attention: Chief Executive Officer

UMB Bank, N.A., as Trustee  
928 Grand Boulevard, 12th Floor  
Kansas City, Missouri 64106  
Attention: Corporate Trust Department

Re: Housing Authority of the City of Columbia, Missouri Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024[A][B]

Ladies and Gentlemen:

The undersigned representative of \_\_\_\_\_ (the "*Transferee*"), as [custodian][trustee] under the [identify custodial or trust arrangement] (the "*Agreement*") pursuant to which the \$ \_\_\_\_\_ of the aggregate principal amount of Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024[A][B] (the "*Bonds*") have been deposited with the Transferee by the [depositor][trustor] thereunder (the "*Transferor*"), does hereby certify, represent and warrant for the benefit of the Housing Authority of the City of Columbia, Missouri (the "*Issuer*") and UMB Bank, N.A., as trustee (the "*Trustee*"), that each beneficial owner under the Agreement is required to be either a "qualified institutional buyer" as defined in Rule 144A under the Securities Act of 1933, as amended (a "QIB"), or an "accredited investor" (as defined in Rule 501(a)(1), (2), (3), (4), (7) or (8) of Regulation D promulgated under the Securities Act of 1933) (an "*Accredited Investor*"). Terms not otherwise defined in this letter have the respective meanings set forth in the below-defined Indenture.

The Transferee hereby acknowledges, represents, and warrants to, and agrees with, the Issuer and the Trustee, as follows:

(1) The Transferee is acquiring the Bonds solely as [custodian][trustee] under the Agreement.

(2) The Transferor has represented to the Transferee that, unless the custodial certificates payments are guaranteed by an entity whose unsecured long-term obligations are rated "A" or better (or its equivalent) by Moody's or S&P, beneficial owners of the Bonds will have such knowledge and experience in business and financial matters, including (i) the evaluation of residential real estate developments such as the Project, (ii) the evaluation of the capabilities of persons such as Kinney Point Housing Development Group, LP, a Missouri limited partnership (the "*Borrower*"), and the Property Manager to operate and maintain the Project, and (iii) the analysis, purchase and ownership of multifamily housing revenue bonds, tax-exempt securities and other investment vehicles similar in character to the Bonds so as to enable them to understand and evaluate the risks of such investments and form an investment decision with respect thereto and

they will be able to bear the risk of such investment for an indefinite period and to afford a complete loss thereof.

(3) The Transferee acknowledges that it has been provided with, and has had the opportunity to review, the Loan Agreement dated as of May 1, 2024 (the "*Loan Agreement*"), between the Issuer and the Borrower, the Trust Indenture dated as of May 1, 2024 (the "*Indenture*"), between the Issuer and the Trustee, and all other documents relating to the issuance of the Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024A in the maximum principal amount of \$[     PRINCIPAL AMOUNT A     ] and the Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024B in the maximum principal amount of \$[     PRINCIPAL AMOUNT B     ]. The Transferee has conducted its own investigation of the Project, the Borrower, the General Partner, the Guarantor, the Property Manager, the Bonds, the Indenture, the Loan Agreement and related documents and the transactions relating thereto, to the extent it deemed necessary. The Transferee has been offered an opportunity to have made available to it any and all such information it might request from the Issuer, the Borrower, the General Partner, the Guarantor and the Property Manager. On this basis, it is agreed by the Transferee that the Transferee is not relying on the Issuer or any other party or person to undertake the furnishing or verification of information related to the referenced transaction.

(4) In connection with the purchase of the Bonds, the Transferee has been advised that (i) the Issuer has not undertaken steps to ascertain the accuracy, completeness or truth of any statements made or omitted to be made to the undersigned concerning any of the facts relating to the business, operations, financial condition, or future prospects of the Borrower, the General Partner, the Guarantor and the Property Manager, and (ii) the Issuer has not made any representations concerning the accuracy or completeness of any information supplied to the undersigned by the Borrower, the General Partner, the Guarantor and the Property Manager.

(5) THE TRANSFEREE UNDERSTANDS THAT:

**A. THE BONDS AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY OUT OF THE REVENUES AND OTHER MONEYS PLEDGED THERETO AND HELD BY THE TRUSTEE AS PROVIDED IN THE INDENTURE;**

**B. THE BONDS ARE EQUALLY AND RATABLY SECURED BY A TRANSFER, PLEDGE AND ASSIGNMENT OF AND A GRANT OF A SECURITY INTEREST IN THE TRUST ESTATE TO THE TRUSTEE AND IN FAVOR OF THE OWNERS OF THE BONDS, AS PROVIDED IN THE INDENTURE;**

**C. THE BONDS ARE NOT A DEBT OF THE CITY OF COLUMBIA, MISSOURI, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF AND NONE OF THE CITY OF COLUMBIA, MISSOURI, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE ON THE BONDS;**

**D. THE BONDS ARE NOT INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER DEBT LIMITATION OR RESTRICTION AND ARE NOT PAYABLE IN ANY MANNER BY TAXATION; AND**

**E. THE ISSUER HAS NO TAXING POWER.**

(6) The Transferee understands that in connection with any proposed transfer or exchange of Bonds, there must be delivered to the Trustee a letter of the Transferee substantially in the form of Exhibit C-1 or Exhibit C-2 to the Indenture.

(7) The Transferee understands that, in connection with any proposed transfer of the Bonds, such transfer must be limited to an Eligible Purchaser. "*Eligible Purchaser*" means a prospective transferee that the Transferor has clear grounds to believe and does believe can make representations with respect to itself to substantially the same effect as the representations set forth herein, or as set forth in the letter attached as Exhibit C-1 to the Indenture.

(8) THE TRANSFEROR HAS REPRESENTED TO THE TRANSFEREE THAT THE TRANSFEROR ALSO UNDERSTANDS THAT THE TRANSFEROR SHALL INDEMNIFY THE ISSUER AND THE TRUSTEE AS SET FORTH IN THE INDENTURE WHICH STATES: "ANY BONDHOLDER DESIRING TO EFFECT SUCH TRANSFER SHALL AGREE TO INDEMNIFY THE ISSUER AND THE TRUSTEE, FROM AND AGAINST ANY AND ALL LIABILITY, COST OR EXPENSE (INCLUDING ATTORNEYS' FEES) THAT MAY RESULT IF THE REPRESENTATIONS OF SUCH BONDHOLDER CONTAINED IN THE INVESTOR'S LETTER ARE FALSE IN ANY MATERIAL RESPECT."

This letter and the representations and agreements contained herein are made for your benefit.

IN WITNESS WHEREOF, I have hereunto set my hand the \_\_\_\_\_ day of \_\_\_\_\_.

**[TRANSFEREE]**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

MUST BE SIGNED BY ACTUAL  
TRANSFEREE. MAY NOT BE SIGNED BY  
NOMINEE OR AGENT

## EXHIBIT C-3

### FORM OF INVESTOR LETTER (PARTICIPANT)

Housing Authority of the City of Columbia, Missouri  
201 Switzler Street  
Columbia, Missouri 65203  
Attention: Chief Executive Officer

UMB Bank, N.A., as Trustee  
928 Grand Boulevard, 12th Floor  
Kansas City, Missouri 64106  
Attention: Corporate Trust Department

Re: Housing Authority of the City of Columbia, Missouri Multifamily Housing Revenue Bonds  
(Kinney Point Apartments Project) Series 2024[A][B]

Ladies and Gentlemen:

The undersigned representative of \_\_\_\_\_ (the "*Participant*"), the purchaser of a participatory interest in the \$ \_\_\_\_\_ aggregate principal amount of Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024[A][B] (the "*Bonds*") under the [identify participation agreement] (the "*Agreement*"), does hereby certify, represent and warrant for the benefit of the Housing Authority of the City of Columbia, Missouri (the "*Issuer*") and UMB Bank, N.A., as trustee (the "*Trustee*"), that the Participant is either a "qualified institutional buyer" as defined in Rule 144A under the Securities Act of 1933, as amended (a "*QIB*"), or an "accredited investor" (as defined in Rule 501(a)(1), (2), (3), (4), (7) or (8) of Regulation D promulgated under the Securities Act of 1933) (an "*Accredited Investor*"). Terms not otherwise defined in this letter have the respective meanings set forth in the below-defined Indenture.

The Participant hereby acknowledges, represents, and warrants to, and agrees with, the Issuer and the Trustee, as follows:

(1) The Participant is acquiring its participatory interest in the Bonds with its own funds (or with funds from accounts over which it has sole investment authority) and not the funds of any other person, and for its own account (or for accounts over which it has sole investment authority) and not as nominee or agent for the account of any other person and not with a view to any distribution thereof.

(2) The Participant has such knowledge and experience in business and financial matters, including (i) the evaluation of residential real estate developments such as the Project, (ii) the evaluation of the capabilities of persons such as Kinney Point Housing Development Group, LP, a Missouri limited partnership (the "*Borrower*"), and the Property Manager to operate and maintain the Project, and (iii) the analysis, purchase and ownership of multifamily housing revenue bonds, tax-exempt securities and other investment vehicles similar in character to the Bonds, so as to enable it to understand and evaluate the risks of such investments and form an investment decision with respect thereto, the Participant has no need for liquidity in its participation in such an investment and the Participant is (or any account for which it is purchasing is) able to bear the risk

of its participation in such an investment for an indefinite period and to afford a complete loss thereof.

(3) The Participant acknowledges that it has been provided with, and has had the opportunity to review, the Loan Agreement, dated as of May 1, 2024 (the "*Loan Agreement*"), between the Issuer and the Borrower, the Trust Indenture, dated as of May 1, 2024 (the "*Indenture*"), between the Issuer and the Trustee, and all other documents relating to the issuance of the Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024A in the maximum principal amount of \$[     PRINCIPAL AMOUNT A     ] and the Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024B in the maximum principal amount of \$[     PRINCIPAL AMOUNT B     ]. The Participant has conducted its own investigation of the Project, the Borrower, the General Partner, the Guarantor, the Property Manager, the Bonds, the Indenture, the Loan Agreement and related documents and the transactions relating thereto, to the extent it deemed necessary. The Participant has been offered an opportunity to have made available to it any and all such information it might request from the Issuer, the Borrower, the General Partner, the Guarantor and the Property Manager. On this basis, it is agreed by the Participant that the Participant is not relying on the Issuer or any other party or person to undertake the furnishing or verification of information related to the referenced transaction.

(4) In connection with the purchase of its participatory interest in the Bonds, the Participant has been advised that (i) the Issuer has not undertaken steps to ascertain the accuracy, completeness or truth of any statements made or omitted to be made to the undersigned concerning any of the facts relating to the business, operations, financial condition, or future prospects of the Borrower, the General Partner, the Guarantor and the Property Manager, and (ii) the Issuer has not made any representations concerning the accuracy or completeness of any information supplied to the undersigned by the Borrower, the General Partner, the Guarantor and the Property Manager.

(5) THE PARTICIPANT UNDERSTANDS THAT:

**A. THE BONDS AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY OUT OF THE REVENUES AND OTHER MONEYS PLEDGED THERETO AND HELD BY THE TRUSTEE AS PROVIDED IN THE INDENTURE;**

**B. THE BONDS ARE EQUALLY AND RATABLY SECURED BY A TRANSFER, PLEDGE AND ASSIGNMENT OF AND A GRANT OF A SECURITY INTEREST IN THE TRUST ESTATE TO THE TRUSTEE AND IN FAVOR OF THE OWNERS OF THE BONDS, AS PROVIDED IN THE INDENTURE;**

**C. THE BONDS ARE NOT A DEBT OF THE CITY OF COLUMBIA, MISSOURI, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF AND NONE OF THE CITY OF COLUMBIA, MISSOURI, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE ON THE BONDS;**

**D. THE BONDS ARE NOT INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER DEBT LIMITATION OR RESTRICTION AND ARE NOT PAYABLE IN ANY MANNER BY TAXATION; AND**

**E. THE ISSUER HAS NO TAXING POWER.**

(6) The Participant understands that in connection with any proposed transfer or exchange of its participatory interest in the Bonds, there must be delivered to the Trustee a letter of the transferee to substantially the same effect as this letter or otherwise as permitted under the Indenture.

(7) The Participant understands that, in connection with any proposed transfer of its participatory interest in the Bonds, such transfer must be limited to an Eligible Participant. "Eligible Participant" means a prospective transferee that the Participant has clear grounds to believe and does believe can make representations with respect to itself to substantially the same effect as the representations set forth herein.

(8) The Participant also understands that it shall indemnify the Issuer and the Trustee as set forth in the Indenture which states: "ANY PARTICIPANT SHALL AGREE TO INDEMNIFY THE ISSUER AND THE TRUSTEE FROM AND AGAINST ANY AND ALL LIABILITY, COST OR EXPENSE (INCLUDING ATTORNEYS' FEES AND EXPENSES) THAT MAY RESULT IF THE REPRESENTATIONS OF SUCH PARTICIPANT CONTAINED IN THE INVESTOR LETTER ARE FALSE IN ANY MATERIAL RESPECT."

This letter and the representations and agreements contained herein are made for your benefit.

**IN WITNESS WHEREOF**, I have hereunto set my hand the \_\_\_\_\_ day of \_\_\_\_\_.

**[PARTICIPANT]**

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MUST BE SIGNED BY ACTUAL  
PARTICIPANT. MAY NOT BE SIGNED  
BY NOMINEE OR AGENT.**



**EXHIBIT D**

**MANDATORY SINKING FUND REDEMPTION SCHEDULE  
SERIES A BONDS**

[TO BE COMPLETED]

**Date**

**Principal Amount**

## BOND PURCHASE AGREEMENT

\$\_[Principal Amount A\_] Maximum Principal  
Amount  
Multifamily Housing Revenue Bonds  
(Kinney Point Apartments Project)  
Series 2024A

\$\_[Principal Amount B\_] Maximum Principal  
Amount  
Multifamily Housing Revenue Bonds  
(Kinney Point Apartments Project)  
Series 2024B

of

Housing Authority of the  
City of Columbia, Missouri

[\_ May \_\_, 2024 \_]

Housing Authority of the City of  
Columbia, Missouri  
201 Switzler Street  
Columbia, Missouri 65203

Kinney Point Housing Development Group, LP  
c/o CHA Affordable Housing Development, LLC  
201 Switzler Street  
Columbia, Missouri 65203

Ladies and Gentlemen:

Legacy Bank & Trust Company, a Missouri chartered bank (the "Purchaser"), with an address of 3250 East Sunshine Street, Springfield, Missouri 65804, offers to enter into this Bond Purchase Agreement (this "Bond Purchase Agreement") with the Housing Authority of the City of Columbia, Missouri, a Missouri municipal corporation (the "Issuer"), and Kinney Point Housing Development Group, LP, a Missouri limited partnership (the "Borrower"), solely with respect to the Bonds (as defined below), subject to acceptance on the date hereof.

The Issuer is authorized to issue its Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024A, in the maximum principal amount of \$\_[Principal Amount A\_] (the "Series A Bonds") and its Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024B, in the maximum principal amount of \$\_[Principal Amount B\_] (the "Series B Bonds", and together with the Series A Bonds, the "Bonds"), in accordance with the provisions of Sections 99.010 to 99.230, Revised Statutes of Missouri, as supplemented and amended (the "Act"), and pursuant to Resolution No. 2951 of the Issuer adopted April 24, 2024 (the "Resolution"). The Bonds will be issued pursuant to a Trust Indenture dated as of May 1, 2024 ("Indenture"), between the Issuer and UMB Bank, N.A., as trustee (the "Trustee"). Pursuant to a Loan Agreement dated May 1, 2024 (the "Loan Agreement"), between the Issuer and the Borrower, the Issuer has agreed to issue the Bonds and lend the proceeds thereof to the Borrower. The proceeds of the Bonds will be used for the purpose of paying a portion of the costs of the acquisition and construction of 34 multifamily housing units in the city of Columbia, Missouri, to be known as Kinney Point Apartments (the "Project").

Capitalized terms not defined in this Bond Purchase Agreement have the meanings ascribed to them in the Indenture.

1. Purchase, Sale and Delivery of Bonds. On the basis of the representations, warranties and agreements contained herein, but subject to the terms and conditions herein set forth, the Purchaser hereby agrees to purchase from the Issuer for its own investment and not for any re-offering to the public, and the Issuer hereby agrees to sell to the Purchaser for such purpose on [\_ May \_\_, 2024 \_] (the "Closing Date"),

all (but not less than all) of the Bonds, as described in Schedule I, at a purchase price equal to (a) not to exceed \$[Principal Amount A] with respect to the Series A Bonds, the Series A Bonds to be purchased in the initial installment of \$[          ] on the Closing Date and subsequently purchased in additional installments as provided in Section 4, and (b) not to exceed \$[Principal Amount B] with respect to the Series B Bonds, the Series B Bonds to be purchased in the initial installment of \$[          ] on the Closing Date and subsequently purchased in additional installments as provided in Section 4. As a condition to the Purchaser's agreement to purchase the Bonds hereunder, the Borrower shall pay the Purchaser a fee in the amount of \$[          ] payable on the Closing Date.

The Bonds shall be dated as of their date of issuance, and shall mature on the dates and bear interest on the outstanding principal amounts pursuant to the Indenture at the rates set forth in Schedule I, computed on a 365/360 basis (that is by applying the ratio of the Interest Rate over a year of 360 days multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding) and payable on (i) the 1<sup>st</sup> day of each month, commencing [July] 1, 2024, and (ii) any other day on which the principal of and interest on the Bonds is due and payable, whether upon redemption or at maturity, whether scheduled or accelerated.

The Borrower will deliver to the Trustee, not later than 3:00 p.m., Springfield, Missouri time, on the Closing Date, a sum certain, which sum is the amount required to pay all costs required to be paid in order to close the sale of the Bonds on the Closing Date, or such sum shall be paid from proceeds of the sale of the Bonds.

It shall be a condition to (a) the obligations of the Issuer to sell and deliver the Bonds to the Purchaser and (b) the obligations of the Purchaser to purchase and accept delivery of and to pay for the Bonds, that the first purchase price installment of the Series A Bonds in the amount of \$[          ] and the first purchase price installment of the Series B Bonds in the amount of \$[          ] to be sold and delivered by the Issuer in accordance with this Section 1 shall be delivered by the Issuer and be purchased, accepted and paid for by the Purchaser.

2. Bond Documents. On or prior to the Closing Date, the Purchaser shall have received the following:

- (a) The Trust Indenture, dated as of May 1, 2024, duly executed by the Issuer and the Trustee;
- (b) The Loan Agreement, dated as of May 1, 2024, duly executed by the Borrower and the Issuer;
- (c) The Series A Promissory Note in the maximum principal amount of \$[Principal Amount A], dated as of the Closing Date, duly executed by the Borrower, payable to the Issuer and endorsed by the Issuer, without recourse, to the Trustee;
- (d) The Series B Promissory Note in the maximum principal amount of \$[Principal Amount B], dated as of the Closing Date, duly executed by the Borrower, payable to the Issuer and endorsed by the Issuer, without recourse, to the Trustee;
- (e) The Tax Compliance Agreement, dated as of May 1, 2024, duly executed by the Issuer, the Borrower and the Trustee;
- (f) The Land Use Restriction Agreement, dated as of May 1, 2024, duly executed by the Issuer, the Borrower and the Trustee;

- (g) UCC-1 Financing Statements with respect to the Deed of Trust reflecting the Borrower as debtor and the Trustee as secured party;
- (h) The Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Deed of Trust");
- (i) UCC-1 Financing Statements with respect to the Deed of Trust reflecting the Borrower as debtor and the Trustee as secured party;
- (j) The Continuing Covenants Agreement.
- (k) The Assignment of Deed of Trust;
- (l) The Assignment of Architect Agreement;
- (m) The Assignment of Construction Documents;
- (n) [  The Assignment of HAP Contract  ];
- (o) The Assignment of Management Agreement;
- (p) Security Agreement;
- (q) The Guaranty duly executed by the Guarantor;
- (r) Environmental Indemnity;
- (s) Disbursing Agreement;
- (t) Subordination Agreement;
- (u) The organizational documents of the Borrower;
- (v) The organizational documents of the General Partner; and
- (w) An original or a certified copy of the Resolution.

The above described documents together with this Bond Purchase Agreement are the "Bond Documents" and the Bond Documents to which the Issuer is a party any and all other agreements executed by the Issuer in connection with the issuance of the Bonds are the "Issuer Documents."

3. Closing Date Review Items. On or prior to the Closing Date, the Purchaser shall have received and approved the following (the "Review Items"):

- (a) A current appraisal of the Project;
- (b) Phase I environmental audit prepared by an environmental engineering company approved by the Purchaser and in substance satisfactory to the Purchaser regarding the Project;
- (c) Evidence of zoning or a copy of any final approved planned unit development map, preliminary development plan or other development plan for the Project permitting the use of the Project for the uses permitted under this Bond Purchase Agreement and containing all use or

building conditions or restrictions affecting the Project and approved by the appropriate governmental entity;

(d) If required by the Purchaser, copies of any marketing brochures or materials regarding the Project, if prepared;

(e) If required by the Purchaser, copies of all engineer reports, engineering contracts, land planning maps, soils tests, drainage studies, traffic studies, erosion control plans, landscaping plans, and other documents prepared and existing for the development of the Project or construction of the Improvements, available to the Issuer;

(f) Evidence of availability of utility services to the Project boundaries;

(g) If required by the Purchaser, the form of lease, acceptable to the Purchaser, to be used by Borrower in leasing residential units in the Project;

(h) An ALTA loan policy of title insurance or an irrevocable and unconditional commitment to issue such policy issued by the Title Company. Such policy shall have a liability limit of not less than the amount of the Bonds and shall provide coverage and otherwise be in form and substance satisfactory to Purchaser insuring Trustee's interest under the Deed of Trust as a valid first lien on the Project. Such policy ("Title Policy") shall be accompanied by such reinsurance and coinsurance agreements and endorsements as Purchaser may require in its sole discretion. Such policy must delete standard exceptions and contain only such exceptions as are satisfactory to Purchaser and must have attached such endorsements as Purchaser may require in its absolute and sole discretion, including without limitation Form 100 Comprehensive Endorsement;

(i) At the Borrower's expense, a current improvement survey plat ("Survey") of the Project, acceptable to the Purchaser and the Title Company issuing the Title Policy, indicating, without limitation, that all foundations or other Improvements currently constructed, if any, are located within the lot lines, without infringement on established easements or rights-of-way and not in violation of any ordinance including zoning ordinances which impose lot line setback requirements and parking requirements. The Survey shall show the legal description of the Project as it will be insured by the Title Company, the courses and distances of the Project lot lines, all appurtenant and subservient easements, setbacks, building lines and width of abutting streets, distance to nearest intersecting streets affording ingress and egress to and from the Project, and the location and dimensions of all encroachments, improvements, above or below ground easements and utilities, and designated parking spaces. The Survey shall show the proposed location of any improvements to be built on the Project as identified by the Issuer to the surveyors, with appropriate notation to distinguish between constructed Improvements or foundations and proposed improvements. The surveyor shall also certify whether or not any portion of the Improvements is located within a Federal Emergency Management Agency identified flood-prone area of a community and if located thereon, state the map number and whether or not the Project appears in the "Flood Hazard Area." The Survey must be certified as accurate by a licensed surveyor in the state of Missouri and certified to the Purchaser, the Issuer, the Trustee and the Title Company. In the event the Borrower shall have obtained a replat of the Project within 60 days prior to the Closing Date, the Purchaser may elect in its reasonable discretion to accept the recorded replat with appropriate certifications and additional notations from the surveyor in lieu of the Survey, provided, however, that the recorded replat is sufficient to induce the Title Company to delete standard exceptions from the Title Policy regarding matters that would be shown by an ALTA survey;

(j) Proof of insurance, as required under the Deed of Trust;

(k) Confirmation, satisfactory to the Purchaser, that the Borrower has received its allocation of low income housing tax credits from the Missouri Housing Development Commission;

(l) Confirmation, satisfactory to the Purchaser, that the Borrower has entered into the Subordinate Loans;

(m) Confirmation, satisfactory to the Purchaser, that the Borrower has received all tax credit equity payable on the Closing Date as contemplated by the Partnership Agreement; and

(n) Any other documentation that the Purchaser may reasonably request.

4. Conditions to Funding of Additional Installments of Bonds. The Purchaser will fund additional purchase price installments of the Bonds once each calendar month, subject to satisfaction of the following terms and conditions:

(a) The Purchaser shall have received and approved a written request from the Borrower to fund an additional purchase price installment;

(b) All sums held in the Project Fund shall have been previously disbursed for Project Costs or will be disbursed in conjunction with the funding of the additional purchase price installment; and

(c) No event shall have occurred and be continuing which, but for the giving of notice, the expiration of any cure period, or both, would constitute an Event of Default by the Borrower under the Indenture, the Loan Agreement, either Note, or any Security Document.

5. Offering and Authorization. The Purchaser acknowledges that the Purchaser is purchasing the Bonds for its own investment, and not for further sale or distribution, and that the Purchaser is not required to comply with the requirements of Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") in connection with the offer and sale of the Bonds. The Bonds will not be registered under the Securities Act of 1933, as amended (the "1933 Act"), or the securities laws of any state and will be sold to the Purchaser in reliance upon certain exemptions from registration and in reliance upon the representations and warranties of the Purchaser to be set forth in the investor letter to be delivered by Purchaser to the Issuer and the Trustee on the Closing Date, the form of which is attached to the Indenture. The Purchaser acknowledges that the Bonds may not be transferred, resold or pledged except in accordance with the transfer provisions set forth in the Indenture. So long as the Purchaser owns 100% of the Outstanding Bonds, the Purchaser may sell participations, receipts evidencing ownership or other participatory interests in the Bonds in accordance with applicable provisions of the Indenture.

6. Representations and Warranties of Issuer. The Issuer represents and warrants as of the date hereof to the Purchaser as follows:

(a) The Issuer is a municipal corporation duly organized and existing under the laws of the state of Missouri, and has full legal right, power and authority (i) to enter into this Bond Purchase Agreement, (ii) to adopt the Resolution, (iii) to issue, sell and deliver the Bonds as provided herein and in the Indenture, and (iv) to carry out the transactions on its part contemplated by the Issuer Documents, as they may be amended or supplemented from time to time by the Issuer (if the Issuer is a party to the Issuer Document).

(b) Pursuant to the Resolution, the Issuer has duly authorized and approved the execution and delivery of, and the performance by the Issuer of the obligations on its part contained in the Issuer Documents, has duly authorized and approved the issuance, execution and delivery of, and the performance by the Issuer of its obligations under the Bonds and has duly authorized and approved the consummation by it of all other transactions on its part contemplated by the Issuer Documents. The Resolution has been duly passed by the Issuer, has not been amended, modified or repealed and is in full force and effect on the date hereof.

(c) To the best knowledge of the Issuer, the execution and delivery by the Issuer of the Bonds and the Issuer Documents, compliance with the provisions of each thereof and the consummation of the transactions contemplated thereby will not conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree, financing agreement, note, resolution, agreement or other instrument to which the Issuer is a party or is otherwise subject.

(d) To the best knowledge of the Issuer, all approvals, consents and orders of any governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to the performance by the Issuer of its obligations under the Bonds and the Issuer Documents have been obtained (other than approvals related to the securities laws of any jurisdiction as to which no representation need be expressed).

(e) To the best of the knowledge of the Issuer, there is no threatened action, suit, proceeding, inquiry or investigation against the Issuer, at law or in equity, by or before any court, public board or body, nor is there any basis therefor, affecting the existence of the Issuer or the titles of its officials to their respective offices, or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds or the pledge of revenues to pay the principal of and interest on the Bonds, or in any way materially adversely affecting or questioning (i) the territorial jurisdiction of the Issuer, (ii) the use of the proceeds of the Bonds to finance the Project, (iii) the validity or enforceability of the Bonds, any proceedings of the Issuer taken with respect to the Bonds, or any of the Issuer Documents, or (iv) the tax-exempt status of the interest on the Bonds, (v) the execution and delivery of the Bonds and the Issuer Documents, (vi) the power of the Issuer to carry out the transactions contemplated by the Bonds, or any of the Issuer Documents, or (vii) the disposition of the Bond proceeds contemplated by the Issuer Documents.

(f) The Bonds, when issued, authenticated and delivered in accordance with the Indenture and sold to the Purchaser, will be validly issued and outstanding limited and special obligations of the Issuer, enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally and further subject to the exercise of judicial discretion in accordance with general principles of equity, and entitled to the benefits of the Indenture.

(g) Those Issuer Documents, when duly executed and delivered by the Issuer and the other parties thereto, and all other documents to be delivered by the Issuer in connection with the consummation of the transactions contemplated thereby, and such Issuer Documents, when duly executed and delivered by the Issuer and the other parties thereto, will constitute valid, legal and binding limited obligations of the Issuer, enforceable in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and further subject to the exercise of judicial discretion in accordance with general principles of equity, common law and statutes affecting the enforceability of contractual obligations generally and principles of public policy concerning, affecting or limiting the enforcement or remedies against governmental entities such as the Issuer.

(h) Any certificate signed by any official of the Issuer and delivered to the Purchaser shall be deemed to be a representation by the Issuer to the Purchaser as to the statements made therein.

The Bonds, together with interest thereon, are not general obligations of the Issuer and do not constitute an obligation, either general or special, of the State or any political subdivision thereof, but are limited obligations payable solely and only from amounts, moneys and securities held from time to time by the Trustee as part of the Trust Estate. Such moneys are hereby pledged and assigned as security for the equal and ratable payment of the Bonds and shall be used for no other purpose than to pay the principal of and interest on the Bonds, except as may be otherwise expressly authorized in the Indenture. THE BONDS ARE NOT A DEBT OF THE CITY OF COLUMBIA, MISSOURI, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF AND NONE OF THE CITY OF COLUMBIA, MISSOURI, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE ON THE BONDS. THE BONDS ARE NOT INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER DEBT LIMITATION OR RESTRICTION AND ARE NOT PAYABLE IN ANY MANNER BY TAXATION. THE ISSUER HAS NO TAXING POWER.

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, provision, covenant or agreement contained in this Indenture against any past, present or future commissioner, member, officer, official, employee or agent of the Issuer, or any member, director, trustee, officer, official, employee or agent of any successor to the Issuer, as such, either directly or through the Issuer or any successor to the Issuer, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such commissioner, member, director, trustee, officer, official, employee or agent as such is hereby 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. No officer of the Issuer or any person executing the Bonds shall be personally liable on the Bonds by reason of the issuance thereof.

7. Conditions to Obligations of the Purchaser. The obligations of the Purchaser to purchase and pay for the Bonds shall be subject to the following conditions precedent:

(a) The Purchaser shall have received and approved the Bond Documents and those Review Items which have been required by the Purchaser.

(b) The representations and warranties of the Issuer herein and the representations and warranties made by the Issuer in any of the Issuer Documents shall be true, correct and complete on the date hereof and on the Closing Date, as if made on the Closing Date. The Issuer shall have performed all of its obligations hereunder and the statements made on behalf of the Issuer hereunder shall be true and correct on the date hereof and on the Closing Date, as if made on the Closing Date.

(c) As of the Closing Date, each of the Bond Documents, the Resolution, and all other official action of the Issuer relating thereto shall be in full force and effect and shall not have been amended, modified or supplemented.

(d) The Issuer and the Trustee shall have received the approving opinion of Gilmore & Bell, P.C., Kansas City, Missouri ("Bond Counsel"), and the Purchaser shall have received a reliance letter from Bond Counsel with respect to its approving opinion.

(e) No default or Event of Default (as defined in any of the Bond Documents) shall have occurred and be continuing, and no event shall have occurred and be continuing which, with the lapse of time or the giving of notice or both, would constitute such a default or event of default.



(f) No material adverse change shall have occurred, nor shall any development involving a prospective material and adverse change in, or affecting the affairs, business, financial condition, results of operations, prospects or properties (including the Project) of, the Issuer have occurred.

(g) On or prior to the Closing Date, all actions required to be taken by the Issuer as of the Closing Date in connection with the Bonds, the Resolution and the Bond Documents shall have been taken, and the Issuer shall have performed and complied with all agreements, covenants and conditions required to be performed or complied with by the Bonds, the Resolution, and the Bond Documents, and each of such agreements shall be in full force and effect and shall not have been amended, modified or supplemented.

(h) Each of the Bond Documents shall have been executed and delivered by each of the respective parties thereto, all such documents in forms exhibited to the Purchaser on the date hereof, and each of the Bond Documents shall be in full force and effect.

(i) None of the events referred to in Section 9 of this Bond Purchase Agreement shall have occurred, unless waived in writing by the Purchaser.

(j) The Purchaser shall have received a certificate, dated the Closing Date and signed on behalf of the Issuer, to the effect that:

- (1) The representations and warranties made by the Issuer in each of the Issuer Documents are true, correct and complete as of the Closing Date.
- (2) The Issuer has performed all of its obligations under the Issuer Documents, and the statements made on behalf of the Issuer under the Bond Purchase Agreement are true and correct.
- (3) The Issuer has not received notice of any pending, nor to the Issuer's knowledge is there any threatened action, suit, proceeding, inquiry or investigation against the Issuer, at law or in equity, by or before any court, public board or body, nor to the Issuer's knowledge is there any basis therefor, affecting the existence of the Issuer or the titles of its officials to their respective offices, or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds or the pledge of revenues or assets of the Issuer pledged or to be pledged to pay the principal of and interest on the Bonds, or in any way materially adversely affecting or questioning (A) the authority of the Issuer to issue the Bonds, (B) the use of the proceeds of the Bonds to finance the Project, (C) the validity or enforceability of the Bonds, any proceedings of the Issuer taken with respect to the Bonds or any of the Issuer Documents, (D) the tax-exempt status of the interest on the Bonds, (E) the execution and delivery of the Bonds or the Issuer Documents, or (F) the power of the Issuer to carry out the transactions on its part contemplated by the Bonds, or any of the Issuer Documents.

(k) The Purchaser shall have received a certificate, dated the Closing Date and signed by an authorized officer of the Trustee, in a form satisfactory to the Purchaser.

(l) The Purchaser shall have received such additional legal opinions, certificates, proceedings, instruments and other documents as the Purchaser or Bond Counsel may reasonably request.

If any condition in this Section 7 is not satisfied on or prior to the Closing Date, this Bond Purchase Agreement may be terminated by the Purchaser by notice in writing or by facsimile to the Issuer. If the obligations of the Purchaser shall be terminated for any reason permitted by this Bond Purchase Agreement, neither the Purchaser nor the Issuer shall be under further obligation hereunder except for any continuing obligations of the Issuer to pay certain expenses as herein provided. The Purchaser may waive compliance with any one or more of the foregoing conditions or extend the time for its or their performance.

All of the legal opinions, certificates, proceedings, instruments and other documents mentioned above or elsewhere in this Bond Purchase Agreement shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance satisfactory to the Purchaser and the Issuer.

8. Indemnification of Purchaser and Issuer.

(a) The Borrower agrees to pay, defend, protect, indemnify, save and hold harmless the Issuer, the Purchaser and each affiliate, member, officer, director, official, employee and agent of the Issuer and the Purchaser and each person, if any, who controls any of the foregoing within the meaning of Section 15 of the 1933 Act, or Section 20 of the Securities Exchange Act of 1934, as amended (collectively referred to herein as the "Indemnified Parties"), against any and all liabilities, losses, damages, costs, expenses (including attorneys' fees), causes of action (whether in contract, tort or otherwise), suits, claims, demands and judgments of any kind, character and nature (collectively referred to herein as the "Liabilities") caused by or directly or indirectly arising from or in any way relating to the Bonds, the Project, the loan of the proceeds of the Bonds, the Bond Documents or any other document related to the Bonds, the Project, the loan of the proceeds of the Bonds (the "Transaction Documents") or any transaction or agreement, written or oral, pertaining to the foregoing; provided, however, that no indemnity shall be required for claims arising from the willful misconduct or gross negligence of any other party seeking indemnification.

(b) The Borrower also agrees to pay, defend, protect, indemnify, save and hold harmless the Purchaser and each affiliate, member, officer, director, official, employee and agent of the Purchaser from and against the Liabilities directly or indirectly arising from or relating to (i) any errors or omissions of any nature whatsoever contained in any legal proceedings or other official representation or inducement made by the Issuer pertaining to the Bonds and (ii) any fraud or misrepresentations or omissions of the Borrower contained in the proceedings of the Issuer pertaining to the financial condition of the Borrower.

(c) Any Indemnified Party shall notify the Borrower of the existence of any Liability to which this indemnification obligation would apply and shall give to the Borrower an opportunity to defend the same at the Borrower's expense and with counsel satisfactory to the Indemnified Party, provided that the Indemnified Party shall at all times also have the right to fully participate in the defense. If there may be legal defenses available to the Indemnified Party which are different from or in addition to those available to the Borrower or if the Borrower shall, after this notice and within a period of time necessary to preserve any and all defenses to any claim asserted, fail to assume the defense or to employ counsel for that purpose satisfactory to the Indemnified Party, the Indemnified Party shall have the right, but not the obligation, to undertake the defense of, and, without the approval of the Borrower, to compromise or settle the claim or other matter on behalf of, for the account of, and at the risk of, the Borrower, all at the expense of the Borrower.

(d) The Indemnified Parties, other than the Issuer and the Purchaser, shall be considered to be third-party beneficiaries of this Bond Purchase Agreement only for purposes of this Section 8, will be in

addition to all liability which the Borrower may otherwise have and shall survive any termination of this Bond Purchase Agreement, the offering and sale of the Bonds and the payment or provisions for payment of the Bonds.

9. Termination. The Purchaser may terminate its obligation to purchase the Bonds by written notice to the Issuer if at any time subsequent to the date hereof and on or prior to the Closing Date:

(a) (i) Legislation shall have been enacted by the Congress, or recommended to the Congress for passage by the President of the United States or the Department of the Treasury of the United States or the Internal Revenue Service or any member of the U.S. Congress, or favorably reported for passage to either House of the Congress by any Committee of such House to which such legislation has been referred for consideration, or (ii) a decision shall have been rendered by a court established under Article III of the Constitution of the United States, or the U.S. Tax Court, or (iii) an order, ruling, regulation or communication (including a press release) shall have been issued by the Department of the Treasury of the United States or the Internal Revenue Service, in each case referred to in clauses (i), (ii) and (iii), with the purpose or effect, and reasonable likelihood, directly or indirectly of causing interest on the Bonds to be included in gross income of the holders thereof for purposes of federal income taxation.

