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Subordinate Loan Agreement

between

Manor Housing Public Facility Corporation,  
as Issuer

and

Manor Leased Housing Associates I,  
Limited Partnership,  
as Borrower

Dated as of October 1, 2024

Relating to:

\$4,000,000  
Manor Housing Public Facility Corporation  
Subordinate Multifamily Housing Revenue Bonds  
(Tower Road Apartments)  
Series 2024

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Pursuant to a Subordinate Indenture of Trust dated as of October 1, 2024, the rights of the Manor Housing Public Facility Corporation (“MPFC”) hereunder, other than MPFC’s Unassigned Rights (as defined in the Subordinate Indenture of Trust referred to above), have been assigned to BOKF, NA, as trustee under such Subordinate Indenture of Trust.

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Exhibit A — Form of Subordinate Note

## **Subordinate Loan Agreement**

This Subordinate Loan Agreement, dated as of October 1, 2024 (this “*Subordinate Loan Agreement*”), is by and between Manor Housing Public Facility Corporation, a Texas public nonprofit housing finance corporation created and existing pursuant to Chapter 303, Texas Local Government Code, as amended (the “*Act*”), (together with its successors and assigns, the “*Issuer*”), and Manor Leased Housing Associates I, Limited Partnership, a Texas limited partnership duly organized and validly existing under the laws of the State of Texas (the “*Borrower*”).

### **Witnesseth:**

Reference is hereby made to the Subordinate Indenture of Trust, dated as of October 1, 2024 (the “*Subordinate Indenture*”), between the Issuer and BOKF, NA, a national banking association (the “*Trustee*”), for the recitals and the definitions of various terms used herein.

In consideration of the premises, the respective representations and agreements contained herein, and for other good and valuable consideration, the receipt whereof is hereby acknowledged, and in order to secure the payments to be made by the Borrower pursuant to Article 4 hereof and the performance of all the covenants of the Borrower contained herein, the parties hereto agree as follows:

### **Article 1 Definitions and Miscellaneous**

*Section 1.1. Definitions.* The terms defined in Section 1.1 of the Subordinate Indenture, when used in this Subordinate Loan Agreement, shall have the meanings specified in that Section.

*Section 1.2. Legal Description of Project Premises.* The Project Premises are legally described in Exhibit A attached to the Subordinate Mortgage.

*Section 1.3. Borrower’s Acts.* Where the Borrower is permitted or required to do or accomplish any act or thing hereunder, the Borrower may cause the same to be done or accomplished by a third party selected by the Borrower with the same force and effect as if done or accomplished by the Borrower.

*Section 1.4. Rules of Interpretation.* (1) This Subordinate Loan Agreement shall be interpreted in accordance with and governed by the laws of the State of Texas (the “State”).

(2) The words “herein,” “hereof” and “hereunder” and words of similar import, without reference to any particular section or subdivision, refer to this Subordinate Loan Agreement as a whole rather than to any particular section or subdivision of this Subordinate Loan Agreement.

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

(4) 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.

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

(6) 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.

(7) Articles, sections, subsections and clauses mentioned by number only are those so numbered which are contained in this Subordinate Loan Agreement.

(8) For purposes of this Subordinate Loan Agreement and the Subordinate Indenture, an Act of Bankruptcy shall be deemed no longer in effect if the petition initiating the Act of Bankruptcy is dismissed by order of a court of competent jurisdiction and no further appeal rights exist from such order.

(9) Any opinion of counsel required hereunder shall be a written opinion of such counsel.

(10) References to the Subordinate Bonds as “tax exempt” or to the “tax-exempt status of the Subordinate Bonds” are to the exclusion of interest on the Subordinate Bonds from gross income pursuant to Section 103(a) of the Code, irrespective of such forms of taxation as the alternative minimum tax or branch profits tax on foreign corporations, as is consistent with the approach taken in Section 59(i) of the Code.

## **Article 2**

### **Representations of Issuer and Borrower**

*Section 2.1. Representations of the Issuer.* The Issuer makes the following representations as the basis for its covenants herein:

(1) The Issuer is a Texas public nonprofit housing finance corporation created and existing under the Constitution and laws of the State.

(2) The Issuer has found, based on the representations of the Borrower, and hereby declares that the issuance of the Subordinate Bonds to assist the financing and/or refinancing of the Project is in furtherance of the public purposes set forth in the Act.