(b) Legislation shall have been enacted or a decision by a court of the United States shall be rendered or any action taken by the Securities and Exchange Commission which, in the opinion of counsel to the Purchaser, has the effect of requiring the offer or sale of the Bonds to be registered under the 1933 Act, as amended, or the Indenture to be qualified under the Trust Indenture Act of 1939, as amended.

(c) (i) In the sole discretion of the Purchaser, the value of the Bonds is adversely affected because (A) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority; (B) a general banking moratorium shall have been established by federal, New York or Missouri authorities; or (C) a war involving the United States of America shall have been declared, or any other national or international calamity shall have occurred, or any conflict involving the armed forces of the United States of America shall have escalated to such a magnitude as to materially affect the marketability of the Bonds; (ii) any litigation shall be instituted, pending or threatened to restrain or enjoin the issuance or sale of the Bonds or in any way contesting or affecting any authority or security for or the validity of the Bonds, or the existence or powers of the Issuer; or (iii) legislation shall have been introduced in or enacted by the Legislature of the state of Missouri that would, in the sole discretion of the Purchaser, materially adversely affect the security for the Bonds.

(d) There shall have occurred any change that, in the sole discretion of the Purchaser, makes unreasonable or unreliable any of the assumptions upon which (i) yield on the Bonds for purposes of compliance with the Code, (ii) payment of debt service on the Bonds, or (iii) the basis for the exclusion from gross income for federal income tax purposes of interest on the Bonds, is predicated.

10. Expenses. Notwithstanding any other provisions hereof to the contrary, under no circumstances shall the Issuer be obligated to pay any of the expenses of the transaction herein contemplated, except from proceeds of the Bonds.

11. Notices. Any notice required or permitted to be given by the Issuer, the Borrower or the Purchaser under this Bond Purchase Agreement shall be in writing and will be deemed given (a) upon personal delivery or upon confirmed or transmission by telecopier or similar facsimile transmission device,

(b) on the first business day after receipted delivery to a courier service which guarantees next-business-day delivery, (c) by electronic mail (with the original delivered via overnight delivery service), or (d) on the third business day after mailing, by certified United States mail, postage prepaid, in any case to the appropriate party at its address set forth below:

To the Issuer: Housing Authority of the City of Columbia, Missouri  
201 Switzler Street  
Columbia, Missouri 65203  
Attention: Randy Cole  
Email: rcole@columbiaha.com

To the Borrower: Kinney Point Housing Development Group, LP  
c/o CHA Affordable Housing Development, LLC  
201 Switzler Street  
Columbia, Missouri 65203  
Attention: Randy Cole  
Email: rcole@columbiaha.com

with a copy to: Rosenblum Goldenhersh, P.C.  
7733 Forsyth Boulevard, Suite 400  
St. Louis, Missouri 63105  
Attention: Tomas A. Duda, Esq.  
Email: tduda@rgsz.com

and: [ ] INVESTOR [ ]  
c/o Red Stone Equity Partners  
[ ] 5800 Armada Drive, Suite 235  
Carlsbad, California 92008 [ ]  
Attention: [ ]  
Email: [ ]

with a copy to: [ ]  
[ ]  
[ ]  
Attention: [ ]  
Email: [ ]

To the Purchaser: Legacy Bank & Trust Company  
3250 East Sunshine Street  
Springfield, Missouri 65804  
Attention: Eric Leonard  
Email: eleonard@legacybankandtrust.com

with a copy to: Polsinelli PC  
201 East Las Olas Boulevard, Suite 2250B  
Fort Lauderdale, Florida 33301  
Attention: Shawn Whitney  
Email: swhitney@polsinelli.com

Any notice required to be given to the Borrower will also be given to the Investor Limited Partner.

12. Liability of Borrower. The personal liability of the Borrower and its partners under this Bond Purchase Agreement is limited in manner to the same extent as set forth in Section 9.13 of the Loan Agreement.

13. Successors. This Bond Purchase Agreement is made solely for the benefit of the Issuer and the Purchaser (including their successors or assigns, provided the words "successors" and "assigns" shall not include the purchaser of any of the Bonds from or through the Purchaser by reason of such purchase) and no other person shall acquire or have any right hereunder or by virtue hereof. The representations, warranties and agreements contained herein shall remain operative and in full force and effect and shall survive delivery of and payment for the Bonds hereunder, regardless of any investigation made by or on behalf of the Purchaser.

14. Survival of Certain Representations and Warranties. All agreements, covenants, representations and warranties and all other statements of the Issuer and its officials and officers set forth in or made pursuant to this Bond Purchase Agreement shall remain in full force and effect, regardless of any investigation, or statement as to the results thereof made by or on behalf of the Purchaser, and shall survive the Closing Date and the delivery of and payment for the Bonds.

15. Governing Law. This Bond Purchase Agreement shall be governed by the laws of the state of Missouri, without giving effect to principles of conflicts of laws.

16. Electronic Transactions. The transactions described in this Bond Purchase Agreement, the Indenture and the other Loan Documents may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

*[Remainder of this page is intentionally left blank.]*

17. Counterparts. This Bond Purchase Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Very truly yours,

LEGACY BANK & TRUST COMPANY, a  
Missouri state bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

HOUSING AUTHORITY OF THE CITY OF  
COLUMBIA, MISSOURI

By: \_\_\_\_\_  
Name: Randy Cole  
Title: Chief Executive Officer

KINNEY POINT HOUSING DEVELOPMENT  
GROUP, LP, a Missouri limited partnership

By: KINNEY POINT HOUSING GP, LLC, a  
Missouri limited liability company, its general  
partner

By: COLUMBIA COMMUNITY HOUSING  
TRUST, a Missouri non-profit  
corporation, its sole owner

By: \_\_\_\_\_  
Name: Bob Hutton  
Title: President



## SCHEDULE I

### AMOUNTS, FUNDING, MATURITY AND INTEREST RATES

<u>Bond</u>	<u>Amounts</u>	<u>Funding Dates</u>	<u>Maturity Dates</u>	<u>Interest Rate</u>
Series A	\$[ <u>    </u> Principal Amount A <u>    </u> ]	[ <u>    </u> May <u>    </u> , 2024 <u>    </u> ] and monthly thereafter on dates to be determined	[ <u>    </u> November 1, 2040 <u>    </u> ]	[ <u>    </u> ]% to, but not including, the Rate Adjustment Date; [ <u>    </u> ]% on and after the Rate Adjustment Date
Series B	\$[ <u>    </u> Principal Amount B <u>    </u> ]	[ <u>    </u> May <u>    </u> , 2024 <u>    </u> ] and monthly thereafter on dates to be determined	[ <u>    </u> November 1, 2025 <u>    </u> ] (subject to extension pursuant to Section 3.06 of the Continuing Covenants Agreement)	[ <u>    </u> ]%

#### **Optional and Mandatory Redemption.**

The Bonds are subject to optional and mandatory redemption as provided in the Indenture.

#### **Mandatory Sinking Fund Redemption – Series A Bonds.**

The Series A Bonds are subject to mandatory sinking fund redemption in part on the dates, commencing on the Amortization Commencement Date of [     December 1, 2025     ], in the amounts and at a redemption price equal to 100% of the principal amount redeemed, without premium, plus accrued interest to the redemption date, as set forth on the following page.

*[Remainder of this page is intentionally left blank.]*

SERIES A BONDS

Date            Principal Amount

**LOAN AGREEMENT**

**Dated as of May 1, 2024**

between

**HOUSING AUTHORITY OF  
THE CITY OF COLUMBIA, MISSOURI**

and

**KINNEY POINT HOUSING DEVELOPMENT GROUP, LP**

relating to

**\$[     PRINCIPAL AMOUNT A] Maximum Principal Amount  
Multifamily Housing Revenue Bonds  
(Kinney Point Apartments Project)  
Series 2024A**

and

**\$[     PRINCIPAL AMOUNT B] Maximum Principal Amount  
Multifamily Housing Revenue Bonds  
(Kinney Point Apartments Project)  
Series 2024B**

of

**Housing Authority of  
the City of Columbia, Missouri**

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*The interests of the Housing Authority of the City of Columbia, Missouri in this Loan Agreement, excluding certain rights retained by the Issuer pursuant to **Section 4.06**, have been assigned to UMB Bank, N.A., as Trustee.*

## TABLE OF CONTENTS

	<u>Page</u>
Parties .....	1
Recitals .....	1
<b>ARTICLE I</b>	
<b>DEFINITIONS, EXHIBITS AND MISCELLANEOUS</b>	
Section 1.01. Definitions .....	2
Section 1.02. Rules of Interpretation.....	3
<b>ARTICLE II</b>	
<b>REPRESENTATIONS OF ISSUER AND BORROWER</b>	
Section 2.01. Representations by the Issuer .....	3
Section 2.02. Representations, Covenants and Warranties of the Borrower .....	4
Section 2.03. Tax Exemption; Tax Agreement and Land Use Restriction Agreement .....	7
<b>ARTICLE III</b>	
<b>ISSUANCE OF BONDS; FINANCING OF PROJECT</b>	
Section 3.01. Issuance of Bonds.....	7
Section 3.02. Possession and Use of the Project .....	8
Section 3.03. Use of Bond Proceeds; Completion of the Project.....	8
Section 3.04. Project Documents .....	9
Section 3.05. Enforcement of Contracts and Surety Bonds .....	10
Section 3.06. No Warranty by Issuer.....	10
Section 3.07. Payment of Costs of Issuance.....	10
Section 3.08. Termination of Existing Liens or Security Interests.....	10
<b>ARTICLE IV</b>	
<b>THE LOANS, BASIC PAYMENTS AND ADDITIONAL CHARGES</b>	
Section 4.01. The Loans .....	11
Section 4.02. Basic Payments .....	11
Section 4.03. Additional Charges.....	12
Section 4.04. Borrower's Obligations Unconditional.....	12
Section 4.05. Borrower's Remedies.....	13
Section 4.06. Assignment of Issuer's Rights .....	13
Section 4.07. Deposit of Gross Revenues Upon Event of Default.....	13
<b>ARTICLE V</b>	
<b>PROJECT COVENANTS</b>	
Section 5.01. Title, Operation and Maintenance .....	15
Section 5.02. Sale or Lease of Project.....	16
Section 5.03. Advances .....	16
Section 5.04. Alterations to Project and Removal of Project Equipment.....	16
Section 5.05. Insurance .....	16
Section 5.06. Annual Budget; Operating Covenants.....	16
Section 5.07. Financial Statements; Other Information .....	17

**ARTICLE VI  
DAMAGE, DESTRUCTION AND CONDEMNATION**

Section 6.01.	Damage and Destruction.....	18
Section 6.02.	Condemnation.....	18
Section 6.03.	Parties to Give Notice.....	18

**ARTICLE VII  
BORROWER'S COVENANTS**

Section 7.01.	Covenant for the Benefit of the Trustee and Bondowners.....	19
Section 7.02.	Inspection and Access.....	19
Section 7.03.	Indemnity by Borrower .....	19
Section 7.04.	Status of Borrower.....	21
Section 7.05.	No Additional Debt.....	21

**ARTICLE VIII  
BORROWER'S OPTIONS**

Section 8.01.	Assignment and Transfer .....	21
Section 8.02.	Prepayment .....	22
Section 8.03.	Direction of Investments.....	23
Section 8.04.	Termination of Loan Agreement; Required Prepayment.....	23

**ARTICLE IX  
EVENTS OF DEFAULT AND REMEDIES**

Section 9.01.	Events of Default .....	23
Section 9.02.	Remedies .....	25
Section 9.03.	Disposition of Funds.....	25
Section 9.04.	Nonexclusive Remedies.....	25
Section 9.05.	Attorneys' Fees and Expenses.....	26
Section 9.06.	Effect of Waiver.....	26
Section 9.07.	Waiver of Stay or Extension .....	26
Section 9.08.	Issuer or Trustee May File Proofs of Claim.....	26
Section 9.09.	Restoration of Positions .....	26
Section 9.10.	Suits to Protect the Project.....	27
Section 9.11.	Performance by Third Parties .....	27
Section 9.12.	Exercise of the Issuer's Remedies by Trustee .....	27
Section 9.13.	Non-Recourse Obligation .....	27

**ARTICLE X  
GENERAL PROVISIONS**

Section 10.01.	Amounts Remaining in Funds .....	28
Section 10.02.	Notices .....	28
Section 10.03.	Binding Effect.....	28
Section 10.04.	Severability .....	28
Section 10.05.	Amendments, Changes, and Modifications .....	29
Section 10.06.	Execution in Counterparts .....	29
Section 10.07.	Required Approvals .....	29
Section 10.08.	Limitation on Issuer's Liability.....	29

Section 10.09. Representations of Borrower .....29  
Section 10.10. Electronic Transactions.....29  
Section 10.11. Complete Agreement .....30  
  
Signatures ..... S-1  
  
EXHIBIT A – Legal Description  
EXHIBIT B – Forms of Promissory Notes

\* \* \* \* \*

## LOAN AGREEMENT

**THIS LOAN AGREEMENT** is made and entered into as of [\_\_ May 1, 2024 \_\_], by and between the **HOUSING AUTHORITY OF THE CITY OF COLUMBIA, MISSOURI**, a municipal corporation organized and existing under the laws of the state of Missouri, and its successors and assigns (the "**Issuer**"), and **KINNEY POINT HOUSING DEVELOPMENT GROUP, LP**, a Missouri limited partnership, its successors and assigns (the "**Borrower**"). Terms not otherwise defined in the **Recitals** have the meanings set forth in the below-defined Indenture.

### RECITALS

1. The Issuer is empowered by Sections 99.010 to 99.230 of the Revised Statutes of Missouri (as supplemented and amended, the "**Act**"), to, among other things, issue revenue bonds to provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income (within the meaning of the Act).

2. The Issuer has agreed to assist in financing a portion of the costs of the acquisition and construction of 34 multifamily housing units to be located in the City of Columbia, Missouri to be collectively known as Kinney Point Apartments, for the Borrower.

3. Pursuant to the Act, the Issuer is authorized to issue its Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024A in the aggregate maximum principal amount of \$[\_\_ PRINCIPAL AMOUNT A \_\_] (the "**Series A Bonds**") and its Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024B in the aggregate maximum principal amount of \$[\_\_ PRINCIPAL AMOUNT B \_\_] (the "**Series B Bonds**," together with the Series A Bonds, the "**Bonds**"), the proceeds of which will be applied, at the request of the Borrower, to finance a portion of the costs of the Project.

4. The Issuer passed Resolution No. 2951 (the "**Resolution**") on April 24, 2024, authorizing the issuance of the Bonds pursuant to the Trust Indenture, dated as of May 1, 2024 (the "**Indenture**"), between the Issuer and UMB Bank, N.A., as Trustee (the "**Trustee**") for the above purposes.

5. Pursuant to the Resolution, the Issuer is authorized (a) to execute and deliver the Indenture for the purpose of issuing and securing the Bonds, (b) to enter into this Loan Agreement pursuant to which the Issuer will loan the proceeds of each Series of Bonds to the Borrower (each a "**Loan**" and, collectively, the "**Loans**") to finance the Project and (c) to enter into a Land Use Restriction Agreement, dated as of May 1, 2024, and the Tax Compliance Agreement, dated as of May 1, 2024, each among the Issuer, the Borrower and the Trustee, relating to compliance with certain federal requirements applicable to the Project.

6. The Notes will be equally secured by the Security Documents.

7. Under the terms of this Loan Agreement, the Borrower has agreed to the repayment of the sums borrowed pursuant to this Loan Agreement.

8. This Issuer has duly and validly authorized the execution and delivery of this Loan Agreement and the issuance of the Bonds.

**ARTICLE I**  
**DEFINITIONS, EXHIBITS AND MISCELLANEOUS**

**Section 1.01. Definitions.** In this Loan Agreement, the following terms have the following meanings, unless the context clearly requires otherwise, and any other capitalized terms defined in Section 101 of the Indenture (incorporated herein by this reference as if fully set forth herein) shall have the same meanings when used herein as assigned them in the Indenture unless the context or use thereof indicates another or different meaning or intent:

"**Additional Charges**" has the meaning as set forth in **Section 4.03**.

"**Affiliate**" of a specified Person means (a) any Person directly or indirectly controlling, controlled by or under common control with the Person specified, (b) any Person owning or controlling 10% or more of the outstanding voting securities or beneficial interests of the Person specified, (c) any officer, director, partner, trustee or member of the immediate family of the Person specified, (d) if the Person specified is an officer, director, partner, manager, member or trustee, any corporation, partnership, limited liability company or trust for which that Person acts in that capacity, or (e) any Person who is an officer, director, partner, manager, member, trustee or holder of 10% or more of the outstanding voting securities or beneficial interests of any Person described in clauses (a) through (d). The term "**control**" (including the term "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Basic Payments**" means the amounts specified pursuant to **Section 4.02**.

"**Completion Date**" means the date the Project has received the temporary certificate of occupancy attached to the Completion Certificate.

"**Default Rate**" means for any day, a per annum rate of interest equal to the sum of the interest rate then in effect with respect to the Bonds on such day plus five percent (5.0%).

"**Event of Default**" means any event or occurrence set forth in **Section 9.01**.

"**Fiscal Year**" means the Fiscal Year of the Borrower from time to time, initially January 1 through December 31.

"**Management Agreement**" means the Management Agreement with respect to the Project between the Borrower and the Property Manager, together with all extensions, modifications, amendments and renewals.

"**Premises**" means the real estate described in **Exhibit A**.

"**Project Documents**" means the documents listed in **Section 3.04**.

"**Requisition**" means a requisition submitted by the Borrower requesting disbursements, in substantially the form of **Exhibit B-1** or **Exhibit B-2**, as applicable, to the Indenture.



**Section 1.02. Rules of Interpretation.**

(a) This Loan Agreement shall be interpreted in accordance with and governed by the laws of the State.

(b) The words "herein", "hereof" and "hereunder" and words of similar import, without reference to any particular section or subdivision, refer to this Loan Agreement as a whole rather than to any particular section or subdivision of this Loan Agreement.

(c) References in this Loan Agreement to any particular article, section or subdivision hereof are to the designated article, section or subdivision of this Loan Agreement as originally executed.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles; and all computations provided for herein shall be made in accordance with generally accepted accounting principles consistently applied and applied on the same basis as in prior years.

(e) The Table of Contents and titles of articles and sections herein are for convenience of reference only and are not a part of this Loan Agreement, and shall not define or limit the provisions hereof.

(f) Unless the context hereof clearly requires otherwise, the singular shall include the plural and vice versa and the masculine shall include the feminine and vice versa.

(g) Words importing person shall include partnerships, limited liability companies, associations and corporations, including public bodies, as well as natural persons.

(h) Articles, sections, subsections and clauses mentioned by number only are those so numbered which are contained in this Loan Agreement.

(i) Any opinion of counsel required hereunder shall be a written opinion of such counsel.

(j) If the Borrower is a limited liability company, references in this Loan Agreement to "General Partner" and "Investor Limited Partner" means "Manager" or "Managing Member" and "Member," respectively. If the Borrower is not a limited liability company, partnership or limited partnership, references in this Indenture to "General Partner" or "Investor Limited Partner" will be of no force or effect.

**ARTICLE II  
REPRESENTATIONS OF ISSUER AND BORROWER**

**Section 2.01. Representations by the Issuer.** The Issuer represents and agrees as follows:

(a) The Issuer is a municipal corporation duly organized and existing under the laws of the State.

(b) The Issuer has lawful power and authority under the Act to enter into the transactions contemplated by this Loan Agreement, the Indenture, the Land Use Restriction Agreement and the Tax Agreement and to carry out its obligations hereunder and thereunder. By proper action of its commissioners, the Issuer has been duly authorized to execute and deliver this Loan Agreement, the Indenture, the Land Use Restriction Agreement and the Tax Agreement acting by and through its duly authorized officers.

(c) The execution and delivery of this Loan Agreement, the Indenture, the Land Use Restriction Agreement and the Tax Agreement, the consummation of the transactions contemplated hereby and thereby, and the performance of or compliance with the terms and conditions of this Loan Agreement, the Indenture, the Land Use Restriction Agreement and the Tax Agreement will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any restriction or any agreement or instrument to which the Issuer is a party or by which it or any of its property is bound, or, to the best of the Issuer's knowledge, any order, rule or regulation applicable to the Issuer or any of its property of any court or governmental body, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Issuer under the terms of any instrument or agreement to which the Issuer is a party.

(d) The financing of the Project will further the public purposes of the Act.

(e) To the knowledge of the Issuer, no member of the Issuer or any other officer of the Issuer has any significant or conflicting interest, financial, employment or otherwise, in the Borrower or the Project or in the transactions contemplated hereby.

#### **Section 2.02. Representations, Covenants and Warranties of the Borrower.**

(a) The Borrower (i) is a limited partnership duly organized, validly existing and in good standing under the laws of the State, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted (and as now contemplated by this Loan Agreement, the Land Use Restriction Agreement, the Tax Agreement and the Security Documents) and (iii) has the full legal right, power and authority to execute and deliver this Loan Agreement, the Land Use Restriction Agreement, the Tax Agreement and the Security Documents to which it is a party and to perform all the undertakings of the Borrower thereunder. The General Partner is a limited liability company duly organized, validly existing and in good standing under the laws of the State.

(b) The execution, delivery and performance of this Loan Agreement, the Land Use Restriction Agreement, the Tax Agreement and the Security Documents to which it is a party by the Borrower, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions thereof do not and will not conflict with or result in a breach of any of the terms or conditions of the Partnership Agreement, any restriction or any agreement or instrument to which the Borrower (or the General Partner) is now a party or by which it or the General Partner is bound or to which any property of the Borrower or the General Partner is subject, and do not and will not constitute a default under any of the foregoing, or to the best of the Borrower's knowledge cause the Borrower or the General Partner to be in violation of any order, decree, statute, rule or regulation of any court or any state or federal regulatory body having jurisdiction over the Borrower or the General Partner or their properties, including the Project, and do not and will not result in the creation or imposition of any lien, charge or encumbrance of any nature

upon any of the property or assets of the Borrower or the General Partner contrary to the terms of any instrument or agreement to which the Borrower or the General Partner is a party or by which they are bound.

(c) The use of the Project will comply in all material respects, with all presently applicable zoning, development, pollution control, water conservation, environmental and other laws, regulations, rules and ordinances of the federal government and the State and the respective agencies thereof and the political subdivisions in which the Project is located; the Borrower has or will timely obtain all necessary and material approvals of and licenses, permits, consents and franchises from federal, state, county, municipal or other governmental authorities having jurisdiction over the Project to acquire and operate the Project and to enter into, execute and perform its obligations under this Loan Agreement, the Land Use Restriction Agreement, the Tax Agreement and the Security Documents to which it is a party.

(d) The Borrower will own and operate the Project in accordance with all applicable federal, state and local laws, ordinances and regulations and all agreements and instruments to which it is a party.

(e) There are no actions, suits, proceedings or inquiries or investigations at law or in equity pending or, to the knowledge of the Borrower, overtly threatened in writing against the Borrower or the General Partner or any property of the Borrower or the General Partner in any court or before any federal, state, municipal or other governmental agency, which, if decided adversely to the Borrower or the General Partner, would have a material adverse effect upon the Borrower or the General Partner or upon the business or properties of the Borrower or the General Partner, upon their power, authority and right to enter into this Loan Agreement, the Land Use Restriction Agreement, the Tax Agreement and the Security Documents to which they are a party, or upon the acquisition and rehabilitation of the Project. Neither the Borrower nor the General Partner is in default with respect to any order of any court or governmental agency.

(f) The Borrower (i) is not in default in the payment of the principal of or interest on any indebtedness for borrowed money; and (ii) is not in default under any instrument or agreement under and subject to which any indebtedness for borrowed money has been issued. The General Partner (A) is not in default in the payment of the principal of or interest on any indebtedness for borrowed money; and (B) is not in material default under any material instrument or agreement under and subject to which any indebtedness for borrowed money has been issued.

(g) The Borrower has filed all federal and state income tax returns which, to its knowledge, are required to be filed and has paid all taxes shown on said returns and all assessments and governmental charges received by it to the extent that they have become due.

(h) The Borrower has reviewed the provisions of the Indenture. By the execution and delivery of this Loan Agreement, the Borrower approves the Indenture and agrees to be bound by all provisions thereof applicable to the Borrower.

(i) To the best of the Borrower's knowledge, no director of the Issuer or any officer of the Issuer has any significant or conflicting interest, financial, employment or otherwise, in the Borrower or the Project or in the transactions contemplated hereby.

(j) The Borrower will not discriminate on the basis of race, creed, color, sex, age, handicap, 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.

(k) The Borrower will not:

- (1) except pursuant to the provisions of this Loan Agreement and Permitted Encumbrances (as defined in the Continuing Covenants Agreement) except upon a sale, transfer or conveyance of the Project in accordance with the terms of this Loan Agreement, the Partnership Agreement and the Land Use Restriction Agreement, permit the sale, transfer, conveyance or encumbrance of the Project or any part thereof during the effective term of this Loan Agreement and the Land Use Restriction Agreement, provided this covenant shall not apply to any encumbrance, conveyance or transfer in connection with a sale, transfer or other conveyance of the Project that complies with the requirements of this Loan Agreement and the Land Use Restriction Agreement;
- (2) except in connection with the renovation of the Project, demolish any part of the Project or substantially remove from the Project any real or personal property except for the replacement of personal property with personal property performing substantially the same function; or
- (3) permit the use of any dwelling unit for any purpose other than rental housing during the term of this Loan Agreement and the Land Use Restriction Agreement (except for any unit used as a management office or any other use directly related to the operation of the Project and as may be authorized under Section 142(d) of the Code and the Land Use Restriction Agreement).

(l) The Borrower has not 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 Loan Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

(m) The Borrower will comply with Section 42 of the Code, and all relevant Missouri statutes, and all rules and regulations promulgated thereunder, all federal, state and local labor laws, including any prevailing wage requirements and all requirements of the Missouri Housing Development Commission as set forth in its Qualified Allocation Plan and its Workforce Eligibility Policy.

(n) The covenants, representations and warranties of the Borrower in the Land Use Restriction Agreement are true and correct and are incorporated herein by reference and made a part of this Loan Agreement.

(o) The Borrower acknowledges that the Issuer has made no independent investigation of the matters with respect to which the Borrower has made the representations and warranties set forth in this Section.

**Section 2.03. Tax Exemption; Tax Agreement and Land Use Restriction Agreement.**  
The Borrower hereby covenants, represents and agrees as follows:

- (a) not to take any action or omit to take any action with respect to this Loan Agreement or the Project that would adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes;
- (b) to the extent it is able, to take such action or actions, including amendment of the Land Use Restriction Agreement or the Tax Agreement, as may be necessary in the Opinion of Bond Counsel, to preserve or perfect the excludability of interest on the Bonds from gross income for federal income tax purposes;
- (c) to file of record such documents and take such other steps as are necessary in order to assure that the requirements and restrictions of the Land Use Restriction Agreement will be binding upon all owners of the Project, including, but not limited to, the recordation of the Land Use Restriction Agreement in the real property records of the Recorder of Deeds of Boone County, Missouri;
- (d) to include the requirements and restrictions contained in the Land Use Restriction Agreement in any deed or other documents transferring any interest in the Project to another person to the end that such transferee has notice of, and is bound by such restrictions, and to obtain the agreement from any transferee so to abide; and
- (e) to provide to the Issuer and the Trustee written notice of any action (other than actions in its ordinary course of business) which impacts the Issuer's rights under this Loan Agreement, the Tax Agreement or the Land Use Restriction Agreement.

### **ARTICLE III ISSUANCE OF BONDS; FINANCING OF PROJECT**

**Section 3.01. Issuance of Bonds.** The Issuer has contracted for the sale of the Bonds authorized by the Indenture, and the Borrower has approved and does approve the terms of the Bonds. Upon execution of this Loan Agreement, the Land Use Restriction Agreement, the Security Documents, the Tax Agreement and the Indenture, or as soon thereafter as practicable, the Issuer will execute the Bonds and cause them to be authenticated by the Trustee and delivered to the Original Purchaser or to its order upon payment of the purchase price of the Bonds and filing with the Trustee of the Opinion of Bond Counsel as to the legality of the Bonds and the furnishing of all other documents required to be furnished before such delivery. The proceeds of the Bonds will be deposited with the Trustee and disbursed in accordance with Article IV of the Indenture.

**Section 3.02. Possession and Use of the Project.** The Issuer acknowledges that the Borrower is entitled to sole and exclusive possession of the Project, subject to the Security Documents to which the Borrower is a party.

**Section 3.03. Use of Bond Proceeds; Completion of the Project.**

(a) The proceeds of the Bonds loaned to the Borrower shall be deposited with the Trustee and shall be administered, disbursed and applied for the purposes and in the manner as provided in the Indenture and in this Loan Agreement and the Security Documents. The Trustee shall not make any disbursement from the Project Fund in any amount in the event that the Majority Owner notifies the Trustee in writing that the Majority Owner has not received the items required to be delivered to the Trustee and/or Majority Owner in accordance with **Sections 5.06 and 5.07**.

(b) The Borrower shall cause the acquisition and rehabilitation of the Project to be diligently and continuously pursued and to be completed with reasonable dispatch, and to provide (from its own funds if required) all moneys necessary to complete the acquisition and rehabilitation of the Project substantially in accordance with the plans and specifications for the Project.

(c) The Borrower agrees to comply with all of the provisions set forth in the Indenture with respect to the completion of the Project and to perform all obligations of the Borrower set out in the Indenture.

(d) The Borrower will cause the [\_\_first capital contribution\_\_] to be deposited with the Disbursing Agent on the Issue Date, to be disbursed in accordance with the Disbursing Agreement. If any subsequent [\_\_Capital Contribution\_\_] is not received in the full amount due in accordance with the Partnership Agreement, the Borrower will give prompt written notice of the amount of any deficiency to the Trustee and the Original Purchaser. Capitalized terms used in this subsection (**d**) but not defined in the Indenture or this Loan Agreement shall have the meanings set forth in the Partnership Agreement.

(e) The Borrower, within 30 days after the Completion Date, shall deliver to the Issuer, the Trustee and the Majority Owner a certificate (the "**Completion Certificate**") signed by the Authorized Borrower Representative --

- (i) stating that the Project has been completed substantially in accordance with the plans and specifications for the Project, as then amended, and the date of completion of the Project; and
- (ii) stating that such person has made such investigation of such sources of information as are deemed by such person to be necessary, including pertinent records of the Borrower, and is of the opinion that the Costs of the Project have been fully paid for and no claim or claims exist against the Issuer or the Borrower or against the Project out of which a lien based on furnishing labor or material exists or might ripen (except any claim which has been bonded over by the Contractor to the satisfaction of Majority Owner); provided, however, there may be excepted from the foregoing statement any claim or claims out of which a lien exists or might

ripen in the event that the Borrower intends to contest such claim or claims in accordance with the Loan Agreement, in which event such claim or claims shall be described; provided, further, that it shall be stated that moneys are on deposit in the Project Fund or are available through enumerated bank loans (including letters of credit) or other sources sufficient, in the sole discretion of Majority Owner, to make payment of the full amount which might in any event be payable in order to satisfy such claim or claims; and

- (iii) attaching a copy of the temporary certificate of occupancy issued with respect to the Project.

(f) After payment by the Trustee of all Requisitions tendered to the Trustee under the provisions of Section 403 of the Indenture and after receipt by the Trustee of the Completion Certificate, the balance of moneys in the Project Fund shall be transferred and applied as provided in Section 403 of the Indenture.

**Section 3.04. Project Documents.** The Borrower, at its own cost and expense, shall maintain in its files and available for inspection by the Trustee, the Majority Owner and their attorneys and agents, upon request and at reasonable times, copies of the following documents at such time as such documents become available and in any event by the time work is commenced on the portion of the Project to which they relate:

- (a) ***Plans and Specifications.*** All available preliminary and final as-built plans and specifications for the Project.
- (b) ***Construction Contracts.*** All architect's and general contractor's contracts for the Project and all prime subcontractor's contracts and purchase orders for any equipment included in the Project.
- (c) ***Licenses and Permits.*** All required licenses and permits to acquire, construct and occupy the Project and to operate the existing facilities of the Borrower.
- (d) ***Title Insurance.*** Standard ALTA mortgage loan policies of title insurance, or commitments therefor, showing the Trustee as insured party, with respect to the Premises and the Borrower's interest in the Project, together with an endorsement equivalent to ALTA 9, in an aggregate amount not less than the principal amount of the Bonds, which policy or policies shall insure that the Borrower holds good and marketable title to the Project and the Trustee has a first lien on the Premises pursuant to the Deed of Trust, subject only to Permitted Encumbrances described in the Continuing Covenants Agreement.
- (e) ***Environmental Audit.*** A phase I environmental audit of the Project with a reliance letter in favor of the Trustee.
- (f) ***Survey.*** A survey of the land constituting a part of the Project and any improvements thereon, certified to the Trustee and the Original Purchaser.

- (g) **Appraisal.** An appraisal of the market value of the Project, addressed to the Trustee and the Original Purchaser.
- (h) **Insurance.** Certificates of insurance demonstrating compliance with the provisions of **Section 5.05.**

**Section 3.05. Enforcement of Contracts and Surety Bonds.** In the event of a material default of any contractor or subcontractor under any construction contract or any other contract made in connection with the Project, or in the event of a material breach of warranty with respect to any materials, workmanship or performance, the Borrower will promptly proceed, either separately or in conjunction with others, to pursue diligently the remedies of the Borrower against the contractor or subcontractor in default and against any surety on a bond securing the performance of such contract. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery and after reimbursement to the Borrower of any amounts theretofore paid by the Borrower and not previously reimbursed to the Borrower for correcting or remedying of the default which gave rise to the proceedings against the contractor, subcontractor or surety, shall be paid into the Project Fund if received before the Completion Date, and otherwise shall be paid to the Borrower.

**Section 3.06. No Warranty by Issuer.** The Borrower recognizes that, because the components of the Project have been or will be designated and selected by the Borrower, THE ISSUER HAS NOT MADE AN INSPECTION OF THE PROJECT OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY THEREOF, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, 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. THE PROVISIONS OF THIS SECTION 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 OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT.

**Section 3.07. Payment of Costs of Issuance.** The Borrower agrees that it will provide, or cause to be provided, any and all funds required for the prompt and full payment of all Costs of Issuance, as set forth in the closing settlement statement executed by the Borrower and the Disbursing Agent, together with any other Costs of Issuance not set forth in the closing settlement statement.

**Section 3.08. Termination of Existing Liens or Security Interests.** Concurrently with the execution of this Loan Agreement, the Borrower shall make provisions for termination of any and all existing liens and security interests, including without limitation, any debts or other obligations secured thereby, with respect to the Project (including, without limitation, any and all agreements executed in



connection with prior financings), except for Permitted Encumbrances (as defined in the Continuing Covenants Agreement).

#### **ARTICLE IV THE LOANS, BASIC PAYMENTS AND ADDITIONAL CHARGES**

**Section 4.01. The Loans.** The Issuer agrees, upon the terms and conditions herein specified, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds, excluding accrued interest, if any, by causing the proceeds to be deposited with the Trustee for disposition as provided in this Loan Agreement and the Indenture. The amount of the Loan from the Series A Bonds is the maximum principal amount of \$[    PRINCIPAL AMOUNT A    ] to be funded in installments with proceeds of the purchase price installments of the Series A Bonds. The amount of the Loan from the Series B Bonds is the maximum principal amount of \$[    PRINCIPAL AMOUNT B    ] to be funded in installments with the proceeds of the purchase price installments of the Series B Bonds. The amount of the Loan from the proceeds of the Bonds will be equal to the Disbursed Amount of the Bonds as reflected in the books and records of the Trustee, which will be conclusive and binding upon the Issuer and the Borrower absent manifest error. The obligation of the Issuer to make the Loans is subject solely to the Issuer's receipt of the proceeds of the Bonds pursuant to the Indenture and will be fully discharged upon the deposit of the proceeds of the Bonds with the Trustee. The Loan is evidenced by the Notes.

#### **Section 4.02. Basic Payments.**

(a) Subject to the Borrower's right of prepayment granted in **Section 8.02**, the Borrower agrees to repay the Loans by making Basic Payments in the following priority order, in immediately available funds at the Administrative Office of the Trustee:

- (i) on each Interest Payment Date, an amount equal to the amount of interest becoming due on the Bonds on the Interest Payment Date; and
- (ii) on each Interest Payment Date, an amount equal to the principal due on the Bonds by maturity, mandatory redemption or otherwise.

The amount of each Basic Payment will be reduced by the amount of the credit for earnings on amounts in the Bond Fund as set forth in a written notice from the Trustee to the Borrower in accordance with Section 413 of the Indenture and amounts transferred from the Project Fund under Section 403 of the Indenture and applied to the mandatory redemption of Bonds pursuant to Section 301(g) of the Indenture.

(b) If any moneys remain in the Bond Fund after the payment of the principal of and interest on the Bonds on an Interest Payment Date, the surplus, to the extent not applied to make up any deficiency in any Basic Payments or Additional Charges, shall be applied to the Basic Payment next due under this Section.

(c) The Trustee will deposit the Basic Payments in the Bond Fund. If the Borrower fails to make any of the payments required in this Section, the item so in default shall continue as an obligation of the Borrower from the date originally due until the amount in default shall have been fully paid by the

Borrower, and the Borrower agrees to pay the same with interest thereon (including to the extent permitted by law, interest on overdue installments of interest) at the Default Rate.

(d) Any sums set aside in an account of the Bond Fund to prepay Bonds will constitute a credit against Basic Payments required to be made under subsection (a) with respect to the Bonds designated to be prepaid, provided notice of redemption of such Bonds shall not have been given by the Trustee.