(3) In order to finance and/or refinance the costs of the Project, in an amount estimated by the Borrower, the Issuer has duly authorized the execution, delivery, and performance on its part of the Placement Agent Agreement, the Subordinate Indenture and this Subordinate Loan Agreement.

(4) To accomplish the foregoing, the Issuer proposes to issue \$4,000,000 in aggregate principal amount of its Subordinate Bonds immediately following the execution and delivery of this Subordinate Loan Agreement. The date, denomination or denominations, interest rate or rates, maturity schedule, redemption provisions and other pertinent provisions with respect to the Subordinate Bonds are set forth in the Subordinate Indenture.

(5) The Issuer makes no representation or warranty that the amount of the Subordinate Loan will be adequate or sufficient to finance and/or the Project or that the Project will be adequate or sufficient for the purposes of the Borrower.

(6) The Issuer has not pledged, assigned, or granted, and will not pledge, assign, or grant any of its rights or interest in or under this Subordinate Loan Agreement for any purpose other than as provided for in the Subordinate Indenture.

*Section 2.2. Representations of the Borrower.* The Borrower makes the following representations and warranties as the basis for its covenants herein:

(1) The Borrower is a limited partnership duly organized under the laws of the State, is duly authorized to conduct its business in the State, has power to enter into the Senior Loan Documents and the Subordinate Loan Documents to which it is a party, and to use the Project for the purpose set forth in the Funding Loan Agreement, the Borrower Loan Agreement, and this Subordinate Loan Agreement and by proper action has authorized the execution and delivery of the Senior Loan Documents and the Subordinate Loan Documents to which it is a party, and has approved the Subordinate Indenture.

(2) The execution and delivery of the Subordinate Loan Documents to which it is a party, and 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 LPA or the Senior Loan Documents, any restriction or any agreement or instrument to which the Borrower is now a party or by which it is bound or to which any property of the Borrower is subject, and do not and will not constitute a default under any of the foregoing, or cause the Borrower 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 its 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 contrary to the terms of any instrument or agreement to which the Borrower is a party or by which it is bound.

(3) The design and plan of the Project comprise a multifamily rental housing development and the Project is a “project” within the provisions of the Act; and subject to the other provisions of this Subordinate Loan Agreement, it is presently intended and reasonably expected that the equipment, if any, purchased from the proceeds of the Subordinate Bonds will be permanently located and exclusively used on the Project Premises and that the Borrower will own and operate the Project on the Project Premises throughout the Term of Loan Agreement in the normal conduct of the Borrower’s business.

(4) The Project and the operation of the Project following construction of the Project, will continue to conform in all material respects with the requirements of the Act as well as all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project.

(5) During the term of this Subordinate Loan Agreement, the Borrower intends to and will utilize or cause the Project to be utilized as a “project” within the meaning of the Act as in effect on the date hereof.

(6) There is (or will be after the completion of the construction of the Project) public access to the Project, and, as of the date of completion of the Project, the use of the Project will comply, in all material respects, with all presently applicable development, pollution control, water conservation 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 (or, to the extent the Project does not so comply, correcting such noncompliance is a part of the scope of the construction of the Project); the Borrower has obtained or will obtain all necessary approvals of and licenses, permits, consents and franchises from federal, state, county, municipal or other governmental authorities having jurisdiction over the Project to acquire, construct, install, and operate the Project and to enter into, execute and perform its obligations under this Subordinate Loan Agreement and the other Borrower Documents.

(7) The sum of the proceeds of the Subordinate Bonds and the proceeds of the Senior Bonds together with any other funds to be contributed to the Project by the Borrower or otherwise in accordance with this Subordinate Loan Agreement, will be sufficient to pay the cost of constructing the Project in a manner suitable for operation as a multifamily housing development as required in Article 3 hereof.

(8) The Subordinate Bonds are issued within the exemption provided under Section 142(d) of the Code with respect to residential rental property, and “substantially all” of the proceeds of the Subordinate Bonds will be used for expenditures chargeable to the capital account of the Project.