**Section 4.03. Additional Charges.** The Borrower agrees to pay, when due, in immediately available funds at the Administrative Office of the Trustee, all costs and expenses incurred in connection with the Bonds (the "**Additional Charges**"), including without limitation, each and all of the following:

- (a) to the Issuer, upon demand, its regular fees and charges, including any annual administrative fee of the Issuer, and all reasonable expenses, including attorneys fees, incurred by the Issuer in relation to the Bonds and the transactions contemplated by this Loan Agreement, the Bond Indenture and any of the Loan Documents.
- (b) to the Trustee, on demand, for deposit in the Rebate Fund the amount of arbitrage rebate to the extent of any deficiency in the Rebate Fund;
- (c) to the Trustee, on demand, the Ordinary Trustee Fees and the Trustee's Extraordinary Fees and Expenses and other charges and expenses of the Trustee and the Rebate Analyst, for deposit to the Expense Fund;
- (d) to the Trustee, for deposit to the Expense Fund, on the 15th day of each month,
  - (i) all reasonable expenses (including legal fees) and expenses directly incurred by the Issuer to exercise its rights under this Loan Agreement following an Event of Default;
  - (ii) all other reasonable expenses incurred by the Issuer in relation to the Project which are not otherwise required to be paid by the Borrower under the terms of this Loan Agreement, provided that an Authorized Borrower Representative has given prior written approval to the incurring of the other expenses; and
  - (iii) all indemnity payments required to be made under **Section 7.03**;
- (e) to the Trustee, interest on all payments not made to the Trustee or the Issuer, respectively, under this **Section 4.03** when due, at the Default Rate; and
- (f) if the Majority Owner has directed the establishment of the Insurance and Taxes Escrow Account, to the Trustee monthly a *pro rata* portion of the insurance premiums and property taxes next due with respect to the Project.

**Section 4.04. Borrower's Obligations Unconditional.** Subject to **Section 9.13**, all Basic Payments and Additional Charges and all other payments required of the Borrower under this Loan Agreement shall be paid without notice or demand (except as provided in **Section 4.03**) and without setoff, counterclaim, or defense for any reason and without abatement or deduction or defense (except for a defense based on prepayment pursuant to **Section 8.02**). The Borrower will not suspend or discontinue any such payments, fail to perform or observe any of its other agreements in this Loan Agreement, or, except as expressly permitted in **Section 8.04**, terminate this Loan Agreement for any cause, including but not limited

to any acts or circumstances that may constitute failure of consideration, destruction or damage to the Project or the Borrower's business, the taking of the Project or the Borrower's business by condemnation or otherwise, the lawful prohibition of the Borrower's use of the Project or the Borrower's business, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Loan Agreement, the lack of right, power or authority of the Issuer to enter into this Loan Agreement, eviction by paramount title, commercial frustration of purpose, bankruptcy or insolvency of the Issuer, the Property Manager or the Trustee, change in the tax or other laws or administrative rulings or actions of the United States of America or of the State or any political subdivision thereof, or 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 Loan Agreement, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Basic Payments, the Additional Charges and other amounts payable by the Borrower shall be paid in full when due without any delay or diminution whatever.

**Section 4.05. Borrower's Remedies.** Nothing contained in this Article will be construed to release the Issuer from the performance of any of its agreements in this Loan Agreement. If the Issuer fails to perform any agreements, the Borrower may institute any action against the Issuer as the Borrower may deem necessary to compel such performance so long as such action shall not violate the Borrower's agreements in **Section 4.04** or diminish or delay the amounts required to be paid by the Borrower pursuant to **Sections 4.02** and **4.03**. The Borrower, however, acknowledges and agrees that any pecuniary obligation of the Issuer created by or arising out of this Loan Agreement are payable solely out of the proceeds derived from: this Loan Agreement; the sale of the Bonds; any insurance and condemnation awards; or amounts received upon the sale or other disposition of the Project upon a default by the Borrower or otherwise.

**Section 4.06. Assignment of Issuer's Rights.** As security for the payment of the Bonds, the Issuer will pledge the amounts payable hereunder and assign, without recourse or liability, to the Trustee, the Issuer's rights under this Loan Agreement and the Notes, including the right to receive payments hereunder (except the right to receive payments, if any, under **Sections 4.03(a), (d) and (e), 7.03** and **9.05** and under the Environmental Indemnity, collectively, the "**Unassigned Issuer's Rights**") and hereby directs the Borrower to make said payments directly to or upon the order of the Trustee or as otherwise provided herein. The Borrower assents to such assignment and will make payments under this Loan Agreement directly to or upon the order of the Trustee without defense or setoff by reason of any dispute between the Borrower and the Trustee or the Issuer.

**Section 4.07. Deposit of Gross Revenues Upon Event of Default.**

(a) During the existence of a Loan Agreement Payment Default and upon the Borrower's and the Trustee's receipt of the written direction from the Majority Owner that the provisions of this Section and Sections 408 and 409 of the Indenture are to be implemented, the Borrower or the Property Manager, as applicable, will deposit all Gross Revenues immediately upon receipt into the Revenue Fund. The account must be insured by the Federal Deposit Insurance Corporation up to applicable limits.

(b) During the existence of an Event of Default and upon the receipt by the Borrower of the written direction from the Majority Owner that the provisions of this Section and Sections 408 and 409 of the Indenture are to be implemented, the Borrower shall cause the Gross Revenues to be transferred to the Trustee, by electronic transfer in immediately available funds, for deposit in the Revenue Fund, on the tenth day of each month.

(c) Concurrently with the transfer of Gross Revenues to the Trustee for deposit into the Revenue Fund pursuant to this Section, on the 15th day of each month the Borrower will submit to the Trustee a requisition (in such form as may be required by the Majority Owner) for 100% of the costs of taxes and insurance and Borrower will submit to the Trustee a requisition (in such form as may be required by the Majority Owner) for 100% or, if necessary, up to 110% of the amount set forth in the Annual Budget as other Operating Expenses. If such requisition is approved in writing by the Majority Owner, the Trustee will remit this amount to the Borrower on the 20th day of each month from the Revenue Fund (or the next business day thereafter). On or before the 15th day of each calendar month, commencing with the 15th day of the month following the implementation of this Section, the Borrower will file with the Trustee a written statement setting forth (i) the total amount of Operating Expenses requisitioned by the Borrower during the previous calendar month and (ii) the difference in total amount between 100% of the Annual Budget for Operating Expenses in the preceding calendar month and 110% of such amount requisitioned which has not been used by the Borrower for Operating Expenses during such month. The Borrower covenants that any Gross Revenues requisitioned pursuant to this paragraph will be spent only for Operating Expenses and any amount, until so spent, will be invested only in Qualified Investments. To the extent there are Annual Budget overruns, the Trustee shall disburse moneys to the Borrower for the payment of same following receipt of a requisition (in such form as may be required by the Majority Owner) therefor, in an amount not to exceed \$25,000 annually (or any higher amount approved in writing by the Majority Owner) if such requisition is approved in writing by the Majority Owner. The Trustee may rely conclusively on any requisition or written statement delivered to it pursuant to this paragraph and shall not be required to make any independent investigation in connection therewith. Prior to making the disbursement requested under this Section, the Trustee may disburse moneys from the Revenue Fund for the payment of Additional Charges owed to it as Trustee without the express authorization from the Issuer, the Borrower or the Majority Owner.

(d) The Trustee will deposit into the Revenue Fund any amounts deposited with the Trustee by the Borrower or the Property Manager under this Section and shall invest such moneys in accordance with the Indenture.

(e) The Borrower hereby grants to the Trustee a security interest in all accounts established pursuant to this Section. The Trustee shall cause to be filed continuation statements to the financing statements under the Uniform Commercial Code of the State, with the appropriate filing office of the State, in such manner as may be required by the Uniform Commercial Code of the State provided the Borrower timely delivers the Trustee a copy of such financing statement. The Borrower shall be responsible for the reasonable fees and costs, including fees and costs of counsel or other experts, incurred by the Trustee in the preparation and filing of all continuation statements. The Borrower shall execute and cause to be sent, to each bank in which Gross Revenues are deposited, a notice of this security interest granted to the Trustee and shall execute and deliver such other documents (including, but not limited to, financing statements and

continuation statements) as may be necessary, or reasonably requested by the Trustee or the Majority Owner, in order to perfect or maintain as perfected such security interest or give public notice thereof.

## ARTICLE V PROJECT COVENANTS

### **Section 5.01. Title, Operation and Maintenance.**

(a) The Issuer and the Trustee are not under any obligation to operate, maintain or repair any portion of the Project. The Borrower agrees, at its own expense, or to cause the Property Manager, to (i) keep the Project in safe repair and in such operating condition as is needed for its operations; (ii) make all necessary repairs and replacements to the Project (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); (iii) operate the Project in a sound and economic manner in accordance with usual business practice; and (iv) subject to subsection (e) below, operate the Project in compliance with all applicable zoning laws and laws regulating construction, occupancy or maintenance of property of a character included in the Project.

(b) The Borrower will pay all expenses of the operation and maintenance of the Project, including the provision of adequate insurance thereon and insurance against all liability for injury to persons or property arising from the operation thereof in accordance with **Section 5.05**, and all taxes and special assessments levied upon or with respect to the Project that will be the responsibility of the Borrower, all in conformance with and subject to the provisions, including any good faith contest provisions, of the Security Documents.

(c) If the Borrower shall fail to maintain, or cause to be maintained, the full insurance coverage required by this Loan Agreement or shall fail to keep the Project in as reasonably safe condition as its operating conditions will permit, or shall fail to keep the Project in good repair and good operating condition and make all necessary repairs and replacements to the Project, the Issuer or the Trustee, with reasonable prior written notice to the Borrower, may (but shall be under no obligation to) contract for the required policies of insurance and pay the premiums on the same or, after 30 days prior written notice to the Borrower, make any required repairs, renewals and replacements; and the Borrower agrees to reimburse the Issuer or the Trustee to the extent of the amounts so advanced, with interest thereon at the Default Rate from the date such amount was advanced until paid by the Borrower.

(d) The Borrower will obtain or cause to be obtained all necessary permits and approvals for the operation and maintenance of the Project and shall comply with all lawful requirements of any governmental body regarding the use or condition of the Project, whether existing or later enacted or foreseen or unforeseen or whether involving any change in governmental policy or requiring structural or other changes to part or all of the Project and irrespective of the cost of making the same.

(e) The Borrower may in good faith contest the validity or the applicability of any law, ordinance, rule or regulation if failure to comply with the requirement does not materially and adversely affect the lien of each Security Document or subject the Project to loss or forfeiture.

(f) The Borrower agrees to use reasonable efforts not to permit or suffer others to commit a nuisance in or about the Project or themselves commit a nuisance in connection with their use or occupancy of the Project.

**Section 5.02. Sale or Lease of Project.**

(a) The Borrower will not lease the Project (except pursuant to leases to residential tenants, leases of the commercial space and leases, licenses and easements to service providers (*e.g.* laundry, cable and similar services) in the normal course of business), in whole or in part, nor sell, mortgage, assign or otherwise encumber its interests in the Project, in whole or in part, without the prior written consent of the Majority Owner. No lease, sale, assignment or encumbrance will be permitted if the effect thereof (i) would be to adversely affect the excludability of the interest on the Bonds from gross income for federal income tax purposes, or (ii) would release the Borrower of any of its obligations under this Loan Agreement. Before entering into any lease (except leases to residential tenants, leases of the commercial space and leases, licenses and easements to service providers (*e.g.* laundry, cable and similar services) in the normal course of business), sale, assignment or encumbrance of the Project, the Borrower shall cause to be delivered to the Trustee an Opinion of Bond Counsel, addressed to the Trustee, stating in effect that such lease, sale, assignment or encumbrance will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes. The Borrower shall give at least 30 days' notice to the Trustee and the Issuer of any such lease, sale, assignment or encumbrance, unless the Trustee and the Issuer waive the 30-day notice in writing.

**Section 5.03. Advances.** The Borrower acknowledges and agrees that under this Loan Agreement, the Indenture and the Security Documents, the Trustee or the Issuer may, but shall be under no obligation to, take certain action and make certain advances relating to the Premises from certain funds held under the Indenture or otherwise, or to certain other matters as expressly provided therein, and the Borrower shall be obligated to repay all such advances on demand of the Issuer or the Trustee, respectively, with interest at the Default Rate from the date such advance was made.

**Section 5.04. Alterations to Project and Removal of Project Equipment.** The Borrower may, subject to the Security Documents, remodel or make any additions, modifications, alterations, improvements or changes (collectively referred to as "**alterations**") in or to the Project and remove any equipment therefrom in the ordinary course of business of the ownership and operation of a multifamily residential facility. However, no alteration or removal will be made if to do so would impair the character of the Project as a qualified residential rental project participating in programs established in Section 142(d) of the Code.

**Section 5.05. Insurance.** The Borrower shall procure and continuously maintain, or cause to be procured or maintained, policies of insurance with respect to the Project insuring against such risks and in such amounts as are required by Section [ 4.1 ] of the Deed of Trust.

**Section 5.06. Annual Budget; Operating Covenants.**

(a) The Borrower shall deliver or cause the Property Manager to deliver to the Trustee, the Majority Owner and the Issuer (at its written request), not later than the 30th day preceding each Fiscal

Year, commencing with the Fiscal Year beginning January 1, 2025, its proposed budget for the Fiscal Year, which shall include all proposed Operating Expenses, capital expenditures and Basic Payments with respect to the Project, together with rents and other income projected to be produced by the Project. The Annual Budget may be amended from time to time by the Borrower, with the written consent of the Property Manager, or by the Property Manager, with the written consent of the Borrower. A copy of the Annual Budget or any amendment thereto shall be promptly provided to the Trustee, the Issuer (at its written request) and the Majority Owner following adoption.

(b) With the consent of the Majority Owner, the Borrower or the Investor Limited Partner may amend or terminate the Management Agreement or any successor agreement or agreements and designate a successor. The Trustee and the Majority Owner shall have the right to terminate for cause the Management Agreement or any successor agreement or agreements. Any successor Property Manager must be of equal national reputation and ability as its predecessor and must be approved by the Majority Owner. The Borrower shall provide written notice of any amendment or termination and, in connection with a termination, the identity of the proposed successor Property Manager to the Trustee and the Majority Owner. The Borrower shall provide notice to the Trustee of any significant change in the Property Manager or any successor Property Manager's financial status and the Trustee shall give prompt notice of the same to the Bondholders. The Management Agreement and any successor management agreement and the fees thereunder shall be subordinate to the Deed of Trust and the rights of the Trustee under the Deed of Trust and the Loan Agreement. The Management Agreement and any successor management agreement shall provide that the Property Manager may not resign without the prior approval of the Majority Owner and that the Property Manager may be removed by the Trustee, at the written direction of the Majority Owner, upon the occurrence of an Event of Default.

#### **Section 5.07. Financial Statements; Other Information.**

(a) The Borrower will furnish each year to the Trustee, the Issuer (at its written request) and the Majority Owner a copy of the annual audit and any other audit of the Project, prepared by a certified public accountant or firm of certified public accountants, showing the annual income and expenses relating to the Project and a balance sheet for the Borrower, commencing with the Fiscal Year beginning January 1, 2025. The audit shall be certified by the Authorized Borrower Representative as being true, correct and complete. Each audit shall be due on or before 120 days following the close of each Fiscal Year. The Trustee has no duty to review or analyze the financial statements and will hold the financial statements solely as a repository for the benefit of the Bondholders. The Trustee will not be deemed to have notice of any information contained in the financial statements or event of default that may be disclosed in the financial statements in any manner.

(b) At the time the Borrower causes to be furnished the annual financial statements required by subsection (a), the Borrower will furnish to the Trustee and Majority Owner a certificate, executed by an Authorized Borrower Representative declaring that during the same Fiscal Year covered by the statements and continuing to the date of execution of the certificate, the Borrower has fully complied with the terms and conditions of this Loan Agreement, the Land Use Restriction Agreement, the Tax Agreement and the Security Documents to which it is a party.

(c) The Borrower will furnish to the Majority Owner and the Issuer (at its written request), within 30 days after the end of each quarter of each fiscal year, unaudited financial statements of the Project for the quarter, showing the quarterly income and expenses relating to the Project and a balance sheet for the Borrower, together with quarterly summaries of occupancy that include the current quarter and the trailing twelve-months with a rent roll and schedule of move-ins and move-outs. The quarterly statements shall be certified by the Authorized Borrower Representative as being true, correct and complete, subject to year-end adjustments. Quarterly financial statements are due on or before 30 days following the close of each fiscal quarter of each Fiscal Year.

(d) Until the third anniversary of Rental Achievement (as defined in the Partnership Agreement), the Borrower will furnish each month to the Majority Owner and the Issuer (at its written request) monthly unaudited operating statements, including a construction budget summary, certified by the Authorized Borrower Representative as being true, correct and complete, subject to year-end adjustments, and monthly summaries of occupancy that include the current month and the trailing twelve-months with a schedule of move-ins and move-outs. Each monthly operating statement and occupancy summary is due within 30 days after the end of the applicable calendar month.

(e) The Borrower will furnish to the Trustee and the Majority Owner at the written request of the Majority Owner, a copy of any asset management report prepared by or on behalf of the Investor Limited Partner and which has been provided in due course to the Borrower.

## ARTICLE VI DAMAGE, DESTRUCTION AND CONDEMNATION

**Section 6.01. Damage and Destruction.** If the Project is damaged or destroyed by fire or other casualty, then unless the Borrower elects to prepay the Loan in accordance with Section 507(b)(ii) of the Indenture, the Borrower shall restore the Project and will not take any other action, unless such action is required or permitted by the Security Documents, the Indenture or this Loan Agreement.

**Section 6.02. Condemnation.** If there are any Outstanding Bonds when the Project or any part thereof is taken by condemnation, then unless the Borrower elects to prepay the Loan in accordance with Section 507(b)(ii) of the Indenture, the Borrower shall restore the Project and will not take any other action, unless such action is required or permitted by the Security Documents, the Indenture or this Loan Agreement.

**Section 6.03. Parties to Give Notice.** In the case of material damage to or destruction of all or any part of the Project, the Borrower shall give prompt notice thereof in the manner provided in **Section 10.02**. In the case of a taking or proposed taking of all or any part of the Project by condemnation, the party hereto upon which notice of such taking or proposed taking is served shall give prompt notice in the manner provided in **Section 10.02**. Any such notice shall describe generally the nature and extent of such damage, destruction, taking or proposed taking.



**ARTICLE VII  
BORROWER'S COVENANTS**

**Section 7.01. Covenant for the Benefit of the Trustee and Bondowners.** The Borrower recognizes the authority of the Issuer to assign its interest in and pledge moneys receivable under this Loan Agreement (other than the Unassigned Issuer's Rights) to the Trustee as security for the payment of the principal of and interest and redemption premium, if any, on the Bonds, and the payment of all fees and expenses of the Trustee. The Borrower agrees to be bound by, and join with the Issuer in the grant of, a security interest to the Trustee in any right and interest the Borrower has in sums held in the Funds described in Article IV of the Indenture, pursuant to the terms and conditions thereof, to secure payment of the Bonds and payments to be made under this Loan Agreement. Each of the terms and provisions of this Loan Agreement is a covenant for the use and benefit of the Trustee and the Bondowners, so long as any Bonds remain Outstanding, but upon payment in full of the Bonds in accordance with Article IX of the Indenture, all obligations to Bondowners and of all fees, expenses and charges of the Trustee and Paying Agent, all references in this Loan Agreement to the Bonds, the owners thereof and the Trustee shall be ineffective, and neither the Trustee nor any Bondowners shall thereafter have any rights hereunder, save and except those that shall have previously vested or that arise from provisions of this Loan Agreement which survive termination of this Loan Agreement.

**Section 7.02. Inspection and Access.**

(a) The Borrower agrees that, at all reasonable times upon the Borrower's receipt of notice, the Issuer, the Trustee, the Majority Owner, the Property Manager and their duly authorized agents shall have the right to examine and inspect, and for that purpose to enter upon, the Project, and shall also have such right of access thereto as may be reasonably necessary to cause the Project to be properly maintained in accordance with **Article V** and in accordance with the applicable provisions of the Security Documents.

(b) The Borrower covenants to execute, acknowledge and deliver all such further documents, and do all such other acts and things as may be necessary in order to grant to the Issuer, the Trustee, the Majority Owner and the Property Manager the rights of access and entry described herein and agrees that such rights of access and entry shall not be terminated, curtailed or otherwise limited by any assignment, lease or other transfer of the Project by the Borrower to any other person.

**Section 7.03. Indemnity by Borrower.**

(a) Subject to subsection (e), the Borrower will, to the fullest extent permitted by law, protect, indemnify and hold the Issuer, the Trustee and the Majority Owner, and their officers, agents, and employees and any person who controls the Issuer, the Trustee or the Majority Owner (the "**Indemnified Parties**") within the meaning of the Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses of the Issuer, the Trustee and the Majority Owner), taxes, causes of action, suits, claims, demands and judgments of any nature arising from:

- (i) any injury to or death of any person or damage to property in or upon the Project or growing out of or connected with the use, non-use, condition or occupancy of the Project or any part thereof, including any and all acts or operations relating to

the construction or installation of property or improvements or any other act, or failure to act, by the Borrower or its agents in connection with its ownership and management of the Project. The foregoing indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Borrower, customers, suppliers or affiliated organizations under any Workers' Compensation Acts, Disability Benefit Acts or other employee benefit acts;

- (ii) violation of any contract, agreement or restriction relating to the Project which shall have existed on the Issue Date and has been disclosed to the Borrower, or which have been approved by the Borrower;
- (iii) violation of any law, ordinance, court order or regulation affecting the Project or a part thereof or the ownership, occupancy or use thereof; and
- (iv) subject to the provisions of **Section 9.13**, this Loan Agreement, the Bonds, the Indenture or the transactions contemplated thereby.

(b) The Borrower hereby agrees to indemnify and hold harmless the Trustee from and against any and all costs, claims, liabilities, losses or damages whatsoever (including reasonable costs and fees of counsel, auditors or other experts), asserted or arising out of or in connection with the acceptance or administration of the trusts established pursuant to the Indenture, except costs, claims, liabilities, losses or damages resulting from the negligence or willful misconduct of the Trustee.

(c) Promptly after receipt by the Issuer, the Trustee or the Majority Owner, or any other person indemnified hereunder, as the case may be, of notice of the commencement of any action with respect to which indemnity may be sought against the Borrower under this Section, such person will notify the Borrower in writing of the commencement thereof, and, subject to the provisions hereinafter stated, the Borrower shall assume the defense of such action (including the employment of counsel, who shall be counsel satisfactory to the Issuer, the Trustee, the Majority Owner or such other person as the case may be, and the payment of expenses). Insofar as such action shall relate to any alleged liability with respect to which indemnity may be sought against the Borrower, the Issuer or any such other Indemnified Person shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall not be at the expense of the Borrower unless the employment of such counsel has been specifically authorized by the Borrower. However, notwithstanding the foregoing, (i) if counsel for any Indemnified Party determines that (A) having common counsel to represent both the Borrower and the Indemnified Party would present a conflict of interest or (B) defenses are available to the Indemnified Party which are not available to the Borrower or (ii) if the Borrower fails to assume the defense of the action or proceeding in a timely manner, then the Indemnified Party may employ separate counsel to represent or defend it in any such action or proceeding and the Borrower will pay the reasonable fees and disbursements of such counsel.

(d) The Borrower shall not be liable to indemnify any Indemnified Party for any settlement of any such action effected without its consent, which consent shall not be unreasonably withheld.

(e) Notwithstanding anything else in this **Section 7.03** to the contrary, the Borrower shall have no liability to indemnify (i) the Issuer against the Issuer's own willful misconduct, (ii) the Trustee against the Trustee's own negligence or willful misconduct or (iii) the Majority Owner against the Majority Owner's own negligence or willful misconduct.

(f) The provisions of this Section shall survive the payment and discharge of the Bonds and the resignation or removal of the Trustee.

**Section 7.04. Status of Borrower.** The Borrower will maintain its existence as a limited partnership organized under the laws of the State, will remain qualified to do business in the State, and will not wind up or otherwise dispose of all or substantially all of its assets.

**Section 7.05. No Additional Debt.** The Borrower will not incur, directly or indirectly, any indebtedness for borrowed money other than under this Loan Agreement and the Security Documents, and the documents evidencing the Subordinate Loans, any deferred development fees or any unsecured partner loans as permitted under the Partnership Agreement.

## **ARTICLE VIII BORROWER'S OPTIONS**

### **Section 8.01. Assignment and Transfer.**

(a) The Borrower may not assign its rights and obligations under this Loan Agreement or transfer its interest in the Project, except as specifically provided in this Loan Agreement, the Land Use Restriction Agreement and the Security Documents. Notwithstanding anything to the contrary herein or in the Indenture, the Land Use Restriction Agreement or any Security Document, the Borrower, with the consent of the Investor Limited Partner, may transfer ownership of the Project to a Chapter 353 "urban redevelopment corporation" in connection with the Borrower's receipt of real estate tax abatement on the Project provided that the ownership of the Project is promptly transferred back to the Borrower.

(b) Notwithstanding any provision herein or in the Indenture, the Land Use Restriction Agreement or in any Security Document to the contrary, the withdrawal, removal and/or replacement of the General Partner in accordance with the Partnership Agreement shall not require the consent of the Issuer, the Trustee or the Majority Owner if the substitute General Partner is the Investor Limited Partner or an Affiliate of the Investor Limited Partner, and shall not constitute a default under this Loan Agreement or accelerate the maturity of the Loans. Otherwise any withdrawal, removal and/or replacement of the General Partner requires the written consent of the Majority Owner, which consent the Majority Owner will not unreasonably withhold. Notwithstanding the foregoing, the substitute General Partner shall assume all of the rights and obligations of the removed General Partner under all of the Loan Documents in accordance with their terms. In the event of a transfer in accordance with this paragraph **(b)**, the Borrower will provide written notice to the Majority Owner and the Trustee that such transfer has occurred in accordance with the terms of the Partnership Agreement. In the event of any withdrawal, removal and/or replacement of the General Partner as contemplated in this section, and provided all requirements of this section are otherwise complied with, the partners of the Borrower may make all such amendments to the Partnership Agreement

as are necessary to effectuate such withdrawal, removal and/or replacement without the consent of the Issuer, Trustee and/or Majority Owner.

(c) Notwithstanding any provision herein or in the Indenture, the Land Use Restriction Agreement or any Security Document to the contrary, without notice to, or consent of, the Issuer, the Majority Owner or the Trustee, the (i) Investor Limited Partner may transfer all or any part of their interest in the Borrower to an Affiliate of the Investor Limited Partner and (ii) the Investor Limited Partner may transfer all or any part of its interest in the Borrower to an entity that is not an Affiliate with approval of the Majority Owner provided that such transfer has occurred in accordance with the terms of the Partnership Agreement. In the event of any transfer of all or part of the interest of the Investor Limited Partner as contemplated in this Section, and provided all requirements of this section are otherwise complied with, the partners of the Borrower may make all such amendments to the Partnership Agreement as are necessary to effectuate such transfer without the consent of the Issuer, Trustee and/or Majority Owner.

(d) The execution and delivery of a purchase option agreement or right of first refusal with respect to ownership interests in the Borrower shall not constitute a default under the Loan Documents or accelerate the maturity of the Loans thereunder. Any requisite consent of the Issuer to (i) the exercise of such purchase option agreement or right of first refusal by the optionee thereunder and (ii) the assumption without penalty of the Borrower's obligations under the Loans by the optionee thereunder, and the release of the Borrower from such obligations, shall not be unreasonably withheld. Subject to any such consent requirement and any other requirements for transfer, the exercise of the rights under such purchase option agreement or right of first refusal shall not constitute a default or accelerate the maturity of the Loans. The Borrower will provide written notice of the execution and delivery of the purchase option agreement or right of first refusal to the Trustee and the Majority Owner.

#### **Section 8.02. Prepayment.**

(a) Except during the continuance of an Event of Default, the Borrower may at any time transmit moneys directly to the Trustee for deposit in the Bond Fund, in addition to amounts, if any, otherwise required at that time pursuant to this Loan Agreement, and direct in writing that the moneys be utilized by the Trustee, as soon as practicable in accordance with the Indenture to:

- (i) redeem Bonds which are then or will be redeemable in accordance with their terms on a date specified by the Borrower; or
- (ii) provide for the discharge of Bonds prior to their maturity or redemption dates as provided in Article IX of the Indenture.

(b) The Borrower will prepay the Notes in whole or in part to the extent of the mandatory redemption of the Bonds under Article III of the Indenture and will at any time transmit directly to the Trustee, for deposit in the Bond Fund, funds in the required amount in addition to any other amounts required to be paid at that time pursuant to this Loan Agreement. The principal amount of the Notes to be prepaid upon casualty or condemnation will be determined in accordance with Section 507(b)(ii) of the Indenture.

**Section 8.03. Direction of Investments.** Except during the continuance of an Event of Default, the Borrower shall have the right, as provided in Section 413 of the Indenture, to direct the Trustee in writing to invest or reinvest all money held for the credit of Funds established by Article IV of the Indenture and held by the Trustee in Qualified Investments.

**Section 8.04. Termination of Loan Agreement; Required Prepayment.**

(a) Except during the continuance of an Event of Default, the Borrower shall have the option of terminating this Loan Agreement if (i) all Bonds shall have matured or will mature or be subject to redemption in accordance with their terms on the next succeeding Interest Payment Date and if provision is otherwise made for payment of all Bonds and all other amounts payable under the Indenture in such manner that the Indenture will be discharged under Article IX of the Indenture on or before the date of termination and (ii) the Borrower provides the Trustee with an Opinion of Bond Counsel to the effect that all such conditions have been satisfied.

(b) Notwithstanding the foregoing, the Borrower may not terminate this Loan Agreement unless and until the Trustee has on deposit moneys in any of the Funds established under Article IV of the Indenture and available for that purpose which are sufficient to discharge the Indenture in accordance with Article IX of the Indenture.

(c) On the termination date, at the request of the Borrower, a closing shall be held at the principal corporate trust office of the Trustee (which closing may be conducted by first-class mail or recognized overnight delivery service), or any other office mutually agreed upon. At the closing the Issuer and Trustee shall execute and deliver to the Borrower such release and other instruments as the Borrower reasonably determines is necessary (and which the Borrower provides to the Issuer and the Trustee) to terminate this Loan Agreement. All further obligations of the Borrower hereunder (except as specifically provided in **Sections 4.03** and **7.03**) shall thereupon terminate.

**ARTICLE IX  
EVENTS OF DEFAULT AND REMEDIES**

**Section 9.01. Events of Default.**

(a) Any one or more of the following events is an Event of Default under this Loan Agreement, and the term "Event of Default," wherever used herein, means any one of the following events, whatever the reason for such default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body:

- (i) if the Borrower shall fail to make a Basic Payment when due and such failure to pay the Basic Payment shall continue for five Business Days, after written notice has been given to the Borrower and the Investor Limited Partner by the Trustee;
- (ii) if the Borrower shall fail to pay any Additional Charge on or before the date such payment is due and such failure to pay the Additional Charge shall continue for 30 days after written notice has been given to the Borrower and the Investor

Limited Partner by the Issuer or the Trustee, as applicable, but in any event if the failure to pay has continued for 60 days after written notice has been given to the Borrower and the Investor Limited Partner;

- (iii) if the Borrower shall fail in any respect to observe and perform (or cause the observance or performance) or shall breach in any respect any other covenant, condition or agreement on its part under this Loan Agreement and shall fail to remedy (or fail to have remedied) such default or breach within 30 days after mailing of a notice to it, to the Investor Limited Partner by the Issuer or the Trustee (and if by the Issuer, with the approval of the Trustee), specifying such default or breach and requesting that it be remedied, or within such longer period of time (up to an additional 90 days) as may be necessary to remedy such default or breach provided that (1) the default or breach in question is able to be remedied; (2) the Borrower (or any partner of the Borrower) has commenced, or cause to be commenced, action during the 30 days necessary to remedy such default or breach; and (3) the Borrower (or any partner of the Borrower) is proceeding with reasonable diligence to remedy the default or breach;
- (iv) if an Event of Bankruptcy shall occur with respect to the Borrower or the General Partner, provided that no Event of Default with respect to an Event of Bankruptcy of the General Partner shall be deemed to have occurred if, within 90 days after such Event of Bankruptcy of the General Partner, the Investor Limited Partner of the Borrower replaces such General Partner;
- (v) if the Partnership Agreement shall expire or be annulled; or if the Borrower shall be dissolved or liquidated (other than when the conditions permitting such action contained in **Sections 7.04** and **8.01** or the applicable Security Document have occurred);
- (vi) if a default shall occur under the Indenture, the Land Use Restriction Agreement, the Tax Agreement or a Security Document and any applicable period for remedying such default has expired; or
- (vii) if any representation or warranty made by the Borrower in this Loan Agreement, or by the General Partner or representative of the Borrower in any document or certificate furnished to the Trustee, the Issuer or the Majority Owner, in connection herewith or therewith or pursuant hereto or thereto shall prove at any time to be, in any material adverse respect, incorrect or misleading as of the date made.

(b) The Trustee shall also give written notice to the Borrower, with a copy to the Investor Limited Partner and the Majority Owner, promptly (and in any event within five Business Days) after the Trustee has actual knowledge of any act or failure to act which will, with the passage of time or otherwise, constitute an Event of Default under this Section. The Issuer, the Trustee and the Majority Owner agree that any cure of an Event of Default, or of any act or failure to act that will, with the passage of time or otherwise, constitute an Event of Default, made or tendered by one or more of the Borrower's partners,

or their respective Affiliates, shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower. Nothing herein shall be construed to create an obligation on the part of the Investor Limited Partner of the Borrower to cure such defaults.

**Section 9.02. Remedies.**

(a) Whenever any Event of Default shall have occurred and be continuing, and the Trustee shall have accelerated the Bonds, as appropriate, pursuant to Section 602 of the Indenture, the Trustee shall declare all the applicable Basic Payments (in an amount equal to that necessary to pay in full all of the Bond Obligation and interest on such Bonds, assuming acceleration of such Bonds under the Indenture and to pay all other indebtedness thereunder) to be immediately due and payable, whereupon the same shall become immediately due and payable by the Borrower.

(b) Whenever any Event of Default shall have occurred and be continuing, any one or more of the following remedial steps may also be taken to the extent permitted by law:

- (i) the Trustee or the Issuer (with the prior written consent of the Trustee) may take whatever action at law or in equity may appear necessary or appropriate to collect all sums then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement, covenant, representation or warranty of the Borrower, under this Loan Agreement, the Land Use Restriction Agreement, the Security Documents or any related instrument; or to otherwise compensate the Issuer, the Trustee or Bondholders for any damages on account of such Event of Default; and
- (ii) the Issuer (without the prior written consent of the Trustee if the Trustee is not enforcing the Issuer's rights in a manner to protect the Issuer or is otherwise taking action that brings adverse consequences to the Issuer) may take whatever action at law or in equity may appear necessary or appropriate to enforce its rights of indemnification under **Section 7.03** and to collect all sums then due and thereafter to become due to the Issuer under **Sections Sections 4.03(a), (d) and (e), 7.03 and 9.05.**

**Section 9.03. Disposition of Funds.** Any amounts collected pursuant to action taken under **Section 9.02** (other than sums collected for the Issuer or the Trustee on account of their rights to indemnification and certain direct payments to be made to the Issuer and the Trustee under **Sections 4.03, 7.03 and 9.05** which sums shall be paid directly to the Issuer and the Trustee) shall be applied in accordance with the provisions of the Indenture.

**Section 9.04. Nonexclusive Remedies.** 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 Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and 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 either of them in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or as may be required by law.

**Section 9.05. Attorneys' Fees and Expenses.** If an Event of Default shall exist under this Loan Agreement and the Issuer or the Trustee employ attorneys or incur other expenses for the collection of any amounts due hereunder, or for the enforcement of performance of any obligation or agreement on the part of the Borrower, the Borrower shall upon demand pay to the Issuer or the Trustee, as the case may be, the reasonable fees of such attorneys and such other reasonable expenses so incurred.

**Section 9.06. Effect of Waiver.** In the event any agreement contained in this Loan Agreement is 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 9.07. Waiver of Stay or Extension.** The Borrower covenants that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any appraisal, valuation, stay, or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants in, or the performance of, this Loan Agreement; and the Borrower hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Issuer or the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

**Section 9.08. Issuer or Trustee May File Proofs of Claim.** In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Borrower or the property of the Borrower, the Trustee or the Issuer (with the prior consent of the Trustee), shall be entitled and empowered, by intervention in such proceeding or otherwise:

- (i) to file and prove a claim and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Issuer and Trustee (for themselves and on behalf of Bondowners) (including any claim for the reasonable compensation, expenses, disbursements and advances of the Issuer and Trustee, their agents and counsel) allowed in such judicial proceeding, and
- (ii) to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same.

**Section 9.09. Restoration of Positions.** If the Issuer or the Trustee has instituted any proceeding to enforce any right or remedy under this Loan Agreement, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Issuer or Trustee, then and in every such case the Borrower, the Trustee and the Issuer shall, subject to any determination in the proceeding, be restored to the positions they held prior to commencement of such proceedings, and thereafter all rights and remedies of the Issuer shall continue as though no such proceeding had been instituted.



**Section 9.10. Suits to Protect the Project.** If the Borrower shall fail to do so after 30 days prior written notice from the Issuer or the Trustee to the Borrower, the General Partner and the Investor Limited Partner, the Trustee shall have power, but shall not be obligated, to institute and to maintain such proceedings as it may deem expedient to prevent any impairment of the Project or any portion thereof, by any acts which may be unlawful or in violation of this Loan Agreement, and such suits and proceedings as the Trustee may deem expedient to protect its interests in the Project or any portion thereof, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of, or compliance with, such enactment, rule or order would impair or adversely affect the Project or be prejudicial to the interests of the Bondowners.

**Section 9.11. Performance by Third Parties.** The Issuer may permit third parties to perform any and all acts or take such action as may be necessary for and on behalf of the Borrower to cure any Event of Default hereunder. The acceptance by Issuer or the Trustee of any such performance by third parties shall not in any way diminish or absolve the Borrower of primary liability under this Loan Agreement. Any cure offered or effected by a partner of the Borrower shall be accepted hereunder as if offered or effected by the Borrower itself.

**Section 9.12. Exercise of the Issuer's Remedies by Trustee.** Whenever any Event of Default shall have happened and be continuing the Trustee may, but except as otherwise provided in the Indenture shall not be obliged to, exercise any or all of the rights of the Issuer under this **Article IX**, without notice to the Issuer.

**Section 9.13. Non-Recourse Obligation.** Except as otherwise provided in the Security Documents, or as otherwise set forth below, the personal liability of the Borrower and the partners of the Borrower shall be limited to the Project and any other collateral securing the obligations of the Borrower under this Loan Agreement, the Notes, the Indenture, or the Bonds, but this limitation of liability shall not prejudice the right of the Trustee, as beneficiary to enforce or foreclose on any other security given for the payment of the obligations of the Borrower under this Loan Agreement, the Notes, the Indenture or the Bonds, or to exercise any of its remedies available to it with respect to the collateral securing the Borrower's obligations under this Loan Agreement, including effecting the sale of the Project in accordance with the Security Documents, foreclosing the Security Documents and in furtherance thereof naming the Borrower but not any of its partners as a party defendant in any action or proceeding to enforce the same. Further, the indemnity obligations of the Borrower and its partners set forth herein shall not otherwise require repayment of the Loan. The General Partner shall be liable under this Loan Agreement to the extent of any funds or property of the Project coming into the hands of the General Partner which, by the provisions of this Loan Agreement, the Borrower has distributed but was not entitled to distribute to the General Partner. The Borrower and the General Partner shall not be exonerated or exculpated for any loss or deficiency suffered or sustained by the Issuer or the Trustee as a result of:

- (a) any fraud or false representations by the Borrower or the General Partner with regard to any matter relating to the Loans and the security therefor;
- (b) misappropriation or intentional misapplication of insurance or condemnation proceeds;

- (c) collection of rents for more than one month in advance or failure to apply rents to current maintenance, repair and taxes while an Event of Default exists under this Loan Agreement;
- (d) failure to deliver security deposits of tenants to the Trustee following an Event of Default, to the extent permitted by law;
- (e) permitting or suffering to occur any intentional waste of all or any portion of the Project;
- (f) a knowing failure to comply with any law, governmental standard or regulation applicable to the Borrower or the Premises with respect to Environmental Laws or Hazardous Materials (within the meaning of the Environmental Indemnity) or a material misrepresentation of the Borrower with respect to the same; or
- (g) any willful misconduct of the Borrower and/or any intentional tort created by the Borrower and resulting in loss or damage to the security of the Project.

## **ARTICLE X GENERAL PROVISIONS**

**Section 10.01. Amounts Remaining in Funds.** Except during the continuance of an Event of Default, any amounts remaining in the Funds created under Article IV of the Indenture upon expiration or earlier termination of this Loan Agreement, as provided herein, shall be paid by the Trustee as provided in Section 414 of the Indenture.

**Section 10.02. Notices.** All notices, certificates or other communications hereunder shall be in writing (except as otherwise expressly provided herein), shall be deemed to have been properly given when delivered by hand delivery, or served by depositing the same with the United States Postal Service, or any official successor thereto, designated as registered or certified mail, return receipt requested, bearing adequate postage, or delivery by reputable private carrier such as FedEx, United Parcel Service or similar overnight delivery service, or by electronic mail (with the original delivered via overnight delivery service) and addressed as hereinafter provided. Notices, except to the Trustee, shall be deemed given when mailed as provided herein. Notices to the Trustee shall be deemed given only when received by the Trustee. All parties listed below may, by written notice given to the others, designate any address or addresses to which notices, certificates or other communications to them shall be sent when required as contemplated by this Loan Agreement. Any notice, certificate, report, financial statement or other communication properly provided by legal counsel on behalf of any party hereunder shall be deemed properly provided by the party represented by such counsel. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as set forth in Section 1004 of the Indenture.

**Section 10.03. Binding Effect.** This Loan Agreement will inure to the benefit of and shall be binding upon the Issuer, the Borrower and their respective successors and assigns.

**Section 10.04. Severability.** If any court of competent jurisdiction holds any provision of this Loan Agreement invalid or unenforceable, the holding shall not invalidate or render unenforceable any other provision of this Loan Agreement.

**Section 10.05. Amendments, Changes, and Modifications.** Except as otherwise provided in this Loan Agreement or in the Indenture, subsequent to the issuance of the Bonds and before the lien of the Indenture is satisfied and discharged in accordance with its terms, this Loan Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee pursuant to Section 803 of the Indenture.

**Section 10.06. Execution in Counterparts.** This Loan 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 10.07. Required Approvals.** Consents and approvals required by this Loan Agreement to be obtained from the Borrower, the Majority Owner, the Issuer, or the Trustee shall be in writing and shall not be unreasonably withheld, conditioned or delayed; *provided* nothing herein shall obligate the Trustee to exercise discretion to provide its consent or approval without first receiving the written direction of the Majority Owner.

**Section 10.08. Limitation on Issuer's Liability.** No provision, covenant or agreement contained in this Loan Agreement, the Indenture, the Land Use Restriction Agreement, the Tax Agreement 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 upon its general credit; nor shall the same constitute or give rise to or a charge upon the general credit or taxing powers of the State. No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Loan Agreement contained against any past, present or future officer, director, employee, director or agent of the Issuer, or of any successor public corporation thereto, as such, either directly or through the Issuer, or any successor public corporation thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, directors, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Loan Agreement and the issuance of the Bonds. Nothing herein shall preclude a proper party in interest from seeking and obtaining specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement herein; provided, that no costs, expenses or other monetary relief shall be recoverable from the Issuer except as may be payable from the Trust Estate.

**Section 10.09. Representations of Borrower.** All representations made in this Loan Agreement by the Borrower are based on its independent investigation of the facts and law, and accordingly no such representations are made in reliance upon any representations made or legal advice given by the Issuer, its Bond Counsel, the Trustee or any of their agents, officers or employees.

**Section 10.10. Electronic Transactions.** The transactions described in this Loan Agreement and the other Bond Documents may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 10.11. Complete Agreement.** This notice is provided pursuant to Section 432.047, R.S.Mo. As used herein, "**creditor**" means the Issuer and "**this writing**" and "**Credit Agreement**" means this Loan Agreement, the Notes, the Land Use Restriction Agreement, the Tax Agreement and the Security Documents. **ORAL OR UNEXECUTED AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE, REGARDLESS OF THE LEGAL THEORY UPON WHICH IT IS BASED THAT IS IN ANY WAY RELATED TO THE CREDIT AGREEMENT. TO PROTECT YOU (BORROWER) AND US (CREDITOR) FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT.**

*[Remainder of page intentionally left blank.]*

**IN WITNESS WHEREOF**, the Issuer and the Borrower have caused this Loan Agreement to be executed by their duly authorized signatories.

**HOUSING AUTHORITY OF THE CITY OF  
COLUMBIA, MISSOURI**

By \_\_\_\_\_

Name: Randy Cole

Title: Chief Executive Officer

**KINNEY POINT HOUSING DEVELOPMENT GROUP,  
LP**, a Missouri limited partnership

By: **KINNEY POINT HOUSING GP, LLC**, a Missouri  
limited liability company, its General Partner

By: **COLUMBIA COMMUNITY HOUSING  
TRUST**, a Missouri nonprofit corporation, its  
Sole Owner

By \_\_\_\_\_

Name: Bob Hutton

Title: President

**EXHIBIT A**

**LEGAL DESCRIPTION**

Real property in the County of Boone, State of Missouri, described as follows:

[\_\_ TO BE INSERTED \_\_]

## EXHIBIT B

### FORMS OF PROMISSORY NOTES

#### SERIES A PROMISSORY NOTE

**MAXIMUM PRINCIPAL AMOUNT:**  
\$[\_\_ PRINCIPAL AMOUNT A \_\_]

**Dated** [\_\_ May \_\_], 2024  
Columbia, Missouri

**FOR VALUE RECEIVED**, the undersigned, **KINNEY POINT HOUSING DEVELOPMENT GROUP, LP**, a Missouri limited partnership (together with its successors and assigns as borrower under the below defined Loan Agreement, the "**Borrower**"), promises to pay in lawful money of the United States of America to the order of the **HOUSING AUTHORITY OF THE CITY OF COLUMBIA, MISSOURI**, its successors or assigns (the "**Issuer**"), the principal advanced but not to exceed the maximum principal sum of [\_\_ PRINCIPAL AMOUNT A \_\_] and 00/100 Dollars (\$[\_\_ PRINCIPAL AMOUNT A \_\_]).

The principal and interest on this Note shall be payable in installments at the times and in the amounts determined as provided in **Section 4.02** of the Loan Agreement, dated as of May 1, 2024 (the "**Loan Agreement**"), between the Borrower and the Issuer, with the final payment of all outstanding principal and interest on this Note to be paid not later than [\_\_ November 1, 2040 \_\_]. Both principal and interest under this Note shall be payable in immediately available funds at the principal payment office of UMB Bank, N.A., Kansas City, Missouri (the "**Trustee**").

This Note is made pursuant to the Loan Agreement wherein, among other things, the Issuer has agreed to loan to the Borrower and the Borrower has agreed to take a loan in the maximum principal amount of \$[\_\_ PRINCIPAL AMOUNT A \_\_] (the "**Loan**"), being the proceeds of the purchase price installments of the Issuer's Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024A (the "**Series A Bonds**"), said proceeds to be disbursed to the Borrower from time to time in accordance with the provisions of the Loan Agreement. The Series A Bonds are being issued by the Issuer pursuant to the Trust Indenture, dated as of May 1, 2024 (the "**Indenture**"), between the Issuer and the Trustee. Terms not otherwise defined in this Note have the meanings set forth in the Indenture and the Loan Agreement.

This Note is subject to optional and mandatory prepayments as provided in **Section 8.02** of the Loan Agreement, with such prepayments being first applied to interest and next to principal.

Upon the occurrence of any Event of Default as described in **Section 9.01** of the Loan Agreement, all or a portion of the unpaid principal of and interest on this Note may be declared to be forthwith due and payable in the manner and with the effect provided in said Agreement. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent occurrence of such an Event of Default. If this Note shall be placed in the hands of an attorney or attorneys for collection, the Borrower agrees to pay, in addition to the amount due hereon, the reasonable costs and expenses of collection, including reasonable attorneys' fees.

Except as otherwise provided in the Loan Agreement, or as otherwise set forth below, the personal liability of the Borrower and the partners of the Borrower shall be limited to the Project and any other collateral securing the obligations of the Borrower under this Note, the Loan Agreement, the Indenture, or the Series A Bonds, but this limitation of liability shall not prejudice the right of the Trustee, as beneficiary to enforce or foreclose on any other security given for the payment of the obligations of the Borrower under this Note, the Loan Agreement, the Indenture or the Series A Bonds, or to exercise any of its remedies available to it with respect to the collateral securing the Borrower's obligations under this Note and the



Loan Agreement, including effecting the sale of the Project in accordance with the Security Documents, foreclosing the Security Documents and in furtherance thereof naming the Borrower but not any of its partners as a party defendant in any action or proceeding to enforce the same. Further, the indemnity obligations of the Borrower and its partners set forth herein shall not otherwise require repayment of a Loan. The General Partner shall be liable under this Note to the extent of any funds or property of the Project coming into the hands of the General Partner which, by the provisions of this Note, the Borrower has distributed but was not entitled to distribute to the General Partner. The Borrower and the General Partner shall not be exonerated or exculpated for any loss or deficiency suffered or sustained by the Issuer or the Trustee as a result of:

- (a) any fraud or false representations by the Borrower or the General Partner with regard to any matter relating to the Loan and the security therefor;
- (b) misappropriation or intentional misapplication of insurance or condemnation proceeds;
- (c) collection of rents for more than one month in advance or failure to apply rents to current maintenance, repair and taxes while an Event of Default exists under this Note or the Loan Agreement;
- (d) failure to deliver security deposits of tenants to the Trustee following an Event of Default, to the extent permitted by law;
- (e) permitting or suffering to occur any intentional waste of all or any portion of the Project;
- (f) a knowing failure to comply with any law, governmental standard or regulation applicable to the Borrower or the Premises with respect to Environmental Laws or Hazardous Materials (within the meaning of the Security Documents) or a material misrepresentation of the Borrower with respect to the same; or
- (g) any willful misconduct of the Borrower and/or any intentional tort created by the Borrower and resulting in loss or damage to the security of the Project.

**This notice is provided pursuant to Section 432.047, R.S.Mo. As used herein, "creditor" means the Issuer and "this writing" and "Credit Agreement" means this Note, the Loan Agreement, the Land Use Restriction Agreement, the Tax Agreement and the Security Documents. ORAL OR UNEXECUTED AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE, REGARDLESS OF THE LEGAL THEORY UPON WHICH IT IS BASED THAT IS IN ANY WAY RELATED TO THE CREDIT AGREEMENT. TO PROTECT YOU (BORROWER) AND US (CREDITOR) FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT.**

This Note is secured by the Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing Financing Statement, dated as of May 1, 2024, from the Borrower for the benefit of the Trustee, and by the other Security Documents.

All parties to this Note, whether principal, surety, guarantor or endorser, hereby waive presentment for payment, demand, protest, notice or protest and notice of dishonor.

**KINNEY POINT HOUSING DEVELOPMENT GROUP,  
LP**, a Missouri limited partnership

By: **KINNEY POINT HOUSING GP, LLC**, a Missouri  
limited liability company, its General Partner

By: **COLUMBIA COMMUNITY HOUSING  
TRUST**, a Missouri nonprofit corporation, its  
Sole Owner

By \_\_\_\_\_  
Name: Bob Hutton  
Title: President

**ENDORSEMENT**

Pay to the order of UMB Bank, N.A., as Trustee under the Trust Indenture, dated as of May 1, 2024, between the undersigned and said bank, as Trustee, said Trustee to hold and apply all funds received hereunder as provided in such Trust Indenture. This endorsement shall be without recourse against the undersigned.

**HOUSING AUTHORITY OF THE CITY OF  
COLUMBIA, MISSOURI**

By \_\_\_\_\_  
Name: Randy Cole  
Title: Chief Executive Officer

## SERIES B PROMISSORY NOTE

**MAXIMUM PRINCIPAL AMOUNT:**  
\$[       PRINCIPAL AMOUNT B       ]

Dated [   May   ], 2024  
Columbia, Missouri

**FOR VALUE RECEIVED**, the undersigned, **KINNEY POINT HOUSING DEVELOPMENT GROUP, LP**, a Missouri limited partnership (together with its successors and assigns, as Borrower under the below defined Loan Agreement, the "**Borrower**"), promises to pay in lawful money of the United States of America to the order of the **HOUSING AUTHORITY OF THE CITY OF COLUMBIA, MISSOURI**, its successors or assigns (the "**Issuer**"), the principal advanced but not to exceed the maximum principal sum of [                    ] and 00/100 Dollars (\$[       PRINCIPAL AMOUNT B       ]).

The principal and interest on this Note shall be payable in installments at the times and in the amounts determined as provided in **Section 4.02** of the Loan Agreement, dated as of May 1, 2024 (the "**Loan Agreement**"), between the Borrower and the Issuer, with the final payment of all outstanding principal and interest on this Note to be paid not later than [   November 1, 2025   ] (subject to extension pursuant to Section 3.06 of the Continuing Covenants Agreement). Both principal and interest under this Note shall be payable in immediately available funds at the principal payment office of UMB Bank, N.A., Kansas City, Missouri (the "**Trustee**").

This Note is made pursuant to the Loan Agreement wherein, among other things, the Issuer has agreed to loan to the Borrower and the Borrower has agreed to take a loan in the maximum principal amount of \$[       PRINCIPAL AMOUNT B       ] (the "**Loan**"), being the proceeds of the purchase price installments of the Issuer's Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024B (the "**Series B Bonds**"), said proceeds to be disbursed to the Borrower from time to time in accordance with the provisions of the Loan Agreement. The Series B Bonds are being issued by the Issuer pursuant to the Trust Indenture, dated as of May 1, 2024 (the "**Indenture**"), between the Issuer and the Trustee. Terms not otherwise defined in this Note have the meanings set forth in the Indenture and the Loan Agreement.

This Note is subject to optional and mandatory prepayments as provided in **Section 8.02** of the Loan Agreement, with such prepayments being first applied to interest and next to principal.

Upon the occurrence of any Event of Default as described in **Section 9.01** of the Loan Agreement, all or a portion of the unpaid principal of and interest on this Note may be declared to be forthwith due and payable in the manner and with the effect provided in said Agreement. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent occurrence of such an Event of Default. If this Note shall be placed in the hands of an attorney or attorneys for collection, the Borrower agrees to pay, in addition to the amount due hereon, the reasonable costs and expenses of collection, including reasonable attorneys' fees.

Except as otherwise provided in the Loan Agreement, or as otherwise set forth below, the personal liability of the Borrower and the partners of the Borrower shall be limited to the Project and any other collateral securing the obligations of the Borrower under this Note, the Loan Agreement, the Indenture, or the Series B Bonds, but this limitation of liability shall not prejudice the right of the Trustee, as beneficiary to enforce or foreclose on any other security given for the payment of the obligations of the Borrower under this Note, the Loan Agreement, the Indenture or the Series B Bonds, or to exercise any of its remedies available to it with respect to the collateral securing the Borrower's obligations under this Note and the Loan Agreement, including effecting the sale of the Project in accordance with the Security Documents, foreclosing the Security Documents and in furtherance thereof naming the Borrower but not any of its partners as a party defendant in any action or proceeding to enforce the same. Further, the indemnity

obligations of the Borrower and its partners set forth herein shall not otherwise require repayment of a Loan. The General Partner shall be liable under this Note to the extent of any funds or property of the Project coming into the hands of the General Partner which, by the provisions of this Note, the Borrower has distributed but was not entitled to distribute to the General Partner. The Borrower and the General Partner shall not be exonerated or exculpated for any loss or deficiency suffered or sustained by the Issuer or the Trustee as a result of:

- (a) any fraud or false representations by the Borrower or the General Partner with regard to any matter relating to the Loan and the security therefor;
- (b) misappropriation or intentional misapplication of insurance or condemnation proceeds;
- (c) collection of rents for more than one month in advance or failure to apply rents to current maintenance, repair and taxes while an Event of Default exists under this Note or the Loan Agreement;
- (d) failure to deliver security deposits of tenants to the Trustee following an Event of Default, to the extent permitted by law;
- (e) permitting or suffering to occur any intentional waste of all or any portion of the Project;
- (f) a knowing failure to comply with any law, governmental standard or regulation applicable to the Borrower or the Premises with respect to Environmental Laws or Hazardous Materials (within the meaning of the Security Documents) or a material misrepresentation of the Borrower with respect to the same; or
- (g) any willful misconduct of the Borrower and/or any intentional tort created by the Borrower and resulting in loss or damage to the security of the Project.

**This notice is provided pursuant to Section 432.047, R.S.Mo. As used herein, "creditor" means the Issuer and "this writing" and "Credit Agreement" means this Note, the Loan Agreement, the Land Use Restriction Agreement, the Tax Agreement and the Security Documents. ORAL OR UNEXECUTED AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE, REGARDLESS OF THE LEGAL THEORY UPON WHICH IT IS BASED THAT IS IN ANY WAY RELATED TO THE CREDIT AGREEMENT. TO PROTECT YOU (BORROWER) AND US (CREDITOR) FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT.**

This Note is secured by the Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing Financing Statement, dated as of May 1, 2024, from the Borrower for the benefit of the Trustee, and by the other Security Documents.

All parties to this Note, whether principal, surety, guarantor or endorser, hereby waive presentment for payment, demand, protest, notice or protest and notice of dishonor.

**KINNEY POINT HOUSING DEVELOPMENT GROUP,  
LP**, a Missouri limited partnership

By: **KINNEY POINT HOUSING GP, LLC**, a Missouri  
limited liability company, its General Partner

By: **COLUMBIA COMMUNITY HOUSING  
TRUST**, a Missouri nonprofit corporation, its  
Sole Owner

By \_\_\_\_\_  
Name: Bob Hutton  
Title: President

**ENDORSEMENT**

Pay to the order of UMB Bank, N.A., as Trustee under the Trust Indenture, dated as of May 1, 2024, between the undersigned and said bank, as Trustee, said Trustee to hold and apply all funds received hereunder as provided in such Trust Indenture. This endorsement shall be without recourse against the undersigned.

**HOUSING AUTHORITY OF THE CITY OF  
COLUMBIA, MISSOURI**

By \_\_\_\_\_  
Name: Randy Cole  
Title: Chief Executive Officer

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Space Above Line Reserved For Recorder's Use

1. **Title of Document:** Land Use Restriction Agreement
2. **Date of Document:** As of May 1, 2024
3. **Grantor(s)** (for indexing purposes only): Kinney Point Housing Development Group, LP
4. **Grantee(s)** (for indexing purposes only): Housing Authority of the City of Columbia, Missouri  
UMB Bank, N.A., as Trustee
5. **Statutory Mailing Address(es):**  
**Grantor:**  
Kinney Point Housing Development Group, LP  
c/o CHA Affordable Housing Development, LLC  
201 Switzler Street  
Columbia, Missouri 65203  
Attention: Randy Cole  
  
**Grantees:**  
Housing Authority of the City of Columbia, Missouri  
201 Switzler Street  
Columbia, Missouri 65203  
Attention: Randy Cole  
  
UMB Bank, N.A., as Trustee  
928 Grand Boulevard, 12th Floor  
Kansas City, Missouri 64106  
Attention: Corporate Trust Department
6. **Legal description:** See Exhibit A annexed to the document.
7. **Reference(s) to Book(s) and Page(s):** Not Applicable

**This cover page is attached solely for the purpose of complying with the requirements stated in §§59.310.2; 59.313.2 RSMo. of the Missouri Recording Act**



## TABLE OF CONTENTS

	<u>Page</u>
Section 1.	Definitions..... 1
Section 2.	Borrower Covenant Regarding Application of Bond Proceeds ..... 3
Section 3.	Qualified Residential Rental Project..... 3
Section 4.	Occupancy Restrictions..... 5
Section 5.	Rental Restrictions ..... 6
Section 6.	Records and Reports ..... 6
Section 7.	Tax-Exempt Status of Bonds ..... 7
Section 8.	Modification of Tax Covenants ..... 7
Section 9.	Reliance..... 8
Section 10.	Sale or Transfer of the Project ..... 8
Section 11.	Term..... 9
Section 12.	Covenants To Run With the Land..... 10
Section 13.	Recording and Filing..... 10
Section 14.	Default; Enforcement..... 10
Section 15.	Amendments ..... 11
Section 16.	Notices ..... 12
Section 17.	Indemnification ..... 13
Section 18.	Performance of Duties..... 14
Section 19.	Extent of Covenants of the Issuer; No Personal or Pecuniary Liability..... 15
Section 20.	Electronic Transactions..... 16
Section 21.	Severability ..... 16
Section 22.	Counterparts..... 16
Section 23.	Governing Law ..... 16
Exhibit A	PROJECT SITE
Exhibit B	TENANT INCOME CERTIFICATION
Exhibit C	QUARTERLY TENANT REPORT

## LAND USE RESTRICTION AGREEMENT

**THIS LAND USE RESTRICTION AGREEMENT** (this "Agreement") is made and entered into as of May 1, 2024, by and among **HOUSING AUTHORITY OF THE CITY OF COLUMBIA, MISSOURI** (the "Issuer"), a municipal corporation duly organized and existing under the laws of the state of Missouri, **KINNEY POINT HOUSING DEVELOPMENT GROUP, LP**, a limited partnership organized and existing under the laws of the state of Missouri, and its successors and assigns (the "Borrower"), and **UMB BANK, N.A.**, a national banking association, as trustee with respect to the Bonds described below (the "Trustee").

### **RECITALS:**

1. The Issuer is authorized pursuant to Sections 99.010 to 99.230 of the Revised Statutes of Missouri (as amended and supplemented, the "Act") to, among other things, issue revenue bonds to provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of very low and lower income.

2. The Borrower has requested that the Issuer provide financing for a portion of the costs of the acquisition and construction of 34 multifamily housing units located in the City of Columbia, Missouri, to be collectively known as Kinney Point Apartments (the "Project"), located on the real estate as described in Exhibit A (the "Project Site").

3. Pursuant to the Act, the Issuer has issued its Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024A in the aggregate maximum principal amount of \$[Principal Amount A] (the "Series A Bonds") and its Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024B in the aggregate maximum principal amount of \$[Principal Amount B] (the "Series B Bonds" and, together with the Series A Bonds, the "Bonds") pursuant to the Trust Indenture dated as of May 1, 2024 (as amended and supplemented from time to time, the "Indenture"), between the Issuer and the Trustee, to fund a portion of the costs of the acquisition and construction of the Project pursuant to the Loan Agreement dated as of May 1, 2024 (as amended and supplemented from time to time, the "Loan Agreement") between the Issuer and the Borrower.

4. The interest on the Bonds is excludable from gross income for federal income tax purposes if, among other things, the Project continuously complies during the Qualified Project Period (as hereinafter defined) with Sections 142(a) and 142(d) of the Code (as hereinafter defined) and the Regulations (as hereinafter defined).

5. Compliance of the Project with Sections 142(a) and 142(d) of the Code is in large part within the control of the Borrower and in no part within the control of the Issuer or the Trustee.

6. The Issuer is unwilling to provide proceeds of the Bonds to finance the Project unless the Borrower shall agree to abide by the provisions of this Agreement in order to preserve the excludability of the interest on the Bonds from gross income for federal income tax purposes.

7. The Issuer, the Trustee and the Borrower have determined to enter into this Agreement in order to set forth certain terms and conditions relating to the financing and operation of the Project.

### **AGREEMENT:**

**Section 1. Definitions.** The following terms shall have the respective meanings assigned to them in this **Section 1** (unless the context in which they are used clearly requires otherwise). Capitalized

terms used in this Agreement and not defined in the Recitals shall have the meanings assigned to them in Article I of the Indenture.

"*Area*" means the Columbia, MO Metropolitan Statistical Area.

"*Available Units*" means, except as described in this paragraph, units in the Project that are (a) actually occupied or (b) available for occupancy and have been leased at least once after becoming available for occupancy. A unit that is not available for occupancy due to renovations is not treated as an Available Unit and does not become an Available Unit until it is leased for the first time after the renovations have been completed. A unit shall not fail to be treated as an Available Unit merely because it is a "single-room occupancy unit" within the meaning of Code Section 42.

"*Calendar Quarter*" means each three-month period commencing on January 1, April 1, July 1 and October 1.

"*Certificate of Continuing Program Compliance*" means an annual certification by the Borrower, as set forth on IRS Form 8703 or any successor form provided by the Internal Revenue Service, as to whether the Project continues to meet the requirements of Section 142(d) of the Code.

"*Code*" means the Internal Revenue Code of 1986, as amended. Each reference to the Code is deemed to include (a) any successor internal revenue law and (b) the applicable regulations whether final, temporary or proposed under the Code or such successor law. Any reference to a particular provision of the Code is deemed to include (i) any successor provision of any successor internal revenue law and (ii) the applicable regulations, whether final, temporary or proposed, under such provision or successor provision.

"*County*" means Boone County, Missouri.

"*Income Certification*" means the Tenant Income Certification attached hereto as **Exhibit B** (or, in lieu thereof, an income certification completed in connection with the Section 8 program or the tax credit program administered under Section 42 of the Code in a form substantially similar to **Exhibit B**).

"*Issue Date*" means the date of issuance of the Bonds.

"*Median Income for the Area*" means the median gross income for the Area as most recently determined by the Secretary of Housing and Urban Development under Section 8 (or, if the Section 8 program is terminated, median gross income for the Area determined under the method used by the Secretary immediately prior to such termination).

"*Project*" has the meaning assigned to such term in the Recitals.

"*Project Site*" means the parcel or parcels of real property described in **Exhibit A** hereto, and all rights and appurtenances thereunto appertaining.

"*Qualified Project Period*" means the period commencing on the later of (a) the first day on which 10% of the residential units in the Project are occupied or (b) the Issue Date, and ending on the latest of the following: (i) the date which is 15 years after the date on which 50% of the residential units in the Project are occupied; (ii) the first day on which no tax-exempt private activity bond (as defined in Section 141(a)

of the Code) issued with respect to the Project is outstanding; or (iii) the date on which any assistance provided with respect to the Project under Section 8 terminates.

"*Quarterly Tenant Report*" means the Quarterly Tenant Report with respect to the Project in the form attached hereto as **Exhibit C** (or such substitute form as shall be approved by the Issuer).

"*Qualified Tenants*" generally means individuals or families whose income does not exceed 60% of the Median Income for the Area, with adjustments for family size. But special rules apply to "students" (as defined in Code Section 152), as follows:

(1) An individual will not fail to be treated as a Qualified Tenant merely because he or she is (A) a student and receiving assistance under Title IV of the Social Security Act, (B) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of Title IV of the Social Security Act, or (C) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws; and

(2) If a unit is occupied entirely by full-time students (and their children, if any), they will not fail to be treated as Qualified Tenants if (A) the students are single parents and are not "dependents" of another individual, and the children are not dependents of another individual other than a parent of the children, or (B) the students are married and file a joint return. For purposes of this provision, the term "Dependent" has the meaning assigned in Code Section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) of that section.

"*Regulations*" means all regulations issued by the U.S. Treasury Department to implement the requirements of Code §§ 103 and 141 through 150 and applicable to the Bonds.

"*Section 8*" means Section 8 of the United States Housing Act of 1937, as amended, or any successor law thereto.

**Section 2. Borrower Covenant Regarding Application of Bond Proceeds.** The Borrower will not take or omit to take any action if the action or omission would in any way cause the proceeds from the sale of the Bonds to be applied in a manner contrary to the requirements of the Indenture, the Loan Agreement, the Tax Agreement or this Agreement.

**Section 3. Qualified Residential Rental Project.** The Borrower agrees that the Project will be owned, managed and operated as a "qualified residential rental project" (within the meaning of Section 142(d) of the Code) at all times during the Qualified Project Period. To that end, the Borrower represents, covenants, warrants and agrees as follows:

(a) The Project is being acquired and constructed for the purpose of providing a qualified residential rental project within the meaning of Section 142(d) of the Code.

(b) The Project will consist solely and exclusively of a building or structure or several proximate buildings or structures containing similar residential units in quality and type of construction and amenities and which are located on a single tract of land or contiguous parcels of land, and such buildings, and the land upon which the buildings are located will be owned, for federal tax purposes, at all times by the same person or entity, and may include facilities functionally related

and subordinate thereto. Each building or structure will be a discrete edifice or other man-made construction consisting of independent (i) foundation, (ii) outer walls, and (iii) roof.

(c) Any functionally related and subordinate facilities (e.g., parking areas, swimming pool, playground, etc.) which are to be included as part of the Project will be made available to all tenants on an equal basis. Fees will only be charged with respect to the use thereof if the charging of fees is customary for the use of such facilities at similar residential rental properties in surrounding areas. In any event, any fees charged with respect to the use thereof will not be discriminatory or exclusionary as to the Qualified Tenants.

(d) No part of the Project will at any time be owned or used by a cooperative housing corporation (as defined in Section 216(b)(1) of the Code).

(e) If the Borrower or a person related to the Borrower occupies a unit in a building, the building will include at least four units not occupied by the Borrower or a person related to the Borrower.

(f) Each unit in the Project will contain separate complete living, sleeping, eating, cooking, and sanitation facilities for a single person or a family.

(g) None of the units in the Project will at any time be utilized on a transient basis, or used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital nursing home, sanitarium, rest home, retirement home or trailer park. Prior to commencing occupancy in any unit in the Project, a tenant shall execute a written lease that shall be effective for a term of at least six (6) months. For this purpose, a "single-room occupancy unit" (within the meaning of Code Section 42) is not treated as used on a transient basis merely because it is rented on a month-by-month basis.

(h) All of the units in the Project will be leased, rented or available for lease or rental on a continuous basis to members of the general public (other than units for a resident manager, maintenance personnel and/or security personnel).

(i) The leasing of one or more residential units in the Project to a person other than a person who will occupy the unit (a "Corporate Tenant"), in connection with an arrangement whereby the unit will be held for residential use by such person's own employees or for sublease to any other person (a "Corporate Lease"), will occur only under the following conditions: (i) the term of the Corporate Lease must be at least as long as the minimum lease term for units rented directly to individual tenants who will occupy the unit, (ii) no single Corporate Tenant may lease more than 5% of the total residential units in the Project at one time, (iii) no more than 10% of the total residential units in the Project may be subject to Corporate Leases at one time, (iv) any sublease, assignment agreement, or similar arrangement where the premises are provided by the Corporate Tenant to an individual occupant must provide that the individual will occupy the unit for a period of at least 30 days, and (v) under the terms of the Corporate Lease the Corporate Tenant must provide the Borrower the identity of each occupant in the unit and the expected term of the occupancy prior to the date the occupant takes up residence in the unit.

#### **Section 4.      Occupancy Restrictions.**

(a) Pursuant to Section 142(d)(1) of the Code, the Issuer elects at the direction of the Borrower, and the Borrower agrees, that the 40-60 Test of Section 142(d)(1)(B) of the Code shall apply to the Project. The Borrower represents, warrants and covenants that, except as otherwise provided in this paragraph, at all times during the Qualified Project Period at least 40% of the Available Units in the Project shall be occupied (or treated as occupied as provided herein) by Qualified Tenants. If (1) the Borrower is acquiring an existing residential rental project and (2) at least 10% of the units in the Project are Available Units at all times during the 60-day period commencing on the later of (A) the date the Project is acquired by the Borrower and (B) the Issue Date, then the failure to satisfy the occupancy restrictions set forth in this paragraph shall not constitute an event of default under this Agreement during the 12-month period beginning on the Issue Date. If a Qualified Tenant vacates a unit, that unit will be treated as occupied by a Qualified Tenant until reoccupied (other than for a temporary period not in excess of 31 days), at which time a re-determination of whether the unit is occupied by a Qualified Tenant shall be made.

(b) The income of individuals and the Median Income for the Area shall be determined as required by the Secretary of the Treasury in a manner consistent with determinations of lower income families and area median gross income under Section 8 (or, if such program is terminated, under such program as in effect immediately before such termination). Determinations under the preceding sentence shall include adjustments for family size, i.e., a family of four generally having an income of 60% or less of the Median Income for the Area generally will qualify as a Qualified Tenant; a family of three having an income of 54% or less of the Median Income for the Area generally will qualify as a Qualified Tenant; a family of two having an income of 48% or less of the Median Income for the Area generally will qualify as a Qualified Tenant; and a single individual having an income of 42% or less of the Median Income for the Area generally will qualify as a Qualified Tenant. The Borrower acknowledges that the actual income limits may differ based on the figures actually published for the Section 8 program, and that such figures will change periodically, generally on an annual basis.

(c) Except as otherwise provided in this paragraph, the determination of whether a resident meets the income requirements shall be made by the Borrower at least annually on the basis of the current income of the resident. However, no determination of compliance with the income requirements is required with respect to the Project for any year if, during that year, no residential unit in the Project is occupied by a new resident whose income exceeds the applicable income limit. Each lease (whether or not the tenant is intended to be a Qualified Tenant) entered into or renewed after the date of issuance of the Bonds shall require the tenant to certify the income of the residents annually and at any time as the Borrower may reasonably request in the manner set forth in **Section 4(d)**.

(d) As a condition of occupancy, each person who is intended to be a Qualified Tenant shall be required to sign and deliver to the Borrower an Income Certification in which the prospective tenant certifies as to his or her gross income or the gross income of his or her family. In addition, such person shall be required to provide whatever other information, documents or certifications are deemed necessary by the Borrower or the Issuer to substantiate the Income Certification.

(e) Except as otherwise provided in this paragraph, if the income of a resident of a unit in the Project did not exceed the applicable income limit upon commencement of that resident's occupancy of such unit (or as of any prior determination under **Section 4(c)**), the income of such resident shall be treated as continuing to not exceed the applicable income limit. The preceding sentence does not apply to any resident whose income as of the most recent determination under **Section 4(c)** exceeds 140% of the

applicable income limit (either as a result of an increase in income or a decrease in family size) if after such determination, but before the next determination, any residential unit of comparable or smaller size in that resident's building is occupied by a new resident whose income exceeds the applicable income limit.

(f) The form of lease to be used by the Borrower in renting any unit in the Project to a Qualified Tenant shall provide for termination of the lease and consent by such person to immediate eviction for failure to qualify as a Qualified Tenant as a result of any material misrepresentation made by such person with respect to the Income Certification.

**Section 5. Rental Restrictions.** The Borrower represents, covenants and warrants that, once available for occupancy, each unit in the Project will be rented or available for rental on a continuous basis at all times during the Qualified Project Period.

**Section 6. Records and Reports.**

(a) The Borrower will maintain complete and accurate records pertaining to the occupancy of the Project and will permit any duly authorized representative of the Issuer, the Trustee, the Department of the Treasury or the Internal Revenue Service to inspect any books and records of the Borrower relating to the Project or the incomes of Qualified Tenants. All Income Certifications for Qualified Tenants with respect to each Qualified Tenant who resides in a unit or resided therein during the immediately preceding calendar year will be maintained by the Borrower at its offices. The Borrower will file a copy of each initial Income Certification for a Qualified Tenant with the Trustee in connection with the Quarterly Tenant Report required by **Section 6(b)**.

(b) Not later than the 20<sup>th</sup> day of each Calendar Quarter, commencing with the Calendar Quarter immediately following the first day of the Qualified Project Period, the Borrower shall submit to the Issuer (at its written request) and the Trustee a Quarterly Tenant Report with respect to the Project executed by the Borrower stating the number and percentage of units in the Project that were occupied by Qualified Tenants or treated as occupied at all times by Qualified Tenants during the preceding Calendar Quarter.

(c) The Borrower shall submit to the Secretary of the Department of the Treasury (on or before March 31 of each year during the Qualified Project Period and in such manner as the Secretary shall prescribe) a Certificate of Continuing Program Compliance. The Borrower shall simultaneously send a copy of each Certificate of Continuing Program Compliance to the Issuer and the Trustee. The Borrower acknowledges that failure to file a Certificate of Continuing Program Compliance shall subject the Borrower to penalty as provided in Section 6652(j) of the Code.

(d) The Borrower will provide prompt written notice to the Trustee of the dates on which (i) the first unit in the Project is occupied, (ii) 10% of the units in the Project are first occupied, and (iii) 50% of the units in the Project are first occupied.

(e) In addition to the information provided for in this Agreement, the Borrower shall submit any other information, documents or certifications requested by the Issuer or the Trustee that either the Issuer or the Trustee deems reasonably necessary to substantiate the Borrower's continuing compliance with the provisions of this Agreement, Section 142(d) of the Code and the Regulations.

**Section 7. Tax-Exempt Status of Bonds.**

(a) The Borrower makes the following representations, warranties, covenants and agreements for the benefit of the Issuer, the Trustee and the holders of the Bonds from time to time:

(i) The Borrower will not take or permit, or omit to take or cause to be taken, as is appropriate, any action that would adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes.

(ii) The Borrower will take such action or actions as may be necessary, in the written opinion of Bond Counsel filed with the Issuer and the Trustee, with a copy to the Borrower, to comply fully with all applicable rules, rulings, policies, procedures, Regulations or other official statements promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service pertaining to obligations issued under Section 142(d) of the Code.

(iii) The Borrower will file of record such documents and take such other steps as are necessary, in the written opinion of Bond Counsel filed with the Issuer and the Trustee, with a copy to Borrower and the Investor Limited Partner, in order to assure that the requirements and restrictions of this Agreement will be binding upon all owners of the Project, including, but not limited to, the execution and recordation of this Agreement in the real property records of the County.

(iv) Subject to **Section 11**, the Borrower will include the requirements and restrictions contained in this Agreement in any documents transferring any interest in the Project to another person such that such transferee has notice of, and is bound by, such restrictions, and to obtain the agreement from any transferee to abide to all requirements and restrictions of this Agreement.

(b) Each of the Issuer and the Trustee makes the following representations, warranties, covenants and agreements for itself for the benefit of the other and the holders of the Bonds from time to time:

(i) The Issuer and the Trustee, respectively, will not knowingly take, or omit to take, any action that would adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes.

(ii) The Issuer and the Trustee, respectively, will take such action or actions as may be necessary, in the written opinion of Bond Counsel filed with the Issuer and the Trustee, with a copy to the Borrower, to comply fully with all applicable rules, rulings, policies, procedures, Regulations or other official statements promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service pertaining to obligations issued under Section 142(d) of the Code.

**Section 8. Modification of Tax Covenants.**

(a) To the extent any amendments to the Regulations or the Code impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Agreement in order to maintain the tax-exempt status of the Bonds, in the written opinion of Bond Counsel filed with the Issuer and the Trustee, with a copy to the Borrower and the Investor Limited Partner, this Agreement shall be deemed to be automatically amended, without the consent or approval of any other person, to impose such



additional or more restrictive requirements. The parties agree to execute such amendment hereto as shall be necessary to document the automatic amendment of this Agreement.

(b) To the extent any amendments to the Regulations or the Code impose requirements upon the ownership or operation of the Project less restrictive than imposed by this Agreement, in the written opinion of Bond Counsel filed with the Issuer and the Trustee, with a copy to the Borrower and the Investor Limited Partner, this Agreement may be amended or modified to provide such less restrictive requirements but only by written amendment signed by the Issuer, the Trustee and the Borrower, and delivery of an Opinion of Bond Counsel to the effect that such amendment will not cause interest on the Bonds to become includable in gross income for federal income tax purposes. The Issuer is under no obligation to agree to any such amendment.

(c) The Borrower, the Issuer and, if applicable, the Trustee will be entitled to (or, upon direction of the Majority Owner and indemnity satisfactory to it, shall) execute, deliver and, if applicable, file of record any and all documents and instruments necessary to effect the intent of this **Section 8**, and each of the Borrower and the Issuer hereby appoints the Trustee as its true and lawful attorney-in-fact to execute, deliver and, if applicable, file of record on behalf of the Borrower or the Issuer, as is applicable, any such document or instrument (in such form as may be approved in writing by Bond Counsel) if either the Borrower or the Issuer defaults in the performance of its obligations under this **Section 8(c)**; provided however, that the Trustee shall take no action under this **Section 8(c)** without first notifying the Issuer or the Borrower and the Investor Limited Partner, or both of them, as is applicable, unless directed in writing by the Issuer or the Borrower and without first providing the Issuer or the Borrower and the Investor Limited Partner, or both of them, as is applicable, an opportunity to comply with the requirements of this **Section 8**. Nothing in this **Section 8(c)** will be construed to allow the Trustee to execute an amendment to this Agreement on behalf of the Borrower or the Issuer. Further, notwithstanding anything to the contrary in this Agreement, the Trustee has no obligation to monitor the Issuer's or Borrower's compliance with this **Section 8**, and the Trustee shall be deemed to have complied with its obligations under this **Section 8** by following the written direction provided to it in an Opinion of Bond Counsel.

**Section 9. Reliance.** The Borrower recognizes and agrees that the representations, warranties, covenants and agreements set forth in this Agreement may be relied upon by all persons interested in the legality and validity of the Bonds and in the excludability of interest on the Bonds from gross income for federal income tax purposes. In performing their duties and obligations, the Issuer and the Trustee may rely upon statements and certificates of the Borrower and the Qualified Tenants, and upon audits of the books and records of the Borrower pertaining to the Project. In addition, the Issuer and the Trustee may consult with counsel, and the opinion of counsel will be full and complete authorization and protection in respect of any action taken by the Issuer or the Trustee under this Agreement in good faith and in conformity with the opinion. In determining whether any default or lack of compliance by the Borrower exists under this Agreement, neither the Issuer nor the Trustee is required to conduct any investigation into, or review of, the operations or records of the Borrower and may rely solely on any notice or certificate delivered by the Borrower with respect to the occurrence or absence of a default.

**Section 10. Sale or Transfer of the Project.**

(a) 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 occupancy restrictions provided in this Agreement (other than leases to tenants in the ordinary course of business and assignments and transfers permitted under Section 8.01 of the Loan

Agreement) (the "Transfer") that the transferee of the Project pursuant to the Transfer assumes in writing all duties and obligations of the Borrower under this Agreement, including this **Section 10**, in the event of a subsequent Transfer by the transferee prior to expiration of the occupancy restrictions provided herein (the "Assumption Agreement"). The Borrower shall deliver the Assumption Agreement to the Issuer and the Trustee prior to the Transfer. Such restrictions on transfer shall be in addition to, and not in lieu of, compliance with any other provisions of the Loan Documents (as defined in the Indenture), and shall not apply to (i) the transfer to a Chapter 353 "urban redevelopment corporation" and the prompt transfer of the Project back to the Borrower in connection with the Borrower's receipt of real estate tax abatement on the Project from the City of Columbia, (ii) any transfer to or by the Trustee after foreclosure of the Loans or (iii) foreclosure, deed in lieu of foreclosure, exercise of the power of sale, or other similar involuntary transfer.

(b) Nothing contained in this **Section 10** shall affect any provision of the Deed of Trust or any other document or instrument between the Borrower and any other party that requires the Borrower to obtain the consent of the holder of the Notes or such other party as a precondition to sale, transfer or other disposition of the Project. Upon any sale or other transfer that complies with this Agreement, and upon indemnification of each Indemnified Party (as defined in **Section 17**) by the Borrower for acts or omissions occurring during such period as the Borrower owned the Project, the Borrower shall be fully released from its obligations hereunder, to the extent such obligations have been assumed by the transferee of the Project, without the necessity of further documentation.

#### **Section 11. Term.**

(a) This Agreement is effective upon its execution and delivery. Except as otherwise provided in this **Section 11**, this Agreement will remain in full force and effect for the Qualified Project Period. The provisions of this Agreement are intended to survive the retirement of the Bonds and the expiration or termination of the Indenture, the Notes and the Security Documents.

(b) Notwithstanding the provisions of **Section 11(a)** and **Section 12**, this Agreement will terminate in the event of (i) a foreclosure or delivery of a deed in lieu of foreclosure whereby a third party shall take possession of the Project or (ii) involuntary noncompliance with the provisions of this Agreement caused by fire, seizure, requisition, change in a federal law or an action of a federal agency after the date hereof which prevents the Issuer or the Trustee from enforcing the provisions hereof, or condemnation or a similar event with respect to the Project, provided that (A) the Bonds are retired at the first available call date, or (B) within a reasonable time period any insurance proceeds or condemnation award or other amounts received as a result of loss or destruction of the Project are used to finance a project which meets the requirements of Sections 142(a) and 142(d) of the Code and applicable Regulations. However, the preceding sentence of this paragraph will cease to apply and the restrictions contained in this Agreement will be reinstated automatically if, in the event of a foreclosure or the delivery of a deed in lieu of foreclosure or a similar event, at any time subsequent to the termination of the provisions of this Agreement, the Borrower or any related person to it (within the meaning of Section 147 of the Code) obtains an ownership interest in the Project for federal income tax purposes.

(c) Upon termination or expiration of this Agreement, at the request and expense of the Borrower, the Issuer and the Trustee shall execute and deliver to the Borrower, in recordable form, a document (which shall be prepared at the expense of the Borrower) confirming the termination or expiration and releasing the Project from the terms of this Agreement. The Issuer and the Trustee shall also, at the request and expense of the Borrower, release portions of the real estate from the terms of this Agreement in the event that, in the written opinion of Bond Counsel filed with the Issuer and the Trustee, with a copy to

the Borrower, the release of such real estate from this Agreement will not adversely affect the tax-exempt status of the Bonds.

(d) The provisions of **Section 17** will, in the case of the Trustee, survive the term of this Agreement or the replacement of the Trustee, but only as to claims arising from events occurring during the term of this Agreement or the Trustee's tenure as Trustee under the Indenture, and shall, in the case of the Issuer, survive the term of this Agreement, but only as to claims arising from events occurring during the term of this Agreement.

(e) This Agreement may be terminated upon agreement by the Issuer, the Trustee and the Borrower upon receipt by the Issuer, the Trustee and the Borrower of a written opinion of Bond Counsel to the effect that such termination will not cause interest on the Bonds to be includable in gross income for federal income tax purposes.

**Section 12. Covenants To Run With the Land.** The Borrower subjects the Project (including the Project Site) to the covenants, reservations and restrictions set forth in this Agreement. The Issuer, the Trustee and the Borrower hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Borrower's successors in title to the Project; provided, however, that on the termination of this Agreement said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments.

**Section 13. Recording and Filing.** The Borrower shall cause this Agreement, and all amendments and supplements hereto, to be recorded and filed in the real property records of the County and in such other places as the Issuer or the Trustee may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

**Section 14. Default; Enforcement.**

(a) The Borrower covenants and agrees to inform the Issuer, the Trustee and the Investor Limited Partner by written notice of any violation of the Borrower's obligations hereunder within five (5) days of first discovering any such violation, and the Issuer and the Trustee each covenants and agrees to inform the Trustee or the Issuer, as applicable, the Borrower and the Investor Limited Partner by written notice of any violation of the Borrower's obligations hereunder within five (5) days of first discovering such violation. If any such violation is not corrected to the satisfaction of the Issuer within 30 days after the date any notice to or by the Borrower and the Investor Limited Partner is mailed (or within such longer period approved by the Issuer and the Trustee as may be necessary to correct the violation, if a written opinion of Bond Counsel is filed with the Issuer and the Trustee, with a copy to the Borrower and the Investor Limited Partner, to the effect that the additional time necessary to correct the violation will not result in interest on the Bonds becoming includable in gross income for federal income tax purposes, and so long as such additional period of time does not exceed any limitations set by applicable regulations), then the Trustee, acting on its own behalf or on behalf of the Issuer, without further notice, shall declare an "Event of Default" to have occurred hereunder and may take any one or more of the following steps:

(i) by mandamus or other suit, action or proceeding at law or in equity, require the Borrower to perform its obligations and covenants hereunder, or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee hereunder, or cause the appointment of a receiver to take over and operate the Project in accordance with the terms of this Agreement;

(ii) inspect, examine and make copies of all of the books and records of the Borrower relating to the Project or the incomes of the tenants therein; or

(iii) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Borrower under this Agreement.

(b) Notwithstanding anything contained in this Agreement or the Indenture to the contrary, the occurrence of an Event of Default under this Agreement shall not be deemed, under any circumstances whatsoever, to be a default under the Indenture or the Loan Documents (except as specified in the Loan Documents), and will not impact, defeat or render invalid the lien of the Deed of Trust.

(c) The Trustee has the right, in accordance with this **Section 14** and the provisions of the Indenture, without the consent, approval or knowledge of the Issuer, to exercise any or all of the rights or remedies of the Issuer under this Agreement, provided that prior to taking any such act the Trustee shall give the Issuer written notice of its intended action.

(d) The Borrower agrees to pay on demand all reasonable fees, costs and expenses of the Issuer and the Trustee incurred in connection with any actions taken pursuant to this Agreement, including but not limited to any amounts incurred in connection with the inspection of the books and records of the Borrower relating to the Project or the incomes of the tenants in the Project in order to determine whether the Borrower is in compliance with the terms of this Agreement, enforcing compliance by the Borrower with the provisions of this Agreement, and exercising any or all of the Issuer's rights and remedies under this Agreement.

(e) The Borrower, the Issuer and the Trustee each acknowledge that the primary purpose for requiring compliance by the Borrower with the restrictions provided in this Agreement is to preserve the excludability from gross income for federal income tax purposes of interest on the Bonds to the holders of the Bonds. The Trustee, on behalf of the Issuer and the holders of the Bonds, who are hereby declared to be third party beneficiaries of this Agreement, shall be entitled for any breach of the provisions hereof, to all remedies both at law and in equity if there is an Event of Default hereunder, and the Trustee covenants subject to the terms of the Indenture, including its receipt of direction from the Majority Owner and indemnity satisfactory to it, to use its best efforts to enforce each of the covenants contained herein.

(f) The Issuer and the Trustee may conclusively rely on the information set forth in the Quarterly Tenant Reports and the execution of the Quarterly Tenant Reports by the Borrower, without independent investigation of the matters set forth therein.

## **Section 15. Amendments.**

(a) Except as provided in **Section 8(a)**, this Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title and duly recorded in the real property records of the County, and only upon receipt by the Issuer, the Trustee and the Borrower of a written opinion

of Bond Counsel to the effect that such amendment will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes and is not contrary to the provisions of the Act.

(b) The Issuer, the Trustee and the Borrower agree to amend this Agreement to the extent required, in the written opinion of Bond Counsel filed with the Issuer and the Trustee, with a copy to the Borrower and the Investor Limited Partner, in order that interest on the Bonds remains excludable from gross income for federal income tax purposes. The costs and expenses of any such amendment to this Agreement shall be the responsibility of the Borrower.

(c) The party or parties requesting an amendment shall notify the other parties to this Agreement of the proposed amendment and send a copy of the requested amendment to Bond Counsel with a request that Bond Counsel render to the Issuer and the Trustee a written opinion as to the effect of the proposed amendment upon the excludability of interest on the Bonds from gross income for federal income tax purposes.

**Section 16. Notices.** All notices, requests, certificates or other communications under this Agreement shall be in writing (except as otherwise expressly provided herein) and shall be deemed to have been properly given when delivered by prepaid overnight delivery service or mailed by registered or certified mail, postage prepaid, or communicated via electronic mail, with confirmation of receipt by delivery receipt, read receipt or otherwise. All notices given by mail or delivery service as aforesaid shall be deemed given as of the date they are so mailed or provided to the delivery service, respectively, and all notices given by electronic mail as aforesaid shall be deemed duly given as of the date of confirmation of receipt. Unless otherwise specified by the respective parties, all notices, certificates and communications hereunder shall be addressed as follows:

To the Issuer:	Housing Authority of the City of Columbia, Missouri 201 Switzler Street Columbia, Missouri 65203 Attention: Randy Cole Email: rcole@columbiaaha.com
To the Trustee:	UMB Bank, N.A. 928 Grand Boulevard, 12th Floor Kansas City, Missouri 64106 Attention: Corporate Trust Department Email: liz.angotti@umb.com

To the Borrower: Kinney Point Housing Development Group, LP  
c/o CHA Affordable Housing Development, LLC  
201 Switzler Street  
Columbia, Missouri 65203  
Attention: Randy Cole  
Email: rcole@columbiaha.com

with a copy to: Rosenblum Goldenhersh, P.C.  
7733 Forsyth Boulevard, Suite 400  
Jasper, Missouri 63105  
Attention: Thomas A Duda, Esq.  
Email: tduda@rgsz.com

To the Investor Limited Partner: [\_\_\_\_\_]   
c/o Red Stone Equity Partners  
[ ] 5800 Armada Drive, Suite 235  
Carlsbad, California 92008 [ ]  
Attention: [\_\_\_\_\_]

with a copy to: [\_\_\_\_\_]   
[\_\_\_\_\_]   
[\_\_\_\_\_]   
Attention: [\_\_\_\_\_]

To the initial Majority Owner: Legacy Bank and Trust Company  
3250 East Sunshine Street  
Springfield, Missouri 65804  
Attention: Eric Leonard  
Email: eleonard@legacybankandtrust.com

with a copy to: Polsinelli PC  
201 East Las Olas Boulevard, Suite 2250B  
For Lauderdale, Florida 33301  
Attention: S. Shawn Whitney  
Email: swhitney@polsinelli.com

The above parties, by notice given under this Agreement, may designate any different addresses to which subsequent notices or other communications shall be sent. All approvals required under this Agreement shall be given in writing.

**Section 17. Indemnification.**

(a) The Borrower will indemnify and hold harmless the Issuer, the Trustee and the Majority Owner, and the respective officers, members, directors, officials, attorneys and employees and each of them (each an "**Indemnified Party**") against all loss, costs, damages, expenses, suits, judgments, actions and liabilities of whatever nature (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments) directly or indirectly resulting from, or arising out of or related to: (i) the design, construction, installation, operation, use, occupancy,

maintenance or ownership of the Project (including compliance with laws, ordinances and rules and regulations of public authorities relating thereto), or (ii) any breach of representations or warranties with respect to the Borrower, the Project or the Bonds made or given to the Issuer, the Trustee or the Majority Owner, or any underwriters or purchasers of any of the Bonds by the Borrower, including, but not limited to, statements or representations of facts, financial information or partnership or company affairs. The Borrower also shall pay and discharge and shall indemnify and hold harmless the Issuer and the Trustee from (1) any lien or charge upon payments by the Borrower to the Issuer, the Trustee and the Majority Owner hereunder, and (2) any taxes (including, without limitation, all *ad valorem* taxes and sales taxes), assessments, impositions and other charges in respect of any portion of the Project.

(b) Promptly after receipt by any Indemnified Party of notice of the commencement of any suit, action or proceeding subject to the indemnification provisions of this Section, such Indemnified Party shall, if a claim in respect thereof is to be made against the Borrower under this Section, notify the Borrower in writing of the commencement thereof; provided, however, that the failure to provide such notice shall not relieve the Borrower from any liability that it may have to any Indemnified Party otherwise than under this Section or from any liability that it may have to any Indemnified Party under this Section. In case any such action is brought against any Indemnified Party, and it notifies the Borrower of the commencement thereof, the Borrower shall be entitled (but shall not be required) to participate in, and to the extent that the Borrower may elect by written notice delivered to the Indemnified Party promptly after receiving the aforesaid notice from such Indemnified Party, to assume, the defense thereof, with counsel reasonably satisfactory to such Indemnified Party. Upon receipt of notice from the Borrower to such Indemnified Party of the Borrower's election to assume the defense of such action and approval by the Indemnified Party of counsel, the Borrower shall not be liable to such Indemnified Party under this Section for any attorneys' fees or expenses subsequently incurred by such Indemnified Party in connection with defense thereof; provided, however, that the Indemnified Party shall be entitled to retain its own separate counsel and assert such legal defenses and otherwise participate in the defense of such action on behalf of such Indemnified Party, in each jurisdiction for which the Indemnified Party determines such counsel is required, at the expense of the Borrower, if: (i) the defendants in any such action include both the Indemnified Party and the Borrower, and the Indemnified Party shall have reasonably concluded that there exists or is reasonably likely to exist a conflict of interest that would make it inappropriate for the same counsel to represent both the Indemnified Party and the Borrower, or (ii) the Borrower shall not have employed counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party within a reasonable time after notice of commencement of the action is given to the Borrower, or (iii) the Borrower has authorized the employment of separate counsel to represent the Indemnified Party at the expense of the Borrower, or (iv) counsel selected by the Borrower fails to actively and competently pursue a defense. Notwithstanding the foregoing, the Trustee shall not be indemnified for income tax, franchise tax or similar tax liability.

#### **Section 18. Performance of Duties.**

(a) After the date on which no Bonds remain outstanding, as provided in the Indenture, the Trustee shall not be deemed a party to this Agreement and shall no longer have any duties or responsibilities under this Agreement and all references to the Trustee in this Agreement shall be deemed references to the Issuer.

(b) During the portion of the Qualified Project Period remaining after the discharge of the Indenture, the Borrower will pay to the Issuer:

- (i) the fees and expenses (including attorneys' fees and expenses) incurred by the Issuer at any time related to the Project, including, without limitation, fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of this Agreement or in connection with any federal or state tax audit, or any questions or other matters arising under this Agreement, promptly upon receipt of an invoice; and
- (ii) such payments as are required (A) as payment for or reimbursement of any and all reasonable fees, expenses and liabilities (including attorneys' fees and expenses) incurred by the Issuer in satisfaction of any obligations of the Borrower hereunder that the Borrower does not perform, or incurred in the defense of any action or proceeding with respect to this Agreement or the Bonds, or (B) as reimbursement for expenses paid, or as prepayment of expenses to be paid, by the Issuer and that are incurred as a result of a request by the Borrower or a requirement of this Agreement or the Indenture and that the Borrower is not otherwise required to pay under this Agreement.

(c) The obligations of the Borrower to make such payments shall be absolute and unconditional, and the Borrower shall make such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim which the Borrower may have or assert against the Issuer or any other person.

(d) If the Borrower fails to make timely payment of any amount due under this **Section 18(b)** within 30 days following the due date, in addition to all other remedies permitted under this Agreement, the Issuer may take whatever other action at law or in equity, including causing the appointment of a receiver or receivers for the Borrower or its assets, taking all actions necessary and appropriate to exercise or to cause the exercise of the rights and powers set forth in this Agreement as may appear necessary or desirable to collect the amounts payable pursuant to this Agreement then due and thereafter to become due or to enforce the performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement.

(e) In the enforcement of the remedies provided in this **Section 18**, the Issuer may treat all expenses of enforcement, including reasonable legal, accounting and advertising fees and expenses, as additional payments then due and payable by the Borrower.

(f) The provisions governing the rights, immunities and protections of the Trustee under the Indenture and the Loan Agreement are herein granted to the Trustee and incorporated by reference into this Agreement as though fully set forth herein.

#### **Section 19. Extent of Covenants of the Issuer; No Personal or Pecuniary Liability.**

(a) 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 in other than his 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. No provision, covenant or agreement contained in this Agreement, the Indenture or any other Loan Document to which the Issuer is a party or the Bonds, or any obligation herein or therein imposed



upon the Issuer, or the breach thereof, or any action taken by the Issuer or failure to take any action, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge. In acting under this Agreement, or any obligation herein or therein imposed upon the Issuer, or in refraining from acting under any of the aforesaid agreements or instruments, the Issuer may conclusively rely on the advice of its counsel.

- (b) It is expressly understood and agreed by the Borrower and the Trustee that:
- (i) the Issuer may rely exclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by the Trustee or the Borrower as to the existence of any fact or state of affairs required under this Agreement;
  - (ii) the Issuer shall not be under any obligation to perform any record keeping or to provide any legal services, it being understood that such services shall be performed or caused to be performed by the Trustee or the Borrower; and
  - (iii) none of the provisions of this Agreement shall require the Issuer to expend or risk its own funds (other than the proceeds of the Bonds) or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under this Agreement unless the Issuer has first been adequately indemnified to its satisfaction against the costs, expenses and liability which may be incurred thereby.

**Section 20. Electronic Transactions.** The transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 21. Severability.** If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

**Section 22. Counterparts.** This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

**Section 23. Governing Law.** This Agreement shall be governed by the laws of the State of Missouri, without regard to the conflict of laws principles thereof.

*[Remainder of page intentionally left blank.]*

**IN WITNESS WHEREOF**, the Issuer, the Trustee and the Borrower have executed this Agreement by their duly authorized representatives, all on the date first written hereinabove.

**HOUSING AUTHORITY OF THE CITY OF  
COLUMBIA, MISSOURI**

By \_\_\_\_\_  
Name: Randy Cole  
Title: Chief Executive Officer

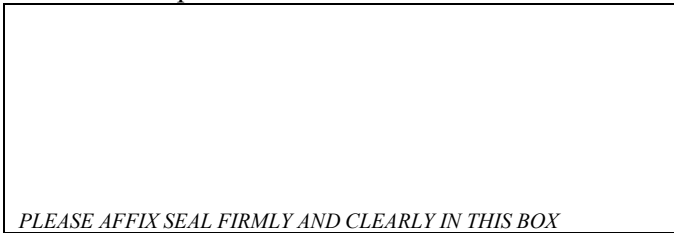
**ACKNOWLEDGMENT**

**STATE OF MISSOURI**        )  
  )   **SS.**  
**COUNTY OF BOONE**        )

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me personally appeared Randy Cole, to me personally known, who, being by me duly sworn, did say that he is the Chief Executive Officer of the Housing Authority of the City of Columbia, Missouri, a municipal corporation, and that said instrument was signed by the Chief Executive Officer on behalf of said corporation by authority of its board of directors; and said officer acknowledged said instrument to be the free act and deed of said corporation.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my notary seal the day and year last above written.

\_\_\_\_\_  
Notary Public in and for said State  
Commission Expires:







**EXHIBIT A**  
**PROJECT SITE**

[ \_ To be inserted \_ ]

**EXHIBIT B**

**TENANT INCOME CERTIFICATION**

<input type="checkbox"/> Initial Certification <input type="checkbox"/> Recertification <input type="checkbox"/> Other	Effective Date: _____ Move-in Date: _____ <div align="right">(MM/DD/YYYY)</div>
--	---

**PART I - DEVELOPMENT DATA**

Property Name: _____	County: _____	BIN #: _____
Address: _____	Unit Number: _____	# Bedrooms: _____

**PART II. HOUSEHOLD COMPOSITION**

HH Mbr #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	Race/Ethnicity	F/T Student (Y or N)	Social Security or Alien Reg. No.
1			HEAD				
2							
3							
4							
5							
6							
7							

**PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)**

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
<b>TOTALS</b>	\$ _____	\$ _____	\$ _____	\$ _____
Add totals from (A) through (D), above			<b>TOTAL INCOME (E):</b>	\$ <span style="border: 1px solid black; padding: 2px;">_____</span>

**PART IV. INCOME FROM ASSETS**

HH Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
<b>TOTALS:</b>			\$ _____	\$ _____
Enter Column (H) Total		Passbook Rate		
If over \$5000      \$ _____ X		2.00%		= (J) Imputed Income
Enter the greater of the total of column I, or J: imputed income				<b>TOTAL INCOME FROM ASSETS (K)</b>
				\$ <span style="border: 1px solid black; padding: 2px;">_____</span>
(L) Total Annual Household Income from all Sources [Add (E) + (K)]				\$ _____

**HOUSEHOLD CERTIFICATION & SIGNATURES**

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature	(Date)	Signature
(Date)		
Signature	(Date)	Signature
(Date)		

**PART V. DETERMINATION OF INCOME ELIGIBILITY**

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES: From item (L) on page 1	\$	Household Meets Income Restriction at: <input type="checkbox"/> 60% <input type="checkbox"/> 50% <input type="checkbox"/> 40% <input type="checkbox"/> 30% <input type="checkbox"/> ____%	<b>RECERTIFICATION ONLY:</b> Current Income Limit x 140%: \$ _____ Household Income exceeds 140% at recertification: <input type="checkbox"/> Yes <input type="checkbox"/> No
Current Income Limit per Family Size:	\$		
Household Income at Move-in:	\$ _____	Household Size at Move-in:	_____

**PART VI. RENT**

Tenant Paid Rent \$ _____  Utility Allowance \$ _____	Rent Assistance: \$ _____ Other non-optional charges: \$ _____
GROSS RENT FOR UNIT: (Tenant paid rent plus Utility Allowance & other non-optional charges)	\$
Maximum Rent Limit for this unit:	\$ _____
	Unit Meets Rent Restriction at: <input type="checkbox"/> 60% <input type="checkbox"/> 50% <input type="checkbox"/> 40% <input type="checkbox"/> 30% <input type="checkbox"/> ____%

**PART VII. STUDENT STATUS**

ARE ALL OCCUPANTS FULL TIME STUDENTS?  <input type="checkbox"/> yes <input type="checkbox"/> no	If yes, Enter student explanation* (also attach documentation)	*Student Explanation: 1 TANF assistance 2 Job Training Program 3 Single parent/dependent child 4 Married/joint return
	Enter 1-4	

**PART VIII. PROGRAM TYPE**

Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification.

a. Tax Credit

See Part V above.

b. HOME

- Income Status*
- ≤ 50% AMGI
  - ≤ 60% AMGI
  - ≤ 80% AMGI
  - OI\*\*

c. Tax Exempt

**Income Status**

- 50% AMGI
- 60% AMGI
- 80% AMGI
- OI\*\*

d. AHDP

- Income Status*
- 50% AMGI
  - 80% AMGI
  - OI\*\*

e. \_\_\_\_\_   
(Name of Program)

- Income Status*
- \_\_\_\_\_
  - \_\_\_\_\_
  - OI\*\* \_\_\_\_\_

\*\* Upon recertification, household was determined over-income (OI) according to eligibility requirements of the program(s) marked above.

**SIGNATURE OF OWNER/REPRESENTATIVE**

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this QRRP.

\_\_\_\_\_  
SIGNATURE OF OWNER/REPRESENTATIVE

\_\_\_\_\_  
DATE





#### Part IV - Income from Assets

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the twelve months from the effective date of the certification. List the respective household member number from Part II and complete a separate line for each member.

Column (F)	List the type of asset (i.e., checking account, savings account, etc.)
Column (G)	Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).
Column (H)	Enter the cash value of the respective asset.
Column (I)	Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).
TOTALS	Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than \$5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 2% and enter the amount in (J), Imputed Income.

Row (K)	Enter the greater of the total in Column (I) or (J)
Row (L)	Total Annual Household Income From all Sources Add (E) and (K) and enter the total

#### HOUSEHOLD CERTIFICATION AND SIGNATURES

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than 5 days prior to the effective date of the certification.

#### Part V – Determination of Income Eligibility

Total Annual Household Income from all Sources	Enter the number from item (L).
Current Income Limit per Family Size	Enter the Current Move-in Income Limit for the household size.
Household income at move-in Household size at move-in	For recertifications, only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.
Household Meets Income Restriction	Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the qualified residential rental project.
Current Income Limit x 140%	For recertifications only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.

#### Part VI - Rent

Tenant Paid Rent	Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).
Rent Assistance	Enter the amount of rent assistance, if any.
Utility Allowance	Enter the utility allowance. If the owner pays all utilities, enter zero.
Other non-optional charges	Enter the amount of <u>non-optional</u> charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.
Gross Rent for Unit	Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.
Maximum Rent Limit for this unit	Enter the maximum allowable gross rent for the unit.
Unit Meets Rent Restriction at	Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the qualified residential rental project.

**Part VII - Student Status**

If all household members are full time\* students, check "yes". If at least one household member is not a full time student, check "no".

If "yes" is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

*\*Full time is determined by the school the student attends.*

**Part VIII – Program Type**

Mark the program(s) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

- |            |  |
|------------|--|
| Tax Credit | See Part V above.  |
| HOME       | If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household's designation.                    |
| Tax Exempt | If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household's designation.  |
| AHDP       | If the property participates in the Affordable Housing Disposition Program (AHDP), and this household's unit will count towards the set-aside requirements, mark the appropriate box indicating the household's designation. |
| Other      | If the property participates in any other affordable housing program, complete the information as appropriate.   |

**SIGNATURE OF OWNER/REPRESENTATIVE**

It is the responsibility of the owner or the owner's representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well trained in tax credit compliance.

These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.

**EXHIBIT C**

**QUARTERLY TENANT REPORT**

Project Name: Kinney Point Apartments

Total Number of Units: 34

Calendar Quarter of Report: \_\_\_\_\_

(a)	(b)	(c)
Total No. of Units Occupied or Treated as Occupied by Qualified Tenants	Total No. of Available Units	% of Total Units Occupied or Treated as Occupied by Qualified Tenants <sup>(1)</sup>

(1) (e) is (c)/(d); must be at least 40.00% without rounding up.

Attached as **Schedule 1** is a current listing of Qualified Tenants and all vacant units treated as occupied by Qualified Tenants. Also attached are copies of the initial Income Certifications for all Qualified Tenants that moved into the Project during the calendar quarter set forth above (\_\_\_ Qualified Tenants).

The Borrower has in its permanent records a signed Income Certification in substantially the form set forth as **Exhibit B** to the Land Use Restriction Agreement dated as of May 1, 2024 for each Qualified Tenant and with respect to each vacant unit treated as occupied by a Qualified Tenant, in each case dated as of the initial certification date (i.e., Move-In Date) or the Recertification Date set forth on **Schedule 1**.

As of the date of this Quarterly Tenant Report, no default has occurred in the observance of the covenants contained in the Land Use Restriction Agreement dated as of May 1, 2024 with respect to the Project, and no event has occurred in connection with the operation of the Project which has caused or will cause the Project to cease to meet the requirements of the Land Use Restriction Agreement.

The information on this Quarterly Tenant Report, including the attached **Schedule 1**, has been verified as required by the Land Use Restriction Agreement. I certify the incomes reported on **Schedule 1** are true and complete to the best of my knowledge and belief and are given under penalty of perjury.

DATED: \_\_\_\_\_

KINNEY POINT HOUSING DEVELOPMENT  
GROUP, LP

By: \_\_\_\_\_  
Name:  
Title:





**VACANT UNITS TREATED AS OCCUPIED BY QUALIFIED TENANTS:**

Unit No.	Head of Household	Move-Out Date	Last Recertification Date	Move-Out Date less than 365 days after Last Recertification Date? Y/N

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TAX COMPLIANCE AGREEMENT

Dated as of May 1, 2024

among

HOUSING AUTHORITY OF THE CITY OF COLUMBIA, MISSOURI,  
as Issuer

KINNEY POINT HOUSING DEVELOPMENT GROUP, LP,  
as Borrower

and

UMB BANK, N.A.,  
as Trustee

Relating to

\$\_[ ] Principal Amount A\_ ] Maximum Principal Amount  
Multifamily Housing Revenue Bonds  
(Kinney Point Apartments Project)  
Series 2024A

and

\$\_[ ] Principal Amount B\_ ] Maximum Principal Amount  
Multifamily Housing Revenue Bonds  
(Kinney Point Apartments Project)  
Series 2024B

of

Housing Authority of the City of Columbia, Missouri

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**TAX COMPLIANCE AGREEMENT**

**TABLE OF CONTENTS**

	<u>Page</u>
<b>Parties</b> .....	1
<b>Recitals</b> .....	1

**ARTICLE I**

**DEFINITIONS**

Section 1.1. Definitions of Words and Terms .....	1
---	---

**ARTICLE II**

**GENERAL REPRESENTATIONS AND COVENANTS**

Section 2.1. Representations and Covenants of the Issuer .....	5
Section 2.2. General Representations, Expectations and Covenants of the Borrower .....	6
Section 2.3. Limit on Bond Maturity.....	11
Section 2.4. Representations and Covenants of the Trustee .....	12
Section 2.5. Survival of Representations and Covenants .....	12

**ARTICLE III**

**ARBITRAGE CERTIFICATIONS AND COVENANTS**

Section 3.1. Purpose .....	12
Section 3.2. Reasonable Expectations .....	12
Section 3.3. Authority and Purpose for Bonds .....	13
Section 3.4. Funds and Accounts.....	13
Section 3.5. Amount and Use of Bond Proceeds and Other Money.....	13
Section 3.6. No Multipurpose Issue.....	14
Section 3.7. No Refunding .....	14
Section 3.8. [Reserved].....	14
Section 3.9. Project Completion.....	14
Section 3.10. Loan Agreement/Sinking Funds .....	14
Section 3.11. Reserve, Replacement and Pledged Funds and Accounts .....	15
Section 3.12. Program Investment Yield.....	15
Section 3.13. Issue Price and Bond Yield.....	16
Section 3.14. Miscellaneous Tax Matters .....	16
Section 3.15. Conclusion.....	16

**ARTICLE IV**

**POST-ISSUANCE TAX REQUIREMENTS, POLICIES AND PROCEDURES**

Section 4.1. General .....	17
Section 4.2. Record Keeping, Use of Bond Proceeds and Use of Financed Facilities .....	18
Section 4.3. Rebate Covenants .....	19

Section 4.4.	Temporary Periods/Yield Restriction .....	19
Section 4.5.	Fair Market Value .....	20
Section 4.6.	Spending Exceptions .....	22
Section 4.7.	Computation and Payment of Arbitrage Rebate .....	23
Section 4.8.	Successor Rebate Analyst.....	24
Section 4.9.	Rebate Report Records .....	24
Section 4.10.	Filing Requirements .....	24
Section 4.11.	Survival after Defeasance.....	24

**ARTICLE V**

**MISCELLANEOUS PROVISIONS**

Section 5.1.	Term of Tax Agreement .....	24
Section 5.2.	Amendments.....	25
Section 5.3.	Opinion of Bond Counsel.....	25
Section 5.4.	Reliance .....	25
Section 5.5.	Severability.....	25
Section 5.6.	Benefit of Agreement.....	25
Section 5.7.	Default, Breach and Enforcement .....	25
Section 5.8.	Tax Audits.....	26
Section 5.9.	Execution in Counterparts .....	26
Section 5.10.	Governing Law .....	26
Section 5.11.	Electronic Transactions.....	26

- Exhibit A - SOURCES AND USES OF FUNDS AND CALCULATION OF AVERAGE ECONOMIC LIFE, REIMBURSEMENT EXPENDITURES
- Exhibit B - DEBT SERVICE SCHEDULE, PROOF OF BOND YIELD, CALCULATION OF WEIGHTED AVERAGE MATURITY OF BONDS
- Exhibit C - FORM OF ANNUAL COMPLIANCE CHECKLIST
- Exhibit D - FORM OF FINAL WRITTEN ALLOCATION
- Exhibit E - TAX COMPLIANCE PROCEDURE

\* \* \*

## TAX COMPLIANCE AGREEMENT

**THIS TAX COMPLIANCE AGREEMENT** (this "Tax Agreement"), entered into as of May 1, 2024, among the **HOUSING AUTHORITY OF THE CITY OF COLUMBIA, MISSOURI**, a municipal corporation duly organized and existing under the laws of the state of Missouri (the "Issuer"), **KINNEY POINT HOUSING DEVELOPMENT GROUP, LP**, a Missouri limited partnership, and its successors and assigns (the "Borrower"), and **UMB BANK, N.A.**, a national banking association, as trustee (the "Trustee").

### RECITALS

1. This Tax Agreement is being executed and delivered in connection with the issuance by the Issuer of its Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024A in the maximum principal amount of \$[Principal Amount A] (the "Series A Bonds") and its Multifamily Housing Revenue Bonds (Kinney Point Apartments Project) Series 2024B in the maximum principal amount of \$[Principal Amount B] (the "Series B Bonds" and, together with the Series A Bonds, the "Bonds"). The Bonds are being issued under the Trust Indenture dated as of May 1, 2024 (the "Indenture"), between the Issuer and the Trustee, for the purpose of making a loan of the proceeds of the Bonds to the Borrower under the Loan Agreement dated as of May 1, 2024 (the "Loan Agreement") between the Issuer and the Borrower, to provide funds for certain purposes as described in this Tax Agreement, the Indenture and the Loan Agreement.

2. In order to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes, the Issuer, the Borrower and the Trustee will comply with certain provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and the applicable regulations and rulings issued by the U.S. Treasury Department (the "Regulations"), regarding the uses and investment of the proceeds of the Bonds and certain other money relating to the Bonds and the uses of the property financed by the Bonds.

3. The Issuer, the Borrower and the Trustee are entering into this Tax Agreement in order to set forth certain representations, facts, expectations, terms and conditions relating to the use and investment of the proceeds of the Bonds and of certain related money, and the uses of the property financed by the Bonds, in order to establish and maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes, and to provide guidance for complying with the arbitrage rebate provisions of Code § 148(f).

4. The Issuer adopted a Tax-Exempt Financing Compliance Policy and Procedure on March 17, 2015 (the "Tax Compliance Procedure") for the purpose of setting out general procedures for the Issuer and the Borrower to continuously monitor and comply with the federal income tax requirements set out in the Code and the Regulations.

5. This Tax Agreement is entered into as required by the Tax Compliance Procedure to set out specific tax compliance procedures applicable to the Bonds.

### AGREEMENT

#### ARTICLE I

#### DEFINITIONS

**Section 1.1. Definitions of Words and Terms.** Except as otherwise provided in this Tax Agreement or unless the context otherwise requires, capitalized words and terms used here have the same meanings as set forth in Section 101 of the Indenture and Section 1.1 of the Loan Agreement; and certain

other words and phrases have the meanings assigned in Code § 148 and the Regulations. In addition to the words and phrases defined in the Indenture, the Loan Agreement, and in the Recitals to this Tax Agreement, the following capitalized terms are defined:

**"Bona Fide Debt Service Fund"** means a fund, which may include Bond proceeds, that—

(1) is used primarily to achieve a proper matching of revenues with principal and interest payments on the Bonds within each Bond Year; and

(2) is depleted at least once each Bond Year, except for a reasonable carryover amount not to exceed the greater of (A) the earnings on the fund for the immediately preceding Bond Year, or (B) one-twelfth of the principal and interest payments on the Bonds for the immediately preceding Bond Year.

**"Bond Compliance Officer"** means the Finance Director of the Issuer or other person named by the Issuer in accordance with the Tax Compliance Procedure.

**"Bond Counsel"** means Gilmore & Bell, P.C., or other firm of nationally recognized bond counsel acceptable to the Issuer and the Borrower.

**"Bond Fund"** means the Bond Fund established under the Indenture.

**"Bond Year"** means each one-year period (or shorter period for the first Bond Year) ending May 1.

**"Borrower Bond Compliance Officer"** means [\_\_the financial officer of the General Partner\_\_], or any successor person appointed by the Borrower or its General Partner to act as Borrower Bond Compliance Officer, with written notice to the Issuer and the Bond Compliance Officer.

**"Casualty/Condemnation Account"** means the Casualty/Condemnation Account which may be established under the Indenture.

**"City"** means the City of Columbia, Missouri.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Computation Date"** means each date on which arbitrage rebate and yield reduction amounts for the Bonds are computed. The Borrower (a) may treat the last day of any Bond Year ending on or before the latest date on which the first rebate amount is required to be paid (60 days after the fifth anniversary of the Issue Date) as a Computation Date, but may not change that treatment after the first required payment date, and (b) after the first required payment date, must consistently treat either the end of each Bond Year or the end of each fifth Bond Year as a Computation Date and may not change these dates after the first required payment date. In addition, the date the last Bond is discharged is the final Computation Date. The Borrower selects May 1, 2029, as the first Computation Date, but reserves the right to select a different date consistent with the Regulations.

**"County"** means the County of Boone, Missouri.

**"Expense Fund"** means the Expense Fund established under the Indenture.

**"Final Written Allocation"** means the Final Written Allocation of expenditures prepared by the Bond Compliance Officer, a sample form of which is attached as **Exhibit D**.

**"Gross Proceeds"** means (1) sale proceeds (any amounts actually or constructively received by the Issuer from the sale of the Bonds, but excluding pre-issuance accrued interest); (2) investment proceeds (any amounts received from investing sale proceeds, other investment proceeds, or transferred proceeds); (3) any transferred proceeds; (4) any amounts held in a sinking fund for the Bonds; (5) any amounts held in a pledged fund or reserve fund for the Bonds; and (6) any other replacement proceeds. Specifically, Gross Proceeds include, but are not limited to, all amounts held in the following funds and accounts:

- (1) the Project Fund;
- (2) the Expense Fund (to the extent funded with sale proceeds or investment proceeds of the Bonds);
- (3) the Bond Fund;
- (4) the Retained Earnings Fund (to the extent of the sum of \$10,000 plus the next payment due under the Loan Agreement); and
- (5) the Rebate Fund (to the extent funded with sale proceeds or investment proceeds of the Bonds).

**"Guaranteed Investment Contract"** is any Investment with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, including any agreement to supply Investments on two or more future dates (*e.g.*, a forward supply contract).

**"Insurance and Taxes Escrow Account"** means the Insurance and Taxes Escrow Account which may be established under the Indenture.

**"Investment"** means any security, obligation, annuity contract or other investment-type property that is purchased directly with, or otherwise allocated to, Gross Proceeds. Such term does not include obligations the interest on which is excluded from federal gross income.

**"IRS"** means the United States Internal Revenue Service.

**"Issue Date"** means May [\_\_\_], 2024.

**"Loan"** means the loan of the proceeds the Bonds by the Issuer to the Borrower under the Loan Agreement.

**"Minor Portion"** means \$100,000.

**"Net Proceeds"** means (a) any amounts actually or constructively received from the sale of the Bonds, less (b) pre-issuance accrued interest, less (c) amounts deposited in a reasonably required reserve or replacement fund, plus (d) investment earnings on such amounts, plus (e) "imputed proceeds" (as defined in Regulations § 1.103-8), if any.

**"Opinion of Bond Counsel"** means the written opinion of Gilmore & Bell, P.C. Unless otherwise specifically noted herein an Opinion of Bond Counsel must conclude that the action or proposed action or the failure to act or proposed failure to act for which the opinion is required will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

**"Partnership Agreement"** means the [\_\_\_ Amended and Restated Agreement of Limited Partnership\_\_\_] of the Borrower dated as of May [\_\_\_], 2024, among [\_\_\_ the General Partner, the Investor

Limited Partner, and [\_\_\_\_], as the withdrawing limited partner], as amended, modified, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

**"Partnership Reserve Accounts"** means, collectively, [\_\_the Replacement Reserve and the Operating Reserve \_\_], established under the Partnership Agreement.

**"Post-Issuance Tax Requirements"** means those requirements related to the use of proceeds of the Bonds, the use of the Project and the investment of Gross Proceeds that apply after the Issue Date of the Bonds.

**"Project"** means all property acquired, renovated, installed and/or improved with proceeds of the Bonds, as described in **Exhibit A**.

**"Project Fund"** means the Project Fund established under the Indenture.

**"Purchaser"** means Legacy Bank & Trust, a Missouri chartered bank, and its successors and assigns, as purchaser of the Bonds.

**"Reasonable Retainage"** means Gross Proceeds retained by the Borrower for reasonable business purposes, such as to ensure or promote compliance with a construction contract; provided that such amount may not exceed, for purposes of the 18-month spending test, 5% of Net Proceeds of the Bonds on the date 18 months after the Issue Date.

**"Rebate Analyst"** means [\_\_Gilmore & Bell, P.C. \_\_], or any other person or firm, chosen by the Borrower and at the expense of the Borrower, qualified and experienced in the calculation of rebate payments under Code § 148 and compliance with the arbitrage rebate regulations promulgated under the Code, which is engaged for the purpose of determining the amount of required deposits to the Rebate Fund, if any, pursuant to this Tax Agreement.

**"Rebate Fund"** means the Rebate Fund established under the Indenture.

**"Regulations"** means all regulations issued by the U.S. Treasury Department to implement the requirements of Code §§ 103 and 141 through 150 and applicable to the Bonds.

**"Regulatory Agreement"** means the Land Use Restriction Agreement relating to the Project, dated as of May 1, 2024, by and among the Issuer, the Trustee and the Borrower, as it may be amended, supplemented or restated from time to time.

**"Related Person"** means the following: a person is related to another person if (a) the relationship between such persons would result in a disallowance of losses under Code §§ 267 or 707(b), or (b) such persons are members of the same controlled group of corporations, as defined in Code § 1563(a), except that "more than 50%" must be substituted for "at least 80%" in § 1563, or (c) such persons are a partnership and any of its partners or an S-corporation and any of its shareholders.

**"Retained Earnings Fund"** means the Retained Earnings Fund established under the Indenture.

**"Revenue Fund"** means the Revenue Fund established under the Indenture.

**"Tax Compliance Procedure"** means the Issuer's Tax-Exempt Financing Compliance Policy and Procedure, dated March 17, 2015, as amended, supplemented or replaced from time to time.

**"Tax-Exempt Bond File"** means documents and records for the Bonds, maintained by the Borrower Bond Compliance Officer pursuant to the Tax Compliance Procedure.

**"Transcript"** means the Transcript of Proceedings relating to the authorization and issuance of the Bonds.

**"Yield"** means yield computed under § 1.148-4 of the Regulations with respect to the Bonds and computed under § 1.148-5 of the Regulations with respect to an Investment.

## ARTICLE II

### GENERAL REPRESENTATIONS AND COVENANTS

**Section 2.1. Representations and Covenants of the Issuer.** The Issuer represents and covenants to the Borrower and the Trustee as follows:

(a) *Organization and Authority.* The Issuer (1) is a municipal corporation duly organized and validly existing under the laws of the state of Missouri, and (2) has lawful power and authority to issue the Bonds for the purposes set forth in the Indenture, to enter into, execute and deliver the Indenture, the Loan Agreement, the Regulatory Agreement, and this Tax Agreement and to carry out its obligations under such documents, and (3) by all necessary action has been duly authorized to execute and deliver the Indenture, the Loan Agreement, the Regulatory Agreement, and this Tax Agreement, acting by and through its duly authorized officials.

(b) *Tax-Exempt Status of Bonds.* The Issuer, to the extent within its power or direction, (1) will not use any money on deposit in any fund or account maintained in connection with the Bonds, whether or not such money was derived from the sale of the Bonds, in a manner that would cause any Bond to be an "arbitrage bond" within the meaning of Code § 148, and (2) will not otherwise use or permit the use of any Bond proceeds, directly or indirectly, in any manner, and will not take or permit to be taken any other action, that would cause interest on the Bonds to be included in gross income for federal income tax purposes.

(c) *Private Activity Bond Volume.* The Issuer has received from the state of Missouri an allocation of Private Activity Bond Volume Cap for 2024 in the aggregate amount of \$[\_\_\_\_], of which \$[\_\_\_\_] is being used for the Bonds. The documentation regarding the volume cap allocation is included in the Transcript. The Bonds are being issued as a "draw-down loan" within the meaning of Regulations § 1.150-1(c)(4)(i). The Issuer is electing to apply the alternative option of § 3.01 of IRS Notice 2011-63 so that all of the Bonds are treated as issued on the Issue Date for volume cap purposes, and the Indenture requires that all draws of Bond proceeds occur prior to the end of the third year after the end of the calendar year during which the Issue Date occurs. Therefore, the Bonds comply with the private activity bond volume cap requirements of Code § 146.

(d) *Public Hearing and Approval.* In connection with the issuance of the Bonds, the Issuer held a public hearing, as required under Code § 147(f) regarding the proposed issuance of the Bonds and the financing of the Project, on April 24, 2024 at 9:30 a.m. at the offices of the Issuer, 201 Switzler Street, Columbia, Missouri 65203, pursuant to notice posted and publicly available on April 16, 2024, through the hearing date, by posting on the Issuer's official website, which website is used to inform residents of the City of public meetings and events affecting such residents and their corresponding dates and times. The hearing was open to the public, and those present were invited to express their views prior to or at the hearing relating to the issuance of the Bonds and the proposed use of the proceeds of the Bonds. On [\_\_\_\_], 2024 the City Council of the City approved the issuance of the Bonds, which approval is contained in the Transcript. [\_\_A Certificate Regarding Public Hearing and Notice of Such Hearing executed by the Issuer

affirming that the public hearing was held and notice of the hearing was published is attached to the City Council's approval [ ]. Based on the foregoing, the issuance of the Bonds by the Issuer to finance the costs of the Project has been approved in accordance with Code § 147(f).

(e) *Official Intent.* On December 12, 2022 the Issuer passed Resolution No. 2917 evidencing its “official intent” to issue the Bonds for the Project, a copy of which resolution is contained in the Transcript.

(f) *IRS Form 8038.* A copy of IRS Form 8038 (Information Return for Tax-Exempt Private Activity Bond Issues) filed with the IRS in connection with the issuance of the Bonds as required by Code § 149(e) is contained in the Transcript.

(g) *Registered Bonds.* The Indenture requires that all of the Bonds will be issued and held in registered form within the meaning of Code § 149(a).

(h) *Hedge Bonds.* Based on the Borrower’s representations, the Issuer expects that (1) at least 85% of the net sale proceeds of the Bonds will be used to carry out the governmental purpose of the Bonds within three years after the Issue Date, and (2) not more than 50% of the proceeds of the Bonds will be invested in investments having a substantially guaranteed yield for four years or more.

(i) *Issuer Reliance on Other Parties.* The expectations, representations and covenants of the Issuer concerning certain uses of Bond proceeds and certain other moneys described in this Tax Agreement and other matters are based in whole or in part upon representations of the Borrower and other parties set forth in this Tax Agreement or exhibits hereto. Although the Issuer has made no independent investigation of the representations of other parties including the Borrower, the Issuer is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation made in this Tax Agreement or its exhibits.

(j) *Compliance with Tax Requirements; Remedial Action.* Upon written notice given by the Borrower, the Issuer, to the extent within its power and direction and at the sole expense of the Borrower, will take any action, including remedial action, if necessary, which may include the redemption or defeasance of all or a portion of the Bonds in accordance with Regulations § 1.142-2 (which action will be accompanied by an Opinion of Bond Counsel), as necessary to cause interest on the Bonds to remain excludable from gross income for federal income tax purposes.

**Section 2.2. General Representations, Expectations and Covenants of the Borrower.** The Borrower represents and covenants to the Issuer and the Trustee as follows:

(a) *Organization and Authority.* The Borrower (1) is a limited partnership duly organized, validly existing and in good standing under the laws of the state of Missouri, (2) has lawful power and authority to enter into, execute and deliver the Loan Agreement, the Regulatory Agreement, and this Tax Agreement and to carry out its obligations under such documents, and (3) by all necessary company action has been duly authorized to execute and deliver the Loan Agreement, the Regulatory Agreement, and this Tax Agreement, acting by and through its General Partner.

(b) *Preservation of Tax-Exempt Status of Bonds.* In order to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes, the Borrower:

(1) will take whatever action, and refrain from whatever action, necessary to comply with the applicable requirements of the Code to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes;



(2) will not use or invest, or permit the use or investment of, any Bond proceeds, other money held under the Indenture, or other funds of the Borrower, in a manner that would violate applicable provisions of the Code; and

(3) will not use, or permit the use of, any portion of the Project in a manner that would violate applicable provisions of the Code.

(c) *Location and Description of Project.* The proceeds of the Bonds are to be used to finance a portion of the costs of the acquisition and rehabilitation of the Project, which consists of one or more “qualified residential rental projects” under Code § 142(d) located wholly within the County.

(d) *Project Plans and Rehabilitation Budget; Completion.* The description of the Project was prepared on the basis of plans and specifications for the Project, which were prepared for and approved by the Borrower. The costs of the Project have been prepared on the basis of a rehabilitation budget for the Project, which was prepared for and approved by the Borrower. Based on its experience in preparing plans and specifications and rehabilitation budgets for similar projects, the Borrower believes that the Project has been properly planned and budgeted, and that the proceeds of the Bonds, together with money contributed by the Borrower and expected investment earnings, as described in this Tax Agreement, will be sufficient to pay in full the costs of the Project. The Borrower has no reason to believe (1) that there will be any material changes, modifications or amendments to such plans or budget prior to the completion of the rehabilitation of the Project, or (2) that the proceeds of the sale of the Bonds will be used in any manner other than to pay the costs of the Project or costs of issuance as described herein. The acquisition of land and existing buildings constituting a portion of the Project will occur on the Issue Date. The rehabilitation of the Project has commenced or will commence as soon as possible after the Issue Date and is expected to be completed by the end of calendar year 2023 (proceeds of the Bonds are expected to be fully expended on or before such date).

(e) *Use of Bond Proceeds; Operation of Project.*

(1) 95% Requirement. At least 95% of the Net Proceeds and imputed proceeds, if any, of the Bonds will be used to finance "eligible costs" of a qualified residential rental project. For this purpose, the "eligible costs" means Project costs which are chargeable to the Project's capital account, or would be so chargeable, either with a proper election by the Borrower (*e.g.*, under Code § 266), or but for a proper election by the Borrower to deduct such amounts. The Borrower will operate the Project as a qualified residential rental project in compliance with Code § 142(d), the Regulations, and this Tax Agreement as long as any Bond remains outstanding. Before entering into, or modifying, any management agreement or operating agreement relating to the operation of the Project, the Borrower will first obtain an Opinion of Bond Counsel that the execution or modification of that agreement will not cause the interest on the Bonds to be included in gross income for federal income tax purposes.

(2) Reimbursement. The Borrower understands that, for Bond proceeds used to reimburse the Borrower for costs of the Project paid before the Issue Date, such costs will constitute "eligible costs" only if the reimbursement is valid under Regulation § 1.150-2. The Borrower [ does not expect to use Bond proceeds to reimburse costs incurred before the Issue Date] [ expects to use \$[] of Bond proceeds to reimburse costs incurred before the Issue Date, as shown on **Exhibit B**]. The Borrower understands that, in general, a reimbursement is valid under Regulations § 1.150-2 only if (A) the expenditure was paid not earlier than 60 days before the date the Issuer adopted Resolution No. 2917 evidencing its “official intent” to issue the Bonds for the Project (December 12, 2022), (B) the reimbursement allocation is made not later than 3 years after the date the expenditure was paid, and (C) the reimbursement allocation is made not

later than 18 months after the later of date the expenditure was paid or the date the project was placed in service.

(3) Restriction on Refinancing. For each person that was a substantial user of the Project at any time during the 5-year period before the Issue Date, or any Related Person to such substantial user, such person either (A) will not receive (directly or indirectly) 5% or more of the proceeds of the Bonds for such person's interest in the Project, or (B) will not be a substantial user of the Project at any time during the 5-year period after the Issue Date. Substantial user has the meaning used in Code §147(a) and generally includes any person (other than a governmental entity or a tax-exempt organization recognized under Code §§ 501(a) and 501(c)(3)) if either (A) the gross revenue derived by that person is more than 5% of the total revenue derived by all users of the facility, or (B) the amount of area of the facility occupied by that person is more than 5% of the entire usable area of the facility.

(4) Related Party Transactions. If any amount of Net Proceeds of the Bonds is allocated to pay or reimburse any person or entity that is a Related Person to the Borrower, no portion of such amount will include any amount that is attributable to profit or mark-up of the Borrower or any Related Person or to the payment of working capital or overhead expenses. In addition, such amount will not exceed an arm's length charge (the amount that would be charged to a person other than the Borrower) and will be paid under the same circumstances as would be by a person other than the Borrower to such affiliated person or entity. Notwithstanding the foregoing, in no event will amounts that are paid to a Related Person be treated as spent until such amounts are spent on capital expenditures by such Related Person.

(f) Qualified Residential Rental Project. The Project will be owned, managed and operated as a "qualified residential rental project" at all times during the "qualified project period".

(1) General Definition. A qualified residential rental project is generally a building or structure, together with any functionally related and subordinate facilities, containing one or more similarly constructed units which—

- (A) are used on other than a transient basis,
- (B) satisfy the low-to-moderate-income set-aside requirements of paragraph (2) below,
- (C) are continuously available for rental as described in paragraph (5) below,
- (D) are available to members of the general public, and
- (E) satisfy the remaining requirements of this subsection.

(2) 40% Set-Aside for Low-to-Moderate Income Tenants. At all times during the Qualified Project Period (defined below), 40% or more of the residential units in the Project will be occupied by individuals whose income is 60% or less of area median gross income.

(3) Qualified Project Period. The term "Qualified Project Period" means the period beginning on the first day on which 10% of the residential units in the Project are occupied and ending on the latest of—

- (A) the date that is 15 years after the date on which 50% of the residential units in the Project are occupied,

(B) the first day on which no tax-exempt private activity bond 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 United States Housing Act of 1937 terminates.

(4) Income of Individuals; Area Median Gross Income. The income of individuals and area median gross income will be determined in accordance with Code § 142, the applicable Treasury Regulations, and the Regulatory Agreement.

(5) Continuously Available. Once available for occupancy, each unit in the Project will be rented or available for rental on a continuous basis during the Qualified Project Period.

(6) Prohibited Facilities. At least 95% of the Project will contain rental units and functionally related and subordinate facilities. Hotels, motels, dormitories, fraternity and sorority houses, rooming houses, hospitals, nursing homes, sanitariums, rest homes, and trailer parks and courts for use on a transient basis are not residential rental projects. Any facility providing residences for the elderly is not a residential rental project if frequent nursing, medical, or psychiatric services are provided to residents. No such services are provided to residents of the Project.

(7) Multiple Buildings. Proximate buildings or structures that have similarly constructed units are treated as part of the same project if the same person owns such buildings and structures for Federal tax purposes and if the buildings and structures are financed pursuant to a common plan. Buildings and structures are proximate if they are located on a single tract of land. The term "tract" means any parcel or parcels of land that are contiguous except for the interposition of a road, street, stream or similar property. Otherwise, parcels are contiguous if their boundaries meet at one or more points. 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. Based on the foregoing, the Borrower represents that the Project constitutes a single "qualified residential rental project."

(8) Functionally Related and Subordinate Facilities. Facilities that are functionally related and subordinate to residential rental projects include facilities for use by the tenants, for example, swimming pools, gymnasiums, other recreational facilities, parking areas, and other facilities which are reasonably required for the Project, for example, heating and cooling equipment, trash disposal equipment or units for resident managers or maintenance personnel.

(9) Corporate Leases. The leasing of one or more units in the Project to a person other than a person who will occupy the unit (a "Corporate Tenant"), in connection with an arrangement whereby the unit will be held for residential use by such person's own employees or for sublease to any other person (a "Corporate Lease") will occur only under the following conditions: (A) the term of the Corporate Lease will be at least as long as the minimum lease term for units rented directly to individual tenants who will occupy the unit, (B) no single Corporate Tenant may lease more than 5% of the total residential units in the Project at one time, (C) no more than 10% of the total residential units in the Project may be subject to Corporate Leases at one time, (D) any sublease, assignment agreement, or similar arrangement where the premises are provided by the Corporate Tenant to an individual occupant will provide that the individual will occupy the unit for a period of at least 30 days, and (E) under the terms of the Corporate Lease the Corporate Tenant will provide the Borrower the identity of each occupant in the unit and the expected term of the occupancy prior to the date the occupant takes up residence in the unit.

(g) *Allocation of Sources and Uses.* The allocation of Bond proceeds and other sources of funds to specific uses is shown on **Exhibit A**.

(h) *Land.* Less than 25% of the Net Proceeds will be used (directly or indirectly) for the acquisition of land (or any interest therein), and no Bond proceeds will be used (directly or indirectly) for the acquisition of land (or an interest therein) to be used for farming purposes.

(i) *Acquisition of Existing Property/Rehabilitation Requirements.*

(1) Acquisition. Bond proceeds will be used to acquire existing facilities as follows:

(A) \$[ ] of Bond proceeds will be allocated by the Borrower to acquire one or more buildings (excluding the cost of the land), including the equipment for such buildings (the "Buildings"); and

(B) \$[ ] of Bond proceeds will be allocated to acquire structures other than the Buildings.

(2) Rehabilitation. The Borrower will incur "rehabilitation expenditures" (as defined in Code § 147(d)(3)) with respect to the Buildings in excess of 15% of the amount of Bond proceeds used for the acquisition cost of the Buildings, excluding the cost of the land. The Borrower will incur such rehabilitation expenditures within 2 years after the Issue Date.

(j) *Prohibited Facilities.* No portion of the Bond proceeds will be used to provide any airplane, skybox, or other private luxury box, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises, as such terms are used in Code § 147(e).

(k) *Limit on Costs of Issuance.* [ ] No proceeds of the Bonds will be used to pay costs of issuing the Bonds [ ].

(l) *Registered Bonds.* All Bonds will be issued and held in registered form within the meaning of Code § 149(a).

(m) *Bonds Not Federally Guaranteed.* The Borrower will not take any action or permit any action to be taken which would cause the Bonds to be "federally guaranteed" within the meaning of Code § 149(b).

(n) *Reports to IRS; Form 8038.* The Borrower will assist the Issuer in filing all appropriate returns, reports and attachments to income tax returns required by the Code, including without limitation the Information Return for Private Activity Bond Issues (Form 8038). The Borrower provided to the Issuer the information contained in Parts II through VI of IRS Form 8038, which is contained in the Transcript, and such information is true, complete and correct as of the Issue Date. The Borrower provides the following information regarding the Project for Part V of Form 8038:

Line 31—Type of Property Financed by Nonrefunding Proceeds:

a	Land	\$[ ]
b	Buildings and structures	\$[ ]
c	Equipment with recovery period of more than 5 years	\$[ ]
d	Equipment with recovery period of 5 years or less	\$[ ]
e	Other	\$[ ]

Line 32a—North American Industry Classification System code for the Project: 531110

Line 46—Primary private user of the Project is the Borrower, employer identification number 85-1658204.

(o) *Hedge Bonds.* At least 85% of the net sale proceeds of the Bonds will be used to carry out the governmental purposes of the Bonds within 3 years after the Issue Date, and not more than 50% of the proceeds of the Bonds will be invested in investments having a substantially guaranteed yield for 4 years or more.

(p) *Arbitrage Certifications.* The facts, estimates and expectations recited in **Article III**, regarding the purpose of the Bonds, the investment and expenditure of Bond proceeds, the acquisition, rehabilitation and use of the Project, the funds and accounts created in the Indenture and the Loan Agreement, the Yield on investments, and the computation and payment of arbitrage rebate, are true and accurate as of the Issue Date; the estimates and expectations recited in such Article are reasonable as of the Issue Date. The Issuer and Gilmore & Bell, P.C., as Bond Counsel, may rely on such statements and expectations. The Borrower does not expect that the proceeds of the Bonds will be used in a manner that would cause any Bond to be an "arbitrage bond" within the meaning of Code § 148, and to the best of the Borrower's knowledge and belief, there are no other facts, estimates or circumstances that would materially change such expectations.

(q) *Rebate Payments.* The Borrower will pay or provide for payment to the United States or the Trustee all arbitrage rebate and yield reduction payments required under Code § 148 and this Tax Agreement, to the extent such amounts are not available to the Trustee in the Rebate Fund.

(r) *Commercial Space.* There is no commercial space in the Project.

(s) *Compliance with Current and Future Tax Requirements; Remedial Action.* The Borrower understands that, in order to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes, the Borrower must comply with the requirements and restrictions governing the investment and uses of Bond proceeds and the operation of the Project as set forth in this **Section 2.2**. In addition, future changes in the Code and regulatory guidance from the IRS may impose new or different restrictions and requirements on the Borrower in the future. The Borrower will comply with all of the current and future restrictions or will take remedial action to redeem all or a portion of the Bonds, in accordance with Regulations § 1.142-2 (which action will be accompanied by an Opinion of Bond Counsel), as necessary to cause interest on the Bonds to remain excludable from gross income for federal income tax purposes.

(u) *Purchase Prohibition.* Neither the Borrower nor any Related Person to the Borrower will purchase the Bonds in an amount related to the amount of the Loan.

### **Section 2.3. Limit on Bond Maturity.**

(a) *Average Economic Life of Project.* The Borrower understands that under Code § 147(b), the average Bond maturity cannot exceed 120% of the average, reasonably expected economic life of the Project, and that the economic life of the Project is measured from the later of (1) the Issue Date, or (2) the date on which the Project is placed in service. Upon completion of the rehabilitation of the Project, the Borrower expects the economic life of the Project to be not less than [ ] years as determined by [ Moore & Shryock ] in its Prospective Appraisal Report dated [ ]. On **Exhibit A**, the Borrower has identified the components of the Project, the portion of their costs paid from Bond proceeds and the economic life of the Project.

(b) *Average Bond Maturity.* The average maturity of the Bonds, as computed by Bond Counsel and set forth in **Exhibit B**, is [ ] years, which is less than [ ] years (120% of the average, reasonably expected economic life of the portion of the Project financed with proceeds of the Bonds of [ ] years), as further shown in **Exhibit A**. The Borrower will not make, or permit to be made, any changes in the Project or the use of the proceeds of the Bonds which will cause the average Bond maturity to exceed 120% of the average, reasonably expected economic life of the Project.

**Section 2.4 Representations and Covenants of the Trustee.** The Trustee represents and covenants to the Issuer and the Borrower as follows:

(a) The Trustee will comply with the applicable provisions of this Tax Agreement and any written letter or Opinion of Bond Counsel that sets forth any action necessary to preserve the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

(b) The Trustee, at the written direction of the Borrower and acting on behalf of the Issuer, may from time to time cause a firm of attorneys, consultants or independent accountants or an investment banking firm to provide the Trustee and the Borrower with such information as the Borrower may request in order to determine all matters relating to (1) the Yield on the Bonds or Investments as it relates to any data or conclusions necessary to verify that the Bonds are not "arbitrage bonds" within the meaning of Code § 148, and (2) compliance with arbitrage rebate requirements of Code § 148(f). The Borrower will pay all costs and expenses incurred in connection with supplying the foregoing information.

(c) The Trustee, acting on behalf of the Borrower and the Issuer, will retain records related to the investment and expenditure of Gross Proceeds held in funds and accounts maintained by the Trustee and any records provided to the Trustee by the Issuer or the Borrower related to the Post-Issuance Tax Requirements in accordance with **Section 4.2(a)** of this Tax Agreement. The Trustee will retain these records until three years following the final maturity of the Bonds or any obligation issued to refund the Bonds; provided, however, if the Trustee is not retained to serve as bond trustee for any obligation issued to refund the Bonds, then the Trustee may satisfy its record retention duties under this subsection (c) by providing copies of all records in its possession related to the Bonds to the bond trustee for the refunding obligation or other party agreed upon by the Borrower and the Issuer.

**Section 2.5. Survival of Representations and Covenants.** All representations, covenants and certifications of the Issuer and the Borrower contained in this Tax Agreement will survive the execution and delivery of this Tax Agreement and the issuance, sale and delivery of the Bonds, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations. The foregoing covenants of this Section will remain in full force and effect notwithstanding the defeasance of the Bonds and the discharge of the Indenture, until the final maturity date of the Bonds and full payment of the Bonds.

### ARTICLE III

#### ARBITRAGE CERTIFICATIONS AND COVENANTS

**Section 3.1. Purpose.** The purpose of this Article is to certify, pursuant to Regulations § 1.148-2(b), the expectations of the Issuer and the Borrower as to the sources, uses and investment of Bond proceeds and other money, in order to support the Issuer's conclusion that the Bonds are not arbitrage bonds. The person executing this Tax Agreement on behalf of the Issuer is an officer of the Issuer responsible for issuing the Bonds.

**Section 3.2. Reasonable Expectations.** The facts, estimates and expectations of the Issuer set forth in this Article are based upon the Issuer's understanding of the documents and certificates that

comprise the Transcript, including (a) the Indenture, (b) the Loan Agreement, (c) the Regulatory Agreement, (d) this Tax Agreement, and (e) representations contained in the certificates of the Purchaser contained in the Transcript. To the Issuer's knowledge, the facts and estimates set forth in this Tax Agreement are accurate, and the expectations of the Issuer set forth in this Tax Agreement are reasonable. The Issuer has no knowledge that would cause it to believe that the representations, warranties and certifications described herein are unreasonable or inaccurate or may not be relied upon.

**Section 3.3. Authority and Purpose for Bonds.** The Issuer is issuing and delivering the Bonds simultaneously with the execution of this Tax Agreement, pursuant to the laws of the state of Missouri, a resolution passed by the governing body of the Issuer, and the Indenture. The Bonds are being issued to finance a portion of the costs of the Project.

**Section 3.4. Funds and Accounts.**

(a) The following funds and accounts have been established in the custody of the Trustee under the Indenture:

- Project Fund
- Bond Fund
- Expense Fund
- Retained Earnings Fund
- Revenue Fund
- Rebate Fund

(b) A Casualty/Condemnation Account may be created in the Project Fund pursuant to Section 403(f) of the Indenture in the event of a casualty or condemnation pursuant to Section 507 of the Indenture. An Insurance and Taxes Escrow Account may be created in the Project Fund at the written direction of the Majority Owner of the Series A Bonds. In addition, the Partnership Agreement establishes a replacements reserve and an operating reserve (collectively, the "Partnership Reserve Accounts")

**Section 3.5. Amount and Use of Bond Proceeds and Other Money.**

(a) *Purchase of Bonds.* The total maximum proceeds to be received by the Issuer from the sale of the Bonds will be \$[\_\_\_\_\_], funded in installments as follows:

(1) the Purchaser shall fund the aggregate purchase price of the initial installment of the principal amount of the Bonds on the Issue Date in accordance with the Indenture and the Bond Purchase Agreement by funding the Bonds in the amount of \$[\_\_\_\_\_] (the "Initial Draw"), which aggregate amount exceeds the lesser of \$50,000 or 5% of the principal amount of the Bonds; and

(2) so long as no event of default under the Indenture or the Loan Documents has occurred and is continuing, and no event that, with the giving of notice or lapse of time or both, would constitute an event of default under the Indenture or the Loan Documents has occurred and is continuing, the Borrower expects to cause the Purchaser to fund the remaining installments of the Bonds from time to time in the aggregate amount of \$[\_\_\_\_\_], provided that the aggregate amount of all installments of the Bonds, including the Initial Draw, does not exceed \$[\_\_\_\_\_].

(b) *Use of Bond Proceeds.* The Trustee will deposit the Initial Draw, as well as subsequent installments or draws, into the Project Fund.

(c) *Sources and Uses of Other Money.* On the Issue Date, the Borrower will deposit \$[ ] of equity with the Disbursing Agent under the Disbursing Agreement. Additional Borrower contributions of equity and operating funds in the aggregate amount of approximately \$[ ] are expected to be made with the Disbursing Agent under the Disbursing Agreement. These amounts will be used to pay additional costs of the Project or will be transferred to the Bond Fund as specified in the Disbursing Agreement to redeem the Bonds.

(d) *Other Proceeds.* [ ]The Borrower expects there will be no investment earnings on the proceeds of the Bonds. The Borrower expects that there will be no “imputed proceeds” with respect to the Bonds. [ ]

(e) *Allocation of Bond Proceeds and Other Money.* The Borrower is initially allocating Bond proceeds and other money to expenditures as shown on **Exhibit A**. For purposes of determining the use of proceeds of the Bonds, in accordance with Regulations § 1.148-6(d), the Bond proceeds shall be allocated to eligible costs (that is, costs properly chargeable to capital account or costs that would be so chargeable as capital costs with a proper election under federal tax principles) of a qualified residential rental project under Section 142(d) of the Code. Within 6 months of completion of the Project, the Borrower will deliver to the Issuer, the Trustee and Bond Counsel a Final Written Allocation of sources and uses in the form of **Exhibit A**. The Borrower will make adjustments to such Final Written Allocation to the extent Bond Counsel notifies the Borrower in writing that failure to make the adjustments may cause interest on the Bonds to be includable in gross income for federal income tax purposes.

**Section 3.6. No Multipurpose Issue.** The Issuer is not applying the arbitrage rules separately to different purposes of the issue pursuant to Regulations § 1.148-9.

**Section 3.7. No Refunding.** No proceeds of the Bonds will be used to pay principal of or interest on any other debt obligation.

**Section 3.8. [Reserved].**

**Section 3.9. Project Completion.** The Borrower has incurred, or will incur within 6 months after the Issue Date, a substantial binding obligation to a third party to spend at least 5% of the net sale proceeds of the Bonds on the Project. The completion of the Project and the allocation of the net sale proceeds of the Bonds to expenditures will proceed with due diligence. At least 85% of the net sale proceeds of the Bonds will be allocated to expenditures on the Project within three years after the Issue Date.

**Section 3.10. Loan Agreement/Sinking Funds.**

(a) The Issuer is making the proceeds of the Bonds available to the Borrower pursuant to the Notes and the Loan Agreement. Under the Notes and the Loan Agreement, the Borrower is required to make payments to the Trustee in amounts sufficient to pay the principal of and interest on the Bonds. The Trustee will deposit such payments into the Bond Fund.

(b) Except for the Bond Fund, neither the Issuer nor the Borrower has established or expects to establish any sinking fund or other similar fund that is expected to be used to pay principal of or interest on the Bonds. The Bond Fund is used primarily to achieve a proper matching of revenues with principal and interest payments on the Bonds within each Bond Year, and the Issuer expects that the Bond Fund will qualify as a Bona Fide Debt Service Fund.



### **Section 3.11. Reserve, Replacement and Pledged Funds and Accounts.**

(a) *No Reserve Fund.* No reserve fund has been established for the Bonds.

(b) *Retained Earnings Fund.* As detailed in Section 409 of the Indenture, amounts in the Retained Earnings Fund must be held to pay debt service on the Bonds. However, to the extent the amount on deposit in the Retained Earnings Fund exceeds the sum of \$10,000 plus the next payment due under the Loan Agreement, such excess may be released to the Borrower. Accordingly, amounts on deposit in the Retained Earnings Fund will only be considered Gross Proceeds up to an amount equal to the sum of \$10,000 plus the next payment due under the Loan Agreement. Any amounts on deposit in excess of such amount will not be considered Gross Proceeds.

(c) *No Other Replacement Funds.* No proceeds of the Bonds will be used as a substitute for other funds that were intended or earmarked to pay costs of the Project, and that have been or will be used to acquire higher yielding investments. Except for the Bond Fund, there are no other funds pledged or committed in a manner that provides a reasonable assurance that such funds would be available for payment of the principal of or interest on the Bonds if the Issuer or the Borrower encounters financial difficulty.

(d) *Funds Not Holding Gross Proceeds.* The Borrower is required to maintain the Partnership Reserve Accounts to fund certain capital expenditures and operating expenses. Amounts in the Partnership Reserve Accounts are not limited directly or indirectly to the payment of debt service on the Bonds. Accordingly, the Bondholders do not have any reasonable assurance that moneys in the Partnership Reserve Accounts under the Partnership Agreement will be available to pay debt service on the Bonds if the Borrower encountered financial difficulty and the amounts in such funds and accounts are not treated as Gross Proceeds of the Bonds. Amounts in the Rebate Fund will be used to pay rebate to the United States and, unless derived from Investment earnings on Gross Proceeds, are not Gross Proceeds of the Bonds. Amounts held in the Expense Fund are expected to be used to pay certain ongoing fees and expenses for administering the Bonds and are not Gross Proceeds of the Bonds. Amounts held in the Revenue Fund are not limited directly or indirectly to the payment of debt service on the Bonds and, accordingly, the Bondholders do not have any reasonable assurance that moneys in the Revenue Fund are not treated as Gross Proceeds of the Bonds. In the event that the Casualty/Condemnation Account is created, proceeds of the Bonds will not be deposited in such account and amounts in such account will not be available to pay debt service on the Bonds and are not Gross Proceeds of the Bonds. In the event that the Insurance and Taxes Escrow Account is created, proceeds of the Bonds will not be deposited in such account and amounts in such account will not be available to pay debt service on the Bonds and are not Gross Proceeds of the Bonds.

### **Section 3.12. Program Investment Yield.**

(a) *Yield.* The Yield on the Loan will not exceed the Yield on the Bonds by more than 1.5%, as permitted by Regulations § 1.148-2(d)(2)(iii). In determining such Loan yield, “qualified administrative costs” of the Loan paid by the Borrower are taken into account to increase payments for, and reduce receipts from, the Loan, as permitted by Regulations § 1.148-5(e)(3). “Qualified administrative costs” are costs of issuing, carrying or repaying the Bonds. But qualified administrative costs do not include (1) fees paid to the Issuer, or (2) costs or expenses paid, directly or indirectly, to purchase, carry, sell or retire the Loan.

(b) *Program Investment.* The Loan constitutes a “program investment” within the meaning of Regulations § 1.148-1(b) because it is a purpose investment that is part of a governmental program in which:

(1) the program involves the origination or acquisition of purpose investments (in this case, the Loan);

(2) at least 95% of the cost of the purpose investments acquired under the program represents one or more loans to persons who provide housing and related facilities;

(3) at least 95% of the receipts from the purpose investments will be used to pay principal, interest or redemption prices on issues that financed the program (in this case, the Bonds), to pay or reimburse administrative costs of those issues or of the program, to pay or reimburse anticipated future losses directly related to the program, to finance additional purpose investments for the same general purposes of the program, or to redeem and retire governmental obligations at the next earliest possible date of redemption;

(4) the program documents prohibit any obligor on a purpose investment financed by the program or any related party to that obligor from purchasing Bonds in an amount related to the amount of the Loan; and

(5) the Issuer has not waived the right to treat the Loan as a program investment.

### **Section 3.13. Issue Price and Bond Yield.**

(a) *Issue Price.* Based on the Purchaser's certifications in the Purchaser's Closing Certificate, the Issuer and the Borrower hereby elect to establish the issue price of the Bonds pursuant to Regulations § 1.148-1(f)(2)(i) (relating to the so-called "private placement rule"). Therefore, the aggregate issue price of the Bonds for such purpose is \$[\_\_\_\_\_].

(b) *Bond Yield.* Based on the issue price of the Bonds, the Borrower's expected timing of disbursement of the purchase price installments of the Bonds, the Borrower's expected completion date of the Project, and the expected payments on the Bonds, the Yield on the Bonds is [\_\_\_\_\_]%, as computed by Bond Counsel and shown on **Exhibit B**.

### **Section 3.14. Miscellaneous Tax Matters.**

(a) *Expected Use.* The Borrower expects to use the Project over a period well in excess of the term of the Bonds.

(b) *No Abusive Arbitrage Device.* The Bonds are not and will not be part of a transaction or series of transactions that has the effect of (1) enabling the Issuer or the Borrower to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, or (2) overburdening the tax-exempt bond market.

(c) *Single Issue; No Other Issues.* The Bonds (the Series A Bonds and the Series B Bonds, collectively) constitute a single "issue" under Regulations § 1.150-1(c). No other obligations of the Issuer (1) are being sold within 15 days of the sale of the Bonds; (2) are being sold pursuant to the same plan of financing as the Bonds; and (3) are expected to be paid from substantially the same source of funds (disregarding guarantees from unrelated parties, such as bond insurance).

**Section 3.15. Conclusion.** On the basis of the foregoing facts, estimates and circumstances, the Issuer does not expect that the proceeds of the Bonds will be used in a manner that would cause any Bond to be an "arbitrage bond" within the meaning of Code § 148.

## ARTICLE IV

### POST-ISSUANCE TAX REQUIREMENTS, POLICIES AND PROCEDURES

#### Section 4.1. General.

(a) *Purpose of Article.* The purpose of this **Article IV** is to supplement the Tax Compliance Procedure and to set out specific policies and procedures governing compliance with the federal income tax requirements that apply after the Bonds are issued. The Issuer and the Borrower recognize that interest on the Bonds will remain excludable from gross income only if the Post-Issuance Tax Requirements are followed after the Issue Date. The Issuer and the Borrower further acknowledge that written evidence substantiating compliance with the Post-Issuance Tax Requirements must be retained in order to permit the Bonds to be refinanced with tax-exempt obligations and substantiate the position that interest on the Bonds is exempt from gross income in the event of an audit of the Bonds by the IRS.

(b) *Written Policies and Procedures of the Issuer.* The Issuer intends for the Tax Compliance Procedure, as supplemented by this Tax Agreement, to be its primary written policies and procedures for monitoring compliance with the Post-Issuance Tax Requirements for the Bonds and to supplement any other formal policies and procedures related to tax compliance that the Issuer has established. The provisions of this Tax Agreement are intended to be consistent with the Tax Compliance Procedure. In the event of any inconsistency between the Tax Compliance Procedure and this Tax Agreement, the terms of this Tax Agreement will govern.

(c) *Borrower Responsible for Post-Issuance Tax Requirements.* By delivery of this Tax Agreement, the Bond Compliance Officer has provided the Borrower Bond Compliance Officer with a copy of the Tax Compliance Procedure. The Tax Compliance Procedure contemplates that the Borrower and the Borrower's Bond Compliance Officer will follow the Tax Compliance Procedure. The Issuer and the Borrower acknowledge that the investment and expenditure of proceeds of the Bonds are within the control of the Borrower, and that substantially all of the proceeds of the Bonds and the property financed or refinanced by the Bonds are controlled by the Borrower. For these reasons, the Issuer and the Bond Compliance Officer are relying on the Borrower and the Borrower Bond Compliance Officer to carry out the Post-Issuance Tax Requirements as set out in this Tax Agreement and the Tax Compliance Procedure. The Borrower agrees to undertake these obligations and the obligations imposed on it by the Tax Compliance Procedure. The Issuer and the Bond Compliance Officer will cooperate with the Borrower when necessary to enable the Borrower to fulfill its Post-Issuance Tax Requirements. Subject to this **Section 4.1(c)** and **Section 4.1(d)**, this cooperation includes, but is not limited to, signing Form 8038-T in connection with the payment of arbitrage rebate or yield reduction payments, participating in any federal income tax audit of the Bonds or related proceedings under a voluntary compliance agreement procedure (VCAP) or a remedial action procedure pursuant to Regulations § 1.142-2.

(d) *Opinion of Bond Counsel.* Prior to taking any action requested by the Borrower Bond Compliance Officer for the purpose of carrying out the Post-Issuance Tax Requirements, the Issuer is entitled to seek and receive an Opinion of Bond Counsel acceptable to the Issuer.

(e) *Payment of Costs of Post-Issuance Tax Requirements and Indemnifications.* Neither the Issuer nor the Trustee is required to incur any cost in connection with any action taken related to the Post-Issuance Tax Requirements, it being the intent of the parties that all costs of the Post-Issuance Tax Requirements will be paid by, or immediately reimbursed by, the Borrower. With respect to all actions requested of the Issuer by the Borrower involving Post-Issuance Tax Requirements, the Issuer is entitled to recover from the Borrower all legal and other fees and expenses incurred and has all rights of indemnification against the Borrower generally contained in the Loan Agreement and the Indenture. The

Issuer may, in its discretion, require prepayment of all legal and other fees and expenses of this type prior to taking any requested action.

#### **Section 4.2. Record Keeping; Use of Bond Proceeds and Use of Financed Facilities.**

(a) *Record Keeping.* The Borrower Bond Compliance Officer will ensure the Tax-Exempt Bond File is kept with the Trustee in accordance with the Tax Compliance Procedure. The Borrower Bond Compliance Officer is also responsible for updating the Tax-Exempt Bond File as set forth in this Tax Agreement and the Tax Compliance Procedure. The Tax-Exempt Bond File shall be accessible to the Issuer. Unless otherwise specifically instructed in a written Opinion of Bond Counsel or to the extent otherwise provided in this Tax Agreement, the Borrower Bond Compliance Officer shall retain records related to the Post-Issuance Tax Requirements until 3 years following the final maturity of (i) the Bonds or (ii) any tax-advantaged obligation issued to refund the Bonds. Any records maintained electronically must comply with Section 4.01 of Revenue Procedure 97-22, which generally provides that an electronic storage system must (1) ensure an accurate and complete transfer of the hardcopy records which indexes, stores, preserves, retrieves and reproduces the electronic records, (2) include reasonable controls to ensure integrity, accuracy and reliability of the electronic storage system and to prevent unauthorized alteration or deterioration of electronic records, (3) exhibit a high degree of legibility and readability both electronically and in hardcopy, (4) provide support for other books and records of the Borrower, and (5) not be subject to any agreement that would limit the ability of the IRS to access and use the electronic storage system on the Borrower's premises.

(b) *Accounting and Allocation of Bond Proceeds to Expenditures.* The Borrower Bond Compliance Officer will account for the investment and expenditure of Bond proceeds in the level of detail required by the Tax Compliance Procedure. The expected allocation of Bond proceeds to expenditures is set forth on **Exhibit A**; Borrower Bond Compliance Officer will supplement this expected allocation with a Final Written Allocation as required by the Tax Compliance Procedure. A sample form of Final Written Allocation is attached as **Exhibit D**. The Borrower agrees to send a notice to the Issuer and the Trustee immediately following the placed-in-service date of the Project alerting each party that the Project has been placed-in-service. Within 12 months of the placed-in-service date of the Project, the Borrower will then complete the Final Written Allocation. Once completed, the Borrower will send a copy of the Final Written Allocation to the Trustee. If the Trustee has not received the Final Written Allocation within 12 months of receiving the Borrower's notice, the Trustee will send a reminder to the Borrower of its responsibility to complete the Final Written Allocation. If the Trustee still has not received the Final Written Allocation from the Borrower as of 60 days following the date the Trustee sent the reminder, the Trustee will notify the Issuer by letter or email.

(c) *Annual Compliance Checklist.* A form of annual compliance checklist for the Bonds is attached as **Exhibit C**. The Borrower Bond Compliance Officer will prepare and complete an annual compliance checklist for the facilities financed with Bond proceeds at least annually in accordance with the Tax Compliance Procedure and file the completed checklist with the Trustee. In the event the annual compliance checklist identifies a deficiency in compliance with the requirements of this Tax Agreement, the Borrower Bond Compliance Officer will consult with the Bond Compliance Officer and in conjunction with the Bond Compliance Officer will take the actions identified in an Opinion of Bond Counsel or the Tax Compliance Procedure to correct any deficiency. The first annual compliance checklist will be completed within one year following the completion of the Final Written Allocation. Beginning on the first anniversary of the Trustee's receipt of the Final Written Allocation and continuing on such date each year until the final maturity of the Bonds (each a "Final Written Allocation Anniversary Date"), if the Trustee has not received an annual compliance checklist from the Borrower as of the Final Written Allocation Anniversary Date, the Trustee will send a reminder to the Borrower of its responsibility to complete the annual compliance checklist. If the Trustee still has not received an annual compliance checklist from the

Borrower as of 30 days following any such Final Written Allocation Anniversary Date, the Trustee will notify the Issuer by letter or email.

(d) *Trustee as Repository.* In holding the Tax-Exempt Bond File and other documents such as the Final Written Allocation and the annual compliance checklists, the Trustee is acting as a repository of documentation concerning the Bonds. The Trustee will not be deemed to have knowledge of the contents of the same or be bound to make any investigation into the facts or matters stated in the Final Written Allocation, or any annual compliance checklist, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document. The Trustee may, however, in its discretion, 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 Issuer and Borrower relating to the Project during normal business hours and upon reasonable notice, personally or by agent or attorney.

(e) *Opinions of Bond Counsel.* The Borrower Bond Compliance Officer is responsible for obtaining and delivering to the Issuer and the Trustee any Opinion of Bond Counsel required under the provisions of this Tax Agreement, including any Opinion of Bond Counsel required by the Tax Compliance Procedure or the annual compliance checklist.

**Section 4.3. Rebate Covenants.** The Borrower, or the Trustee if the Borrower fails to do so, will (a) engage, at the expense of the Borrower, the Rebate Analyst to compute arbitrage rebate on the Bonds in accordance with the Regulations and (b) pay to the United States, but solely from amounts held in the Rebate Fund or money provided by the Borrower, all arbitrage rebate at the written direction of the Rebate Analyst in accordance with this Tax Agreement and the Regulations. The Borrower will make payments to the Trustee as necessary to comply with the rebate requirements of Code § 148(f) and the Regulations.

**Section 4.4. Temporary Periods/Yield Restriction.** Except as described in this Section 4.4, Gross Proceeds will not be invested at a Yield greater than the Yield on the Bonds:

(a) *Project Fund.* Sale proceeds of the Bonds deposited in the Project Fund and investment earnings on such proceeds may be invested without yield restriction for three years after the Issue Date. If any proceeds remain in the Project Fund after three years, such amounts may continue to be invested without yield restriction so long as yield reduction payments are made to the United States of America in accordance with Regulations § 1.148-5(c).

(b) *Bond Fund.* To the extent that the Bond Fund qualifies as a Bona Fide Debt Service Fund, amounts in such funds may be invested without yield restriction for 13 months after the date of deposit. Earnings on such amounts may be invested without yield restriction for one year after the date of receipt of such earnings.

(c) *Portion of Retained Earnings Fund Holding Gross Proceeds.* Gross Proceeds in the Retained Earnings Fund may be invested without Yield restriction up to the least of (1) 10% of the stated principal amount of the Bonds, (2) the maximum annual principal and interest requirements on the Bonds, or (3) 125% of the average annual principal and interest requirements on the Bonds, each determined as of the Issue Date.

(d) *Other Indenture Funds.* Each of the Expense Fund, the Revenue Fund, the Casualty/Condemnation Account (if created), and the Insurance and Taxes Escrow Account (if created) does not contain sale or investment proceeds of the Bonds and are not sinking funds or pledged funds. Therefore, amounts in these funds and accounts may be invested without yield restriction.

(e) *Partnership Reserve Accounts.* The Partnership Reserve Accounts to be established and maintained by the Borrower under the Partnership Agreement are not sinking funds or pledged funds and therefore may be invested without yield restriction.

(f) *Minor Portion.* In addition to the amounts described above, Gross Proceeds not exceeding the Minor Portion may be invested without yield restriction.

#### **Section 4.5. Fair Market Value.**

(a) *General.* No Investment may be acquired with Gross Proceeds for an amount (including transaction costs) in excess of the fair market value of such Investment, or sold or otherwise disposed of for an amount (including transaction costs) less than the fair market value of the Investment. The fair market value of any Investment is the price a willing buyer would pay to a willing seller to acquire the Investment in a bona fide, arm's-length transaction. Fair market value will be determined in accordance with § 1.148-5 of the Regulations.

(b) *Established Securities Market.* Except for Investments purchased for a yield-restricted defeasance escrow, if an Investment is purchased or sold in an arm's-length transaction on an established securities market (within the meaning of Code § 1273), the purchase or sale price constitutes the fair market value. Where there is no established securities market for an Investment, market value will be established using one of the paragraphs below. The fair market value of Investments purchased for a yield-restricted defeasance escrow will be determined in a bona fide solicitation for bids that complies with § 1.148-5 of the Regulations.

(c) *Certificates of Deposit.* The purchase price of a certificate of deposit (a "CD") is treated as its fair market value on the purchase date if (i) the CD has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal; (ii) the Yield on the CD is not less than the Yield on reasonably comparable direct obligations of the United States; and (iii) the Yield is not less than the highest Yield published or posted by the CD issuer to be currently available on reasonably comparable CDs offered to the public.

(d) *Guaranteed Investment Contracts.* The purchase price of a Guaranteed Investment Contract is treated as its fair market value on the purchase date if all of the following requirements are met—

(1) Bona Fide Solicitation for Bids. The Borrower or the Trustee makes a bona fide solicitation for the Guaranteed Investment Contract, using the following procedures:

(A) The bid specifications are in writing and are timely forwarded to potential providers.

(B) The bid specifications include all "material" terms of the bid. A term is material if it may directly or indirectly affect the Yield or the cost of the Guaranteed Investment Contract.

(C) The bid specifications include a statement notifying potential providers that submission of a bid is a representation (a) that the potential provider did not consult with any other potential provider about its bid, (b) that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Issuer, the Borrower, the Trustee, or any other person (whether or not in connection with the Bond issue), and (c) that the bid is not being submitted solely as a courtesy to the Issuer,

the Borrower, the Trustee, or any other person, for purposes of satisfying the requirements of the Regulations.

(D) The terms of the bid specifications are "commercially reasonable." A term is commercially reasonable if there is a legitimate business purpose for the term other than to increase the purchase price or reduce the Yield of the Guaranteed Investment Contract.

(E) The terms of the solicitation take into account the Borrower's reasonably expected deposit and drawdown schedule for the amounts to be invested.

(F) All potential providers have an equal opportunity to bid. For example, no potential provider is given the opportunity to review other bids (*i.e.*, a last look) before providing a bid.

(G) At least 3 "reasonably competitive providers" are solicited for bids. A reasonably competitive provider is a provider that has an established industry reputation as a competitive provider of the type of investments being purchased.

(2) Bids Received. The bids received by the Borrower or the Trustee will meet all of the following requirements:

(A) The Borrower or the Trustee receives at least 3 bids from providers that were solicited as described above and that do not have a "material financial interest" in the issue. For this purpose, (a) a lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the issue date of the issue; (b) any entity acting as a financial advisor with respect to the purchase of the Guaranteed Investment Contract at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue; and (c) a provider that is a related party to a provider that has a material financial interest in the issue is deemed to have a material financial interest in the issue.

(B) At least one of the 3 bids received is from a reasonably competitive provider, as defined above.

(C) If the Borrower or the Trustee uses an agent or broker to conduct the bidding process, the agent or broker did not bid to provide the Guaranteed Investment Contract.

(3) Winning Bid. The winning bid is the highest yielding bona fide bid (determined net of any broker's fees).

(4) Fees Paid. The obligor on the Guaranteed Investment Contract certifies the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the Guaranteed Investment Contract.

(5) Records. The Trustee retains the following records (to the extent it has received the same) with the Bond documents until 3 years after the last outstanding Bond is redeemed:

(A) A copy of the Guaranteed Investment Contract.

(B) The receipt or other record of the amount actually paid by the Borrower or the Trustee for the Guaranteed Investment Contract, including a record of any

administrative costs paid by the Borrower or the Trustee, and the certification as to fees paid, described in paragraph (d)(4) above.

(C) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results.

(D) The bid solicitation form and, if the terms of Guaranteed Investment Contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.

(e) Other Investments. If an Investment is not described above, the fair market value may be established through a competitive bidding process, as follows:

(1) at least three bids on the Investment will be received from persons with no financial interest in the Bonds (*e.g.*, as underwriters or brokers); and

(2) the Yield on the Investment will be equal to or greater than the Yield offered under the highest bid.

#### **Section 4.6. Spending Exceptions.**

(a) *Six-Month Exception.*

(1) The obligation to pay rebate to the United States will be treated as satisfied if—

(A) the Gross Proceeds (as modified by paragraph (2) below) are allocated to expenditures for the governmental purpose of the Bonds within 6 months after the Issue Date; and

(B) rebate is paid in accordance with Code § 148 on all Gross Proceeds not required to be spent as provided in subparagraph (A) (other than amounts in a Bona Fide Debt Service Fund).

(2) For purposes of paragraph (1)(A) above, Gross Proceeds do not include amounts in a Bona Fide Debt Service Fund or a reasonably required reserve or replacement fund, or amounts that become Gross Proceeds after the end of the 6-month spending period, but were not anticipated as of the Issue Date. The use of Gross Proceeds to pay principal of any Bond will not be treated as an expenditure of Gross Proceeds for the purpose of the spending exception.

(b) *Eighteen-Month Exception.*

(1) The obligation to pay rebate to the United States will be treated as satisfied if—

(A) the Gross Proceeds (as modified by paragraph (2) below) are allocated to expenditures for the governmental purpose of the Bonds in accordance with the following schedule:



Time Period After the Issue Date	Minimum Percentage of Gross Proceeds Spent
6 months	15%
12 months	60%
18 months	100%

and

(B) rebate is paid in accordance with Code § 148 on all Gross Proceeds not required to be spent in accordance with the 18-month spending schedule (other than amounts in a Bona Fide Debt Service Fund).

(2) For purposes of paragraph (1)(A) above, Gross Proceeds do not include amounts in a Bona Fide Debt Service Fund or a reasonably required reserve or replacement fund, or amounts that become Gross Proceeds after the end of the 18-month spending period, but were not anticipated as of the Issue Date. The Bonds meet the 18-month spending test even if, at the end of the 18-month period, Gross Proceeds not exceeding a Reasonable Retainage remain unspent, so long as such proceeds are allocated to expenditures within 30 months after the Issue Date. In addition, the failure to satisfy the final spending requirement at the end of the 18-month period is disregarded if the Borrower uses due diligence to complete the Project and the amount of the failure does not exceed the lesser of 3% of the aggregate issue price of the Bonds or \$250,000. But the use of Gross Proceeds to pay principal of any Bond is not treated as an expenditure of Gross Proceeds for the purpose of the spending exception.

#### **Section 4.7. Computation and Payment of Arbitrage Rebate.**

(a) *Rebate Fund.* A special fund designated the "Rebate Fund" has been established under the Indenture. The Trustee will keep the Rebate Fund separate from all other funds and will administer the Rebate Fund pursuant to this Tax Agreement. Any investment earnings derived from the Rebate Fund will be credited to the Rebate Fund, and any investment loss will be charged to such Fund.

(b) *Computation of Rebate Amount.* The Trustee will provide the Rebate Analyst investment reports relating to each fund held by the Trustee that contains Gross Proceeds of the Bonds at the times that reports are provided to the Borrower, and not later than ten days following each Computation Date. The Borrower will provide the Rebate Analyst with copies of investment reports for any funds containing Gross Proceeds that are held by a party other than the Trustee annually as of the end of each Bond Year and not later than ten days following each Computation Date. Each investment report provided to the Rebate Analyst will contain a record of each Investment, including (1) purchase date, (2) purchase price, (3) information establishing the fair market value on the date that Investment was allocated to the Bonds, (4) any accrued interest paid, (5) face amount, (6) coupon rate, (7) frequency of interest payments, (8) disposition price, (9) any accrued interest received, and (10) disposition date. These records may be supplied in electronic form. The Rebate Analyst will compute the rebate amount following each Computation Date and deliver a written report to the Trustee, the Borrower and the Issuer together with an opinion or certificate of the Rebate Analyst stating that arbitrage rebate was determined in accordance with the Regulations. Each report and opinion will be provided not later than 45 days following the Computation Date to which it relates. In performing its duties, the Rebate Analyst may rely, in its discretion, on the correctness of financial analysis reports prepared by other professionals. If the sum of the amount on deposit in the Rebate Fund and the value of prior rebate payments is less than the arbitrage rebate amount due, the Borrower will, within 55 days after that Computation Date, pay to the Trustee the amount of the deficiency for deposit into the Rebate Fund. If the sum of the amount on deposit in the Rebate Fund and the value of prior rebate payments is greater than the arbitrage rebate amount, the Trustee will transfer that

surplus from the Rebate Fund to the Borrower (provided no event of default has occurred and is continuing under the Indenture and the Loan Agreement). After the final Computation Date or at any time if the Rebate Analyst has advised the Trustee, any money left in the Rebate Fund will be paid to the Borrower and may be used for any purpose not prohibited by law.

(c) *Rebate Payments.* Within 60 days after each Computation Date, the Trustee will pay (but solely from moneys in the Rebate Fund or moneys provided by the Borrower) to the United States of America the rebate amount and yield reduction payment, if applicable, then due. Each rebate payment and yield reduction payment determined by the Rebate Analyst, if applicable, will be accompanied by IRS Form 8038-T and such other forms, documents or certificates as may be required by the Regulations, and will be mailed or delivered to the address shown below or to such other location as the Internal Revenue Service may direct:

Internal Revenue Service  
Ogden, Utah 84201

**Section 4.8. Successor Rebate Analyst.** If the firm acting as the Rebate Analyst resigns or becomes incapable of acting for any reason, or if either the Borrower or the Issuer desire that a different firm act as the Rebate Analyst, then the Borrower (so long as no event of default hereunder or under the Loan Agreement has occurred and is continuing) or the Issuer, by an instrument or concurrent instruments in writing delivered to the Trustee, the firm then serving as the Rebate Analyst and any other party to this Tax Agreement, will engage a successor Rebate Analyst. In each case the successor Rebate Analyst must be a firm of nationally recognized bond counsel, a firm of independent certified public accountants, or a financial institution (which may be the Trustee or any of its affiliates) experienced in making the arbitrage and rebate calculation required pursuant to Section 148(f) of the Code, and that firm must expressly agree to undertake the responsibilities assigned to the Rebate Analyst under this Tax Agreement. In the event the firm acting as the Rebate Analyst resigns or becomes incapable of acting for any reason and neither the Issuer nor the Borrower appoints a qualified successor Rebate Analyst within 30 days following a request to appoint a successor Rebate Analyst, then the Trustee will appoint a firm to act as the successor Rebate Analyst.

**Section 4.9. Rebate Report Records.** The Trustee will retain copies of each arbitrage rebate report and opinion until three years after the final Computation Date.

**Section 4.10. Filing Requirements.** The Issuer (if requested in writing by the Borrower), the Trustee and the Borrower will file or cause to be filed with the IRS such reports or other documents as are required by the Code in accordance with an Opinion of Bond Counsel addressed and delivered to those parties.

**Section 4.11. Survival after Defeasance.** Notwithstanding anything in the Indenture to the contrary, the obligation to pay arbitrage rebate to the United States will survive the payment or defeasance of the Bonds.

## ARTICLE V

### MISCELLANEOUS PROVISIONS

**Section 5.1. Term of Tax Agreement.** This Tax Agreement will become effective upon the issuance and delivery of the Bonds and will continue in force and effect until the principal of, redemption premium, if any, and interest on All Bonds have been fully paid and all such Bonds are cancelled; except that the provisions of **Article IV** regarding payment of arbitrage rebate and all related penalties and interest will remain in effect until all such amounts are paid to the United States of America.

**Section 5.2. Amendments.** This Tax Agreement may be amended from time to time by the parties to this Tax Agreement without notice to or the consent of any of the Bondowners, but only if that amendment is in writing and is accompanied by an Opinion of Bond Counsel to the effect that, under then existing law, assuming compliance with this Tax Agreement as so amended, the Indenture and the Loan Agreement, the amendment will not cause any Bond to be an arbitrage bond under Code § 148 or otherwise cause interest on any Bond to be included in gross income for federal income tax purposes.

**Section 5.3. Opinion of Bond Counsel.** The Issuer, the Borrower and the Trustee may deviate from the provisions of this Tax Agreement if furnished with an Opinion of Bond Counsel to the effect that the proposed deviation will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes. The Issuer (to the extent within its power or direction), the Borrower and the Trustee further agree to comply with any further or different instructions provided in an Opinion of Bond Counsel to the effect that the further or different instructions need to be complied with in order to maintain the validity of the Bonds or the exclusion from gross income of interest on the Bonds for federal income tax purposes.

**Section 5.4. Reliance.** In delivering this Tax Agreement, the Issuer and the Trustee are making only those certifications, representations and agreements as are specifically attributed to them in this Tax Agreement. The balance of the certifications, representations and agreements contained in this Tax Agreement, except those made by the Purchaser in the Purchaser's Closing Certificate, are those of the Borrower, and the Issuer and the Trustee are relying on the Borrower with respect to them. Neither the Issuer nor the Trustee is aware of any facts or circumstances which would cause it to question the accuracy of the facts, circumstances, estimates or expectations of the Borrower or the Purchaser and, to the best of the Issuer's knowledge, those facts, circumstances, estimates and expectations are reasonable.

**Section 5.5. Severability.** If any provision in this Tax Agreement or in the Bonds is determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired.

**Section 5.6. Benefit of Agreement.** This Tax Agreement is binding upon the Issuer, the Trustee and the Borrower and their respective successors and assigns, and inures to the benefit of the parties to this Tax Agreement and the owners of the Bonds. Nothing in this Tax Agreement or in the Indenture or the Bonds, express or implied, gives to any person, other than the parties to this Tax Agreement and their successors and assigns, and the owners of the Bonds, any benefit or any legal or equitable right, remedy or claim under this Tax Agreement. The certifications and representations made in this Tax Agreement and the expectations presented in this Tax Agreement are intended, and may be relied upon, as a certification of an officer of the Issuer given in good faith described in Regulations § 1.148-2(b)(2). The Borrower understands that its certifications in this Tax Agreement and in its Closing Certificate will be relied upon by the Issuer in the issuance of the Bonds and execution of this Tax Agreement. The Issuer and the Borrower understand that the certifications will be relied upon by the law firm of Gilmore & Bell, P.C., in rendering its opinion as to the validity of the Bonds and the exclusion from federal gross income of the interest on the Bonds.

**Section 5.7. Default, Breach and Enforcement.** Any misrepresentation of a party, or any breach of a covenant or agreement, contained in this Tax Agreement is an event of default under this Tax Agreement. An event of default under this Tax Agreement constitutes an "Event of Default" under the Indenture, and remedies for an event of default under this Tax Agreement may be pursued pursuant to the terms of the Indenture, the Loan Agreement or any other document which references this Tax Agreement and gives remedies for an event of default thereunder.

**Section 5.8. Tax Audits.** The Issuer and the Borrower acknowledge that the IRS has a tax audit program in place, and that the cost of professional representation and compliance with requests for records and other information that are a part of an audit can be substantial, even if no violation of tax laws are found. The Issuer and the Borrower also recognize that, under current administrative procedures, the IRS must direct audit inquiries to the Issuer, even though the Borrower has the primary responsibility for maintaining the exclusion of interest on the Bonds from gross income for federal income tax purposes. Upon receipt of notice of the commencement of any audit of the Bonds, the Borrower or the Issuer will notify the other promptly. Throughout the term of the audit and any subsequent proceedings, the Issuer and the Borrower will provide copies to one another of any correspondence received from or transmitted to the IRS by the other. The Issuer may hire its own legal counsel to represent its interests in connection with the audit or in any further proceeding that results from the audit. At the request of the Issuer, the Borrower will hire legal counsel to represent the Borrower in the audit. The Borrower, upon written request of the Issuer, will assume responsibility for responding to information and document requests made by the auditor that are within the knowledge or possession of the Borrower. Promptly on demand by the Issuer in writing, the Borrower will pay costs incurred by the Issuer in connection with the audit or any legal or administrative proceeding resulting from the audit (including the Issuer's reasonable attorney's fees and expenses). Neither the Issuer nor the Borrower will have the right to represent or otherwise bind the other party in connection with any settlement related to the tax-exempt status of the Bonds. Nothing contained in this section is intended to limit the rights of the Issuer to recovery under the Loan Agreement or any other agreement or certificate executed in connection with the issuance of the Bonds.

**Section 5.9. Execution in Counterparts.** This Tax Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all counterparts will together constitute the same instrument.

**Section 5.10. Governing Law.** This Tax Agreement will be governed by and construed in accordance with the laws of the state of Missouri.

**Section 5.11. Electronic Transactions.** The parties agree that the transaction described in this Tax Agreement may be conducted, and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

*[remainder of this page intentionally left blank]*

**THE PARTIES** have caused this Tax Compliance Agreement to be duly executed by their duly authorized signatories, all as of the day and year first above written.

HOUSING AUTHORITY OF THE CITY OF  
COLUMBIA, MISSOURI

By: \_\_\_\_\_  
Name: Randy Cole  
Title: Chief Executive Officer

UMB BANK, N.A., as Trustee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

KINNEY POINT HOUSING DEVELOPMENT  
GROUP, LP, a Missouri limited partnership

By: KINNEY POINT HOUSING GP, LLC, a  
Missouri limited liability company, its  
General Partner

By: COLUMBIA COMMUNITY HOUSING  
TRUST, a Missouri nonprofit corporation, its  
sole owner

By: \_\_\_\_\_  
Name: Bob Hutton  
Title: President

**EXHIBIT A**

**SOURCES AND USES OF FUNDS AND  
CALCULATION OF AVERAGE ECONOMIC LIFE**

**[ATTACHED]**



**EXHIBIT B**

**DEBT SERVICE SCHEDULE, PROOF OF BOND YIELD, CALCULATION OF WEIGHTED  
AVERAGE MATURITY OF BONDS, REIMBURSEMENT EXPENDITURES**

**[ATTACHED]**

**EXHIBIT C**

**FORM OF ANNUAL COMPLIANCE CHECKLIST**

<b>Name of tax-exempt bond ("Bond") financing</b>	Multifamily Housing Revenue Bonds (Kinney Point
<b>Financed Asset:</b>	Apartments Project), Series 2024A & Series 2024B
<b>Issue Date of Bonds:</b>	May [    ], 2024
<b>Placed in service date of Project Facility:</b>	_____
<b>Name of Borrower Bond Compliance Officer:</b>	_____
<b>Period covered by request ("Annual Period"):</b>	_____

<b>Item</b>	<b>Question</b>	<b>Response</b>
<b>1 Ownership</b>	Was the entire Project Facility owned by the Borrower during the entire Annual Period?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	During the Annual Period has there been a change to the ownership structure of the Borrower?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If answer above was "No," was an Opinion of Bond Counsel obtained prior to the transfer?  If Yes, include a copy of the Opinion in the Tax-Exempt Bond File.  If No, contact Bond Counsel and include description of resolution in the Tax-Exempt Bond File.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>2 Non-Residential Areas</b>	During the Annual Period, was any part of the Project Facility designated for purposes other than residential?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If answer above was "Yes," was an Opinion of Bond Counsel obtained prior to designation of such purpose?  If Yes, include a copy of the Opinion in the Tax-Exempt Bond File.  If No, contact Bond Counsel and include description of resolution in the Tax-Exempt Bond File.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>3 Timely Return Filing</b>	During the Annual Period, have all necessary forms been filed with the IRS (i.e., Form 8703, possibly Form 8038-T (concerning arbitrage rebate), etc.)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If answer above was "No," contact Bond Counsel and include description of resolution in the Tax-Exempt Bond File.	<input type="checkbox"/> Yes <input type="checkbox"/> No

<b>Item</b>	<b>Question</b>	<b>Response</b>
<b>4 Other Use</b>	Have the Bonds been modified, refunded or redeemed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If answer above was "Yes," was an Opinion of Bond Counsel obtained prior to entering into the agreement?  If Yes, include a copy of the Opinion in the Tax-Exempt Bond File.  If No, contact Bond Counsel and include description of resolution in the Tax-Exempt Bond File.	<input type="checkbox"/> Yes <input type="checkbox"/> No

<b>5 Arbitrage &amp; Rebate</b>	Have all rebate and yield reduction calculations mandated in the Tax Compliance Agreement been prepared for the current year?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If No, contact Rebate Analyst and incorporate report or include description of resolution in the Tax-Exempt Bond File.	

**Borrower Bond Compliance Officer:** \_\_\_\_\_

**Date Completed:** \_\_\_\_\_

## EXHIBIT D

### FORM OF FINAL WRITTEN ALLOCATION

The following is intended to be a form of the Final Written Allocation. The form refers to Exhibits A & B (which are excel spreadsheets). The forms of these Exhibits anticipate that the final allocation will update preliminary estimates contained in "Exhibit A – Sources and Uses of Funds" that was completed when the bond issue closed.

Exhibit A is an updated sources and uses table – which in most cases should be identical to that prepared at closing and shown on the first page of Exhibit A, except it will include actual investment earnings and slight variations attributable to differences between actual costs and those estimated at closing, etc.

Exhibit B is the allocation of "non-refunding proceeds" to pay the cost of the facility financed with Bond proceeds. The format normally should be the same as that used at closing for the Exhibit A. The Bond Compliance Officer should "update" the anticipated cost of the Project with actual costs incurred. In cases where there are new uses not contemplated when the bond issue closed, those should be added as separate line items.

The remaining pages of Exhibit B should list expenditures of Bond proceeds and, as indicated, normally would include the date paid, person or entity paid, amount of payment, and if available a short description or other available reference to the issuer's accounting records. The total of this detailed list of expenditures should equal the sum of the non-refunding proceeds together with amounts spent for costs of issuance/credit enhancement.

When completing the Exhibit, the Bond Compliance Officer needs to take investment earnings into account. In many cases these amounts would be shown paying interest on the Bonds – assuming the funds were transferred to the debt service funds.

Placed in Service Date – A "project" normally is treated as placed in service when the last component is completed and the collective assets are available for use and actually used for their designed purpose. Thus, it typically is not necessary to have separate placed in service dates for a building and its equipment or even for separate buildings or structures that are part of a single integrated project.

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Housing Authority of the City of Columbia, Missouri

\$[\_\_ Principal Amount A\_\_] Maximum Principal Amount  
Multifamily Housing Revenue Bonds  
(Kinney Point Apartments Project)  
Series 2024A

and

\$[\_\_ Principal Amount B\_\_] Maximum Principal Amount  
Multifamily Housing Revenue Bonds  
(Kinney Point Apartments Project)  
Series 2024B

### **Final Written Allocation**

The undersigned is the Borrower Bond Compliance Officer of KINNEY POINT HOUSING DEVELOPMENT GROUP, LP (the "Borrower") and in that capacity is authorized to execute federal income tax returns required to be filed by the Issuer and to make appropriate elections and designations regarding federal income tax matters on behalf of the Borrower. This allocation of the proceeds of the bond issue referenced above (the "Bonds") is necessary for the Borrower to satisfy ongoing reporting and compliance requirements under federal income tax laws.

*Purpose.* This document, together with the schedules and records referred to below, is intended to memorialize allocations of Bond proceeds to expenditures for purposes of §§ 141 and 148 of the Internal Revenue Code (the "Code"). All allocations are or were previously made no later than 18 months following the date the expenditure was made by the Borrower or, if later, the date the "project" was "placed in service" (both as defined below), and no later than 60 days following the 5th anniversary of the issue date of the Bonds.

*Background.* The Bonds were issued on May [\_\_\_], 2024 (the "Issue Date") by the Housing Authority of the City of Columbia, Missouri (the "Issuer") in order to provide funds needed to acquire and rehabilitate a project known as Kinney Point Apartments (the "Project"). Proceeds of the Bonds were deposited from time to time into the Project Fund as shown on **Exhibit A** to this Final Written Allocation.

*Sources Used to Fund Project Costs and Allocation of Proceeds to Project Costs.* A portion of the Project costs was paid from sale proceeds of the Bonds and the remaining portion of the costs of the Project was paid from other money of the Borrower and other sources as shown on **Exhibit A** to this Final Written Allocation.

*Identification of Financed Assets.* The portions of the Project financed from Bond proceeds and other money are listed on page 1 of **Exhibit B** to this Final Written Allocation.

*Identification and Timing of Expenditures for Arbitrage Purposes.* For purposes of complying with the arbitrage rules, the Borrower allocates the proceeds of the Bonds to the various expenditures described in the invoices, requisitions or other substantiation attached as **Exhibit B** to this Final Written Allocation. In each case, the cost requisitioned was either paid directly to a third party or reimbursed the Borrower for an amount it had previously paid or incurred. Amounts received from the sale of the Bonds and retained as underwriter's discount, if any, are allocated to that purpose and spent on the Issue Date. Amounts allocated to interest expense are treated as paid on the interest payment dates for the Bonds.

*Placed In Service.* The Project was "placed in service" on the date set out on **Exhibit B** to this Final Written Allocation. For this purpose, the assets are considered to be "placed in service" as of the date on which, based on all the facts and circumstances: (1) the rehabilitation of the asset has reached a degree of completion which would permit its operation at substantially its design level; and (2) the asset is, in fact, in operation at that level.

This allocation has been prepared based on statutes and regulations existing as of this date. The Borrower reserves the right to amend this allocation to the extent permitted by future Treasury Regulations or similar authorities.

KINNEY POINT HOUSING DEVELOPMENT  
GROUP, LP, a Missouri limited partnership

By: KINNEY POINT HOUSING GP, LLC, a  
Missouri limited liability company, its  
General Partner

By: COLUMBIA COMMUNITY HOUSING  
TRUST, a Missouri nonprofit corporation, its  
sole owner

By: \_\_\_\_\_  
Name: Bob Hutton  
Title: President

Dated: \_\_\_\_\_

Name of Legal Counsel/Law Firm Reviewing Final Written Allocation:

\_\_\_\_\_  
Date of Review: \_\_\_\_\_

**EXHIBIT A  
TO FINAL WRITTEN ALLOCATION**

**ALLOCATION OF SOURCES AND USES**

**[Insert Spreadsheet]**

**EXHIBIT B  
TO FINAL WRITTEN ALLOCATION**

**IDENTIFICATION OF FINANCED ASSETS  
&  
DETAILED LISTING OF EXPENDITURES**

**[Insert Spreadsheet]**







# Housing Authority of the City of Columbia, Missouri

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201 Switzler Street, Columbia MO 65203

Office: (573) 443-2556 ♦ Fax: (573) 443-0051 ♦ TTY: (800) 735-2966 ♦ www.ColumbiaHA.com

Department Source: CEO

To: CHA Board of Commissioners

From: CEO & Staff

CHA Board of Commissioners Meeting Date: April 24, 2024

Re: Resolution 2953: A Resolution Authorizing the Chief Executive Officer of the Housing Authority of the City of Columbia to execute an Agreement to Enter into a Housing Assistance Payments Contract (AHAP) prior to construction, and a Housing Assistance Payment (HAP) contract upon construction completion and final inspection.

## Executive Summary

Approval of this resolution authorizes the Chief Executive Officer to execute an Agreement to Enter into an Agreement to Enter into a Housing Assistance Payments (AHAP) prior to construction, and a Housing Assistance Payment (HAP) contract upon the completion of construction and final inspection.

## Discussion

The Columbia Housing Authority's Kinney Point Apartments includes 34 units of affordable housing. The housing affordability is funded by both grant funding in the development of the units, as well as Project-Based Vouchers (PBV) that also provide an on-going monthly subsidy to each housing unit. PBVs are critical to the long-term financial viability of the project and to ensure on-going affordability to tenants.

CHA staff have completed all required compliance steps to enter into a HAP contract including the award of vouchers in accordance with 983.51 (a) and (b), environmental clearance and release of funds in accordance with National Environmental Protection Act (NEPA) Part 58, and U.S. Department of Housing and Urban Development (HUD) subsidy layering review requirements.

## Recommended Commission Action

Adopt the Resolution Authorizing the Chief Executive Officer of the Housing Authority of the City of Columbia to execute an Agreement to Enter into a Housing Assistance Payment Contract (AHAP) prior to construction, and a Housing Assistance Payment (HAP) contract upon construction completion and final inspection.



# Housing Authority of the City of Columbia, Missouri

## Board Resolution

### RESOLUTION #2953

**A Resolution Authorizing the Chief Executive Officer of the Housing Authority of the City of Columbia to execute an Agreement to Enter into a Housing Assistance Payment Contract (AHAP) prior to construction, and a housing assistance payment (HAP) contract upon construction completion and final inspection.**

**WHEREAS**, the Housing Authority wishes to expand the housing opportunities for homeless and at-risk populations at its Kinney Point development in accordance with Notice PIH 2017-21 (HA), and

**WHEREAS**, in order to facilitate the needs of our community, the Housing Authority will award 34 Project Based Vouchers to be utilized specifically for homeless and at-risk households meeting the McKinney-Vento Act Definition of Homelessness within our community of the City of Columbia, and

**WHEREAS**, the Housing Authority of the City of Columbia has completed compliance requirements stipulated by the U.S. Department of Housing and Urban Development (HUD) in order to authorize the award of an AHAP contract and HAP contract including identification of the use of 34 project-based vouchers (PBV) within the PHA Plan, award of vouchers in accordance with 983.51 (a) and (b), environmental clearance and release of funds in accordance with NEPA Part 58, and HUD subsidy layering review requirements.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Commissioners of the Housing Authority of the City of Columbia, Missouri adopts Resolution 2953 authorizing the Chief Executive Officer to allocate 34 Project Based Vouchers to the Kinney Point Development Group, LP, for an initial term of 20 years.

**FURTHER BE IT RESOLVED** that the Chief Executive Officer is hereby authorized to execute an Agreement to Enter into a Housing Assistance Payment Contract (AHAP) prior to construction, and a Housing Assistance Payment (HAP) Contract once construction is complete and project inspected.

**PASSED** by the governing body of the Housing Authority of the City of Columbia, this 24<sup>th</sup> day of April, 2024.

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Bob Hutton, Chairman

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Randy Cole, Secretary

Adopted April 24, 2024

**U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing**

**SECTION 8 PROJECT-BASED VOUCHER PROGRAM**

**AGREEMENT TO ENTER INTO A  
HOUSING ASSISTANCE PAYMENTS CONTRACT**

**NEW CONSTRUCTION OR REHABILITATION**

**PART I**

**OMB Burden Statement.** The public reporting burden for this collection of information is estimated to average 0.25 hours, including the time for collecting, reviewing and reporting the data. The information is required to establish terms between the PHA and the owner prior to execution of a HAP contract for PBV assistance as provided in §983.152. Assurances of confidentiality are not provided under this collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to the Office of Public and Indian Housing, US. Department of Housing and Urban Development, Washington, DC 20410. HUD may not conduct and sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

**Privacy Notice.** The Department of Housing and Urban Development (HUD) is authorized to collect the information required on this form by 24 CFR § 983.152. The information is being collected to establish the agreement between the PHA and owner prior to execution of a HAP contract for PBV assistance as provided in §983.153. The Personally Identifiable Information (PII) data collected on this form are not stored or retrieved within a system of record.

## 1.1 Parties

This Agreement to Enter into Housing Assistance Payments Contract (“Agreement”) is between:

\_\_\_\_\_ (“PHA”) and

\_\_\_\_\_ (“owner”).

## 1.2 Purpose

The owner agrees to develop the Housing Assistance Payments Contract (“HAP Contract”) units to in accordance with Exhibit B and to comply with Housing Quality Standards (“HQS”), and the PHA agrees that, upon timely completion of such development in accordance with the terms of the Agreement, the PHA will enter into a HAP Contract with the owner of the Contract units.

### 1.3 Contents of Agreement

This Agreement consists of Part I, Part II, and the following Exhibits:

EXHIBIT A: The approved owner's PBV proposal. (Selection of proposals must be in accordance with 24 CFR 983.51.)

EXHIBIT B: Description of work to be performed under this Agreement, including:

- if the Agreement is for rehabilitation of units, this exhibit must include the rehabilitation work write-up and, where the PHA has determined necessary, specifications and plans.
- if the Agreement is for new construction of units, the work description must include the working drawings and specifications.
- any additional requirements beyond HQS relating to quality, design and architecture that the PHA requires.
- work items resulting from compliance with the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205, the accessibility requirements under section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR 8.22 and 8.23, and accessibility requirements under Titles II and III of the Americans with Disabilities Act at 28 CFR parts 35 and 36, as applicable.

EXHIBIT C: Description of housing, including:

- project site.
- total number of units in project covered by this Agreement.
- locations of contract units on site.
- number of contract units by area (size) and number of bedrooms and bathrooms.
- services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner.
- utilities available to the contract units, including a specification of utility services to be paid by the owner (without charges in addition to rent) and utility services to be paid by the tenant.
- estimated initial rent to owner for the contract units.

EXHIBIT D: The HAP contract.

## 1.4 Significant Dates

- A. Effective Date of the Agreement: The Agreement must be executed promptly after PHA notice of proposal selection to the owner has been given. The PHA may not enter this Agreement with the owner until a subsidy layering review has been performed and an environmental review has been satisfactorily completed in accordance with HUD requirements.
- B. A project may either be a single-stage or multi-stage project. A single-stage project will have the same Agreement effective date for all contract units. A multi-stage project will separate effective dates for each stage.

### \_\_\_\_\_ Single-stage project

- i. Effective Date for all contract units: \_\_\_\_\_
- ii. Date of Commencement of the Work: The date for commencement of work is not later than \_\_\_\_\_ calendar days after the effective date of this Agreement.
- iii. Time for Completion of Work: The date for completion of the work is not later than \_\_\_\_\_ calendar days after the effective date of this Agreement.

### \_\_\_\_\_ Multi-Stage Project

Enter the information for each stage upon execution of the Agreement for the corresponding stage.

STAGE	NUMBER OF UNITS	EFFECTIVE DATE	DATE OF COMMENCEMENT OF WORK	TIME FOR COMPLETION OF WORK


**1.5 Nature of the Work**

\_\_\_\_\_ This Agreement is for **New Construction** of units to be assisted by the project-based Voucher program.

\_\_\_\_\_ This Agreement is for **Rehabilitation** of units to be assisted by the project-based Voucher program.

**1.6 Schedule of Completion**

- A. **Timely Performance of Work:** The owner agrees to begin work no later than the date for commencement of work as stated in Section 1.4. In the event the work is not commenced, diligently continued and completed as required under this Agreement, the PHA may terminate this Agreement or take other appropriate action. The owner agrees to report promptly to the PHA the date work is commenced and furnish the PHA with progress reports as required by the PHA.
- B. **Time for Completion:** All work must be completed no later than the end of the period stated in Section 1.4. Where completion in stages is provided for, work related to units included in each stage shall be completed by the stage completion date and all work on all stages must be completed no later than the end of the period stated in Section 1.4.
- C. **Delays:** If there is a delay in the completion due to unforeseen factors beyond the owner’s control as determined by the PHA, the PHA agrees to extend the time for completion for an appropriate period as determined by the PHA in accordance with HUD requirements.

**1.7 Changes in Work**

- A. The owner must obtain prior PHA approval for any change from the work specific in Exhibit B which would alter the design or quality of the rehabilitation or construction. The PHA is not required to approve any changes requested by the owner. PHA approval of any change may be conditioned on establishment of a lower initial rent to owner at the amounts determined by PHA.

- B. If the owner makes any changes in the work without prior PHA approval, the PHA may establish lower initial rents to owner at the amounts determined by PHA in accordance with HUD requirements.
- C. The PHA (or HUD in the case of insured or coinsured mortgages) may inspect the work during rehabilitation or construction to ensure that work is proceeding on schedule, is being accomplished in accordance with the terms of the Agreement, meets the level of material described in Exhibit B and meets typical levels of workmanship for the area.

**1.8 Work completion**

- A. Conformance with Exhibit B: The work must be completed in accordance with Exhibit B. The owner is solely responsible for completion of the work.
- B. Evidence of Completion: When the work is completed, the owner must provide the PHA with the following:
  - 1. A certification by the owner that the work has been completed in accordance with the HQS and all requirements of this Agreement.
  - 2. A certification by the owner that the owner has complied with labor standards and equal opportunity requirements in the development of the housing. (See 24 CFR 983.155(b)(1)(ii).)
  - 3. Additional Evidence of Completion: At the discretion of the PHA, or as required by HUD, this Agreement may specify additional documentation that must be submitted by owner as evidence of completion of the housing. Check the following that apply:
    - \_\_\_\_\_ A certificate of occupancy or other evidence that the contract units comply with local requirements.
    - \_\_\_\_\_ An architect’s or developer’s certification that the housing complies with:
      - \_\_\_\_\_ the HQS;
      - \_\_\_\_\_ State, local, or other building codes;
      - \_\_\_\_\_ Zoning;



\_\_\_\_\_ The rehabilitation work write-up for rehabilitated housing;

\_\_\_\_\_ The work description for newly constructed housing; or

\_\_\_\_\_ Any additional design or quality requirements pursuant to this Agreement.

## **1.9 Inspection and Acceptance by the PHA of Completed Contract Units**

- A. Completion of Contract Units: Upon receipt of owner notice of completion of Contract units, the PHA shall take the following steps:
  - 1. Review all evidence of completion submitted by owner.
  - 2. Inspect the units to determine if the housing has been completed in accordance with this Agreement, including compliance with the HQS and any additional requirements imposed by the PHA under this Agreement.
- B. Non-Acceptance: If the PHA determines the work has not been completed in accordance with this Agreement, including non-compliance with the HQS, the PHA shall promptly notify the owner of this decision and the reasons for the non-acceptance. The parties must not enter into the HAP contract.
- C. Acceptance: If the PHA determines housing has been completed in accordance with this Agreement, and that the owner has submitted all required evidence of completion, the PHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

## **1.10 Acceptance where defects or deficiencies are reported:**

- A. If other defects or deficiencies exist, the PHA shall determine whether and to what extent the defects or deficiencies are correctable, whether the units will be accepted after correction of defects or deficiencies, and the requirements and procedures for such correction and acceptance.
- B. Completion in Stages: Where completion in stages is provided for, the procedures of this paragraph shall apply to each stage.

## **1.11. Execution of HAP Contract**

- A. Time and Execution: Upon acceptance of the units by the PHA, the owner and the PHA execute the HAP contract.
- B. Completion in Stages: Where completion in stages is provided for the number and types of units in each stage, and the initial rents to owner for such units, shall be separately shown in Exhibit C of the contract for each stage. Upon acceptance of the first stage, the owner shall execute the contract and the signature block provided in the contract for that stage. Upon acceptance of each subsequent stage, the owner shall execute the signature block provided in the contract for such stage.
- C. Form of Contract: The terms of the contract shall be provided in Exhibit D of this Agreement. There shall be no change in the terms of the contract unless such change is approved by HUD headquarters. Prior to execution by the owner, all blank spaces in the contract shall be completed by the PHA.
- D. Survival of owner Obligations: Even after execution of the contract, the owner shall continue to be bound by all owner obligations under the Agreement.

## **1.12 Initial determination of rents**

- A. The estimated amount of initial rent to owner shall be established in Exhibit C of this Agreement.
- B. The initial amount of rent to owner is established at the beginning of the HAP contract term.
- C. The estimated and initial contract rent for each units may in no event exceed the amount authorized in accordance with HUD regulations and requirements. Where the estimated initial rent to owner exceeds the amount authorized in accordance with HUD regulations, the PHA shall establish a lower initial rent tow owner, in accordance with HUD regulations and requirements.

## **1.13 Uniform Relocation Act**

- A. A displaced person must be provided relocation assistance at the levels described in and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

(URA) (42 U.S.C. 4201-4655) and implementing regulations at 49 CFR part 24.

- B. The cost of required relocation assistance may be paid with funds provided by the owner, or with local public funds, or with funds available from other sources. Payment of relocation assistance must be paid in accordance with HUD requirements.
- C. The acquisition of real property for a project to be assisted under the program is subject to the URA and 49 CFR part 24, subpart B.
- D. The PHA must require the owner to comply with the URA and 49 CFR part 24.
- E. In computing a replacement housing payment to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term “initiation of negotiations” means the execution of the Agreement between the owner and the PHA.

### **1.14 Protection of In-Place Families**

- A. In order to minimize displacement of in-place families, if a unit to be placed under Contract is occupied by an eligible family on the proposal selection date, the in-place family must be placed on the PHA’s waiting list (if they are not already on the list) and, once their continued eligibility is determined, given an absolute selection preference and referred to the project owner for an appropriately sized unit in the project.
- B. This protection does not apply to families that are not eligible to participate in the program on the proposal selection date.
- C. The term “in-place family” means an eligible family residing in a proposed contract unit on the proposal selection date.
- D. Assistance to in-place families may only be provided in accordance with the program regulations and other HUD requirements.

### **1.15 Termination of Agreement and Contract**

The Agreement or HAP contract may be terminated upon at least 30 days notice to the owner by the PHA or HUD if the PHA or HUD determines that the contract units were not eligible for selection in conformity with HUD requirements.

## **1.16 Rights of HUD if PHA Defaults Under Agreement**

If HUD determines that the PHA has failed to comply with this Agreement or has failed to take appropriate action to HUD's satisfaction or as directed by HUD, for enforcement of the PHA's rights under this Agreement, HUD may assume the PHA's rights and obligations under the Agreement, and may perform the obligations and enforce the rights of the PHA under the Agreement. HUD will, if it determines that the owner is not in default, pay Annual Contributions for the purpose of providing housing assistance payments with respect to the dwelling unit(s) under this Agreement for the duration of the HAP contract.

## **1.17 Owner Default and PHA Remedies**

### **A. Owner Default**

Any of the following is a default by the owner under the Agreement:

1. The owner has failed to comply with any obligation under the Agreement.
2. The owner has violated any obligation under any other housing assistance payments contract under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).
3. The owner has committed any fraud or made any false statement to the PHA or HUD in connection with the Agreement.
4. The owner has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing assistance program.
5. If the property where the contract units are located is subject to a lien or security interest securing a HUD loan or mortgage insured by HUD and:
  - a. The owner has failed to comply with the regulations for the applicable HUD loan or mortgage insurance program, with the mortgage or mortgage note, or with the regulatory agreement; or
  - b. The owner has committed fraud, bribery, or any other corrupt or criminal act in connection with the HUD loan or HUD-insured mortgage.

6. The owner has engaged in any drug-related criminal activity or any violent criminal activity.

**B. PHA Remedies**

1. If the PHA determines that a breach has occurred, the PHA may exercise any of its rights or remedies under the Agreement.
2. The PHA must notify the owner in writing of such determination. The notice by the PHA to the owner may require the owner to take corrective action (as verified by the PHA) by a time prescribed in the notice.
3. The PHA's rights and remedies under the Agreement include but are not limited to: (i) terminating the Agreement; and (ii) declining to execute the HAP contract for some or all of the units.

**C. PHA Remedy is not Waived**

The PHA's exercise or non-exercise of any remedy for owner breach of the Agreement is not a waiver of the right to exercise that remedy or any other right or remedy at any time.

## **1.18 PHA and Owner Relation to Third Parties**

**A. Selection and Performance of Contractor**

1. The PHA has not assumed any responsibility or liability to the owner, or any other party for performance of any contractor, subcontractor or supplier, whether or not listed by the PHA as a qualified contractor or supplier under the program. The selection of a contractor, subcontractor or supplier is the sole responsibility of the owner and the PHA is not involved in any relationship between the owner and any contractor, subcontractor or supplier.
2. The owner must select a competent contractor to undertake rehabilitation or construction. The owner agrees to require from each prospective contractor a certification that neither the contractor nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in contract by the Comptroller General or any federal Department or agency. The owner agrees not to award contracts to, otherwise engage in the service of, or fund any contractor that does not provide this certification.

- B. Injury Resulting from Work under the Agreement: The PHA has not assumed any responsibility for or liability to any person, including a worker or a resident of the unit undergoing work pursuant to this Agreement, injured as a result of the work or as a result of any other action or failure to act by the owner, or any contractor, subcontractor or supplier.
- C. Legal Relationship: The owner is not the agent of the PHA and this Agreement does not create or affect any relationship between the PHA and any lender to the owner or any suppliers, employees, contractor or subcontractors used by the owner in the implementation of the Agreement.
- D. Exclusion of Third Party Claims: Nothing in this Agreement shall be construed as creating any right of any third party (other than HUD) to enforce any provision of this Agreement or the Contract, or to assert any claim against HUD, the PHA or the owner under the Agreement or the Contract.
- E. Exclusion of owner Claims against HUD: Nothing in this Agreement shall be construed as creating any right of the owner to assert any claim against HUD.

### **1.19 PHA-Owned Units**

Notwithstanding Section 1.18 of this Agreement, a PHA may own units assisted under the project-based voucher program, subject to the special requirements in 24 CFR 983.59 regarding PHA-owned units.

### **1.20 Conflict of Interest**

- A. Interest of Members, Officers, or Employees of PHA, Members of Local Governing Body, or Other Public Officials
  - 1. No present or former member or officer of the PHA (except tenant-commissioners), no employee of the PHA who formulates policy or influences decisions with respect to the housing choice voucher program or project-based voucher program, and no public official or member of a governing body or State or local legislator who exercises functions or responsibilities with respect to these programs, shall have any direct or indirect interest, during his or her tenure or for one year thereafter, in the Agreement or HAP contract.
  - 2. HUD may waive this provision for good cause.

B. Disclosure

The owner has disclosed to the PHA any interest that would be a violation of the Agreement or HAP contract. The owner must fully and promptly update such disclosures.

### **1.21 Interest of Member or Delegate to Congress**

No member of or delegate to the Congress of the United States of America or resident-commissioner shall be admitted to any share or part of the Agreement or HAP contract or to any benefits arising from the Agreement of HAP contract.

### **1.22 Transfer of the Agreement, HAP Contract, or Property**

A. PHA Consent to Transfer

The owner agrees that the owner has not made and will not make any transfer in any form, including any sale or assignment, of the Agreement, HAP contract, or the property without the prior written consent of the PHA. A change in ownership in the owner, such as a stock transfer or transfer of the interest of a limited partner, is not subject to the provisions of this section. Transfer of the interest of a general partner is subject to the provisions of this section.

B. Procedure for PHA Acceptance of Transferee

Where the owner requests the consent of the PHA for a transfer in any form, including any sale or assignment, of the Agreement, the HAP contract, or the property, the PHA must consent to a transfer of the Agreement or HAP contract if the transferee agrees in writing (in a form acceptable to the PHA) to comply with all the terms of the Agreement and HAP contract, if the transferee is acceptable to the PHA. The PHA's criteria for acceptance of the transferee must be in accordance with HUD requirements.

C. When Transfer is Prohibited

The PHA will not consent to the transfer if any transferee, or any principal or interested party, is debarred, suspended, subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424, or is listed on the U.S. General Services Administration list of parties excluded from Federal procurement or nonprocurement programs.

## 1.23 Exclusion from Federal Programs

### A. Federal Requirements

The owner must comply with and is subject to requirements of 2 CFR part 2424.

### B. Disclosure

The owner certifies that:

1. The owner has disclosed to the PHA the identity of the owner and any principal or interested party.
2. Neither the owner nor any principal or interested party is listed on the U.S. General Services Administration list of parties excluded from Federal procurement and nonprocurement programs; and none of such parties are debarred, suspended, subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424.

## 1.24 Lobbying Certifications

### A. The owner certifies, to the best of the owner's knowledge and belief, that:

1. No Federally appropriated funds have been paid or will be paid, by or on behalf of the owner, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of the Agreement or HAP contract, or the extension, continuation, renewal, amendment, or modification of the HAP contract.
2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the Agreement or HAP contract, the owner must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.



- B. This certification by the owner is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

## 1.25 Subsidy Layering

- A. Owner Disclosure

The owner must disclose to the PHA, in accordance with HUD requirements, information regarding any related assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is made available or is expected to be made available with respect to the contract units. Such related assistance includes, but is not limited to, any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

- B. Limit of Payments

Housing assistance payments under the HAP contract must not be more than is necessary, as determined in accordance with HUD requirements, to provide affordable housing after taking account of such related assistance. The PHA will adjust in accordance with HUD requirements the amount of the housing assistance payments to the owner to compensate in whole or in part for such related assistance.

## 1.26 Prohibition of Discrimination

- A. The owner may not refuse to lease contract units to, or otherwise discriminate against, any person or family in leasing of a contract unit, because of race, color, religion, sex (including sexual orientation and gender identity), national origin, disability, age, or familial status.
- B. The owner must comply with the following requirements:
  - 1. The Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100 *et seq.*;
  - 2. Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1959–1963 Comp., p. 652, and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107;

3. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1;
4. The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146;
5. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;
6. Title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*; 28 CFR part 35
7. Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964–1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60;
8. Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971–1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprise Development); and
9. Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393, and 3 CFR, 1987 Comp., p. 245) (Women’s Business Enterprise).
10. HUD’s Equal Access Rule at 24 CFR 5.105.

The PHA and the owner must cooperate with HUD in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and all related rules and regulations.

## **1.27 Owner Duty to Provide Information and Access to HUD and PHA**

- A. The owner must furnish any information pertinent to this Agreement as may be reasonably required from time to time by the PHA or HUD. The owner shall furnish such information in the form and manner required by the PHA or HUD.
- B. The owner must permit the PHA or HUD or any of their authorized representatives to have access to the premises during normal business hours and, for the purpose of audit and examination, to have access to any books, documents, papers, and records of the owner to the extent necessary to determine compliance with this Agreement.

## **1.28 Notices and Owner Certifications**

- A. Where the owner is required to give any notice to the PHA pursuant to this Agreement, such notice shall be in writing and shall be given in the manner designated by the PHA.
- B. Any certification or warranty by the owner pursuant to the Agreement shall be deemed a material representation of fact upon which reliance was placed when this transaction was entered into.

## **1.29 HUD Requirements**

- A. The Agreement and the HAP contract shall be interpreted and implemented in accordance with all statutory requirements, and will all HUD requirements, including amendments or changes in HUD requirements. The owner agrees to comply with all such laws and HUD requirements.
- B. HUD requirements are requirements that apply to the project-based voucher program. HUD requirements are issued by HUD Headquarters as regulations, *Federal Register* notices, or other binding program directives.

## **1.30 Applicability of Part II Provisions — Check All that Apply**

Equal Employment Opportunity

Section 2.1 applies only to construction contracts of more than \$10,000.

\_\_\_\_\_ Labor Standards Requirements

Sections 2.3, 2.7, and 2.9 apply only when this Agreement covers nine or more units.

\_\_\_\_\_ Flood Insurance

Section 2.10 applies if units are located in areas having special flood hazards and in which flood insurance is available under the National Flood Insurance Program.

**EXECUTION OF THE AGREEMENT**

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct. **WARNING:** Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §3729, 3802).

<b>PUBLIC HOUSING AGENCY (PHA)</b> <b>Name of PHA (Print)</b>
By:
Signature of authorized representative
Name and official title (Print)
Date
<b>OWNER</b> <b>Name of Owner (Print)</b>
By:
Signature of authorized representative
Name and official title (Print)
Date

**U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing**

**SECTION 8 PROJECT-BASED VOUCHER PROGRAM**

**AGREEMENT TO ENTER INTO A  
HOUSING ASSISTANCE PAYMENTS CONTRACT**

**NEW CONSTRUCTION OR REHABILITATION**

**PART II**

**OMB Burden Statement.** The public reporting burden for this collection of information is estimated to average 0.25 hours, including the time for collecting, reviewing and reporting the data. This form is required to establish terms between a PHA and owner to provide housing assistance. Assurances of confidentiality are not provided under this collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to the Office of Public and Indian Housing, US. Department of Housing and Urban Development, Washington, DC 20410. HUD may not conduct and sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

## **2.1 Equal Employment Opportunity**

- A. The owner shall incorporate or cause to be incorporated into any contract in excess of \$10,000 for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR chapter 60, which is to be performed pursuant to this Agreement, the following nondiscrimination clause:

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided

by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.
3. The contractor will send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided by or at the direction of the Government advising the labor union or workers representative of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor of will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and with the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the rules, regulations, or orders, the contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imported and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.
7. The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order

as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

- B. The owner agrees to be bound by the above nondiscrimination clause with respect to his or her own employment practices when participating in federally assisted construction work.
- C. The owner agrees to assist and cooperate actively with HUD and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the nondiscrimination clause and the rules, regulations, and relevant orders of the Secretary of Labor, to furnish HUD and the Secretary of Labor such information as they may require for the supervision of such compliance, and to otherwise assist HUD in the discharge of HUD's primary responsibility for securing compliance.
- D. The owner further agrees to refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the nondiscrimination clause as may be imposed upon contractors and subcontractors by HUD or the Secretary of Labor pursuant to the Executive Order. In addition, if the owner fails or refuses to comply with these undertakings, HUD may take any or all of the following actions; cancel, terminate, or suspend in whole or in part this Agreement; refrain from extending any further assistance to the owner under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the owner, and refer the case to the Department of Justice for appropriate legal proceedings.

## **2.2 Reserved**

## **2.3 HUD—Federal Labor Standards Provisions**

The owner is responsible for inserting the entire text of section 2.3 of this Agreement in all construction contracts and, if the owner performs any rehabilitation work on the project, the owner must comply with all provisions of section 2.3. (Note: Sections 2.3(b) and (c) apply only when the amount of the prime contract exceeds \$100,000.)



*(a)(1) Minimum Wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project) will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made part hereof regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section l(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.*

*Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321)) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.*

*(ii)(A) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:*

*(1) The work to be performed by the classification requested is not performed by a classification in the wage determination;*

*(2) The classification is utilized in the area by the construction industry; and*

*(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.*

*(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D. C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.*

*(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.*

*(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.*

*(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determinations or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.*

*(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.*

*(2) Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractors under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due.*

*(3)(i) Payrolls and Basic Records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the*

*Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.*

*(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD the PHA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included in weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at: <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to HUD, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).*

*(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his*

*or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:*

*(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete;*

*(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3;*

*(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.*

*(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.*

*(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 231 of Title 31 of the United States Code.*

*(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.*

*(4) Apprentices and Trainees.(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and*

*individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employee and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.*

*(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and*

*individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.*

*(iii) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.*

*(5) Compliance with Copeland Act Requirements. The contractor shall comply with the requirements of 29 CFR part 3 which are incorporated by reference in this Agreement.*

*(6) Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in section 2.3(a)(1) through (11) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the*

*compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section 2.3(a).*

*(7) Contract Terminations; Debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.*

*(8) Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.*

*(9) Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the PHA, HUD, the U. S. Department of Labor, or the employees or their representatives.*

*(10) Certification of Eligibility. (i) By entering into this Agreement, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR part 24.*

*(ii) No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR part 24.*

*(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, section 1010, Title 18, U.S.C., "Federal Housing Administration transactions, provides in part: "Whoever, for the purpose of ...influencing in any way the action of such Administration...makes, utters or publishes any statement, knowing the same to be false... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."*

*11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor*



*standards provisions of this Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Agreement to his employer.*

*(b) Contract Work Hours and Safety Standards Act. The provisions of this paragraph (b) are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms “laborers” and “mechanics” include watchmen and guards.*

*(1) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.*

*(2) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.*

*(3) Withholding for Unpaid Wages and Liquidated Damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by*

*the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.*

*(4) Subcontractors. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.*

*(c) Health and Safety. The provisions of this paragraph (c) are applicable only where the amount of the prime contract exceeds \$100,000.*

*(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety as established under construction safety and health standards promulgated by the Secretary of Labor by regulation.*

*(2) The contractor shall comply with all regulations issue by the Secretary of Labor pursuant to Title 29 part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.*

*(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.*

## **2.4 Reserved**

## **2.5 Reserved**

## **2.6 Reserved**

## **2.7 Wage and Claims Adjustments**

The owner shall be responsible for the correction of all violations under section 2.3, including violations committed by other contractors. In cases where there is evidence of underpayment of salaries or wages to any laborers or mechanics (including apprentices and trainees) by the owner or other contractor or a failure by the owner or other contractor to submit payrolls and related reports, the owner shall be required to place an amount in escrow, as determined by HUD sufficient to pay persons employed on the work covered by the Agreement the difference between the salaries or wages actually paid such employees for the total number of hours worked and the full amount of wages required under this Agreement, as well as an amount determined by HUD to be sufficient to satisfy any liability of the owner or other contractor for liquidated damages pursuant to section 2.3. The amounts withheld may be disbursed by HUD for and on account of the owner or other contractor to the respective employees to whom they are due, and to the Federal Government in satisfaction of liquidated damages under section 2.3.

## **2.8 Reserved**

## **2.9 Evidence of Unit(s) Completion; Escrow**

- A. The owner shall evidence the completion of the unit(s) by furnishing the PHA, in addition to the requirements listed in Part I of this Agreement, a certification of compliance with the provisions of sections 2.3 and 2.7 of this Agreement, and that to the best of the owner's knowledge and belief there are no claims of underpayment to laborers or mechanics in alleged violation of these provisions of the Agreement. In the event there are any such pending claims to the knowledge of the owner, the PHA, or HUD, the owner will place a sufficient amount in escrow, as directed by the PHA or HUD, to assure such payments.
- B. The escrows required under this section and section 2.7 of shall be paid to HUD, as escrowee, or to an escrowee designated by HUD, and the conditions and manner of releasing such escrows shall be designated and approved by HUD.

## **2.10 Flood Insurance**

If the project is located in an area that has been identified by the Federal Emergency Management Agency as an area having special flood hazards and if

the sale of flood insurance has been made available under the National Flood Insurance Program, the owner agrees that: (1) the project will be covered, during the life of the property, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less; and (2) that it will advise any prospective purchaser or transferee of the property in writing of the continuing statutory requirement to maintain such flood insurance during the life of the property.