(9) A major inducement to the Borrower to rehabilitate and equip the Project was the source of financing provided under the Act and the assurance the Borrower received from the Issuer that such financing would be made available to the Borrower; all Project Costs heretofore incurred by the Borrower for which the Borrower will seek reimbursement from the proceeds of the Subordinate Bonds were incurred in anticipation of reimbursement from the proceeds of the Subordinate Bonds, if such proceeds should become available on terms acceptable to the Borrower; the Borrower investigated the possibility of such financing prior to incurring such Project Costs; and the Borrower did not commence construction of the Project more than sixty (60) days prior to [June 24, 2020], which is the date on which the Board of Directors of the Issuer gave preliminary approval to the Project and the financing thereof in whole or part through the Subordinate Bonds, and adopted a statement of official intent to reimburse an original expenditure pursuant to Section 1.150-2 of the Treasury Regulations.



(10) The Borrower is not in the trade or business of selling properties such as the Project and the Borrower is acquiring the Project for investment purposes only or otherwise for use by the Borrower in its trade or business; therefore, the Borrower has no intention, now or in the foreseeable future to voluntarily sell, surrender or otherwise transfer, in whole or part, its interest in the Project, except as contemplated by the partnership agreement of the Borrower.

(11) There are no actions, suits, or proceedings pending or, to the knowledge of the Borrower, threatened against the Borrower or any property of the Borrower in any court or before any federal, state, municipal or other governmental agency, which, if decided adversely to the Borrower, would have a material adverse effect upon the Borrower or upon the business or properties of the Borrower or upon the validity or enforceability of the instruments referred to in subsection (1) above, or the ability of the Borrower to perform its obligations thereunder, and the Borrower is not in default with respect to any order of any court or governmental agency.

(12) The Borrower is not in default in the payment of the principal of or interest on any indebtedness for borrowed money nor in default under any instrument or agreement under and subject to which any indebtedness for borrowed money has been issued.

(13) The Borrower has filed all federal and state income tax returns which, to the knowledge of the Borrower, 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.

(14) To the best of the Borrower's knowledge, none of the Issuer Indemnified Parties has any significant or conflicting interest, financial, employment, or otherwise, in the Borrower, the Project, or in any of the transactions contemplated under the Borrower Documents.

(15) There has been no materially adverse change in the financial condition, prospects, or business affairs of the Borrower or the feasibility or physical condition of the Project subsequent to the date on which the Issuer granted its resolution approving the issuance of the Subordinate Bonds.

(16) The Borrower (a) understands the nature of the structure of the transactions related to the financing and/or refinancing of the Project; (b) is familiar with all the provisions of the documents and instruments related to such financing to which the Borrower or the Issuer is a party or which the Borrower is a beneficiary; (c) understands the risk inherent in such transactions, including, without limitation, the risk of loss of the Project; and (d) has not relied on the Issuer for any guidance or expertise in analyzing the financial consequences of such financing transactions or otherwise relied on the Issuer in any manner, except to issue the Subordinate Bonds in order to provide funds for the Subordinate Loan.

(17) Except for the Senior Obligations and the Equity Bridge Bonds, no other obligations have been or will be issued under Section 103 of the Code which are sold at substantially the same time as the Subordinate Bonds, pursuant to the same plan of financing, which are reasonably expected to be paid out of substantially the same source of funds as the Subordinate Bonds.

(18) The Project will be eligible for low income housing tax credits under Section 42 of the Code.

(19) The Borrower's federal employer identification number is 93-3664597.

(20) The Borrower hereby acknowledges receipt of the Subordinate Indenture and the Senior Loan Documents and agrees to be bound by their terms.

(21) Neither the representations of the Borrower contained in the Borrower Documents nor any oral or written statement, furnished by or on behalf of the Borrower to the Issuer or Colliers in connection with the transactions contemplated hereby, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained herein or therein not misleading. There are no facts that the Borrower has not disclosed to the Issuer or Colliers of the Subordinate Bonds in writing that materially and adversely affect or in the future may (so far as the Borrower can now reasonably foresee) materially and adversely affect the properties, business, prospects, profits, or condition (financial or otherwise) of the Borrower, or the ability of the Borrower to perform its obligations under the Borrower Documents or any documents or transactions contemplated hereby or thereby.

(22) All representations of the Borrower contained herein or in any certificate or other instrument delivered by the Borrower pursuant hereto, to the Subordinate Indenture, or in connection with the transactions contemplated thereby, shall survive the execution and delivery thereof and the issuance, sale, and delivery of the Subordinate Bonds as representations of facts existing as of the date of execution and delivery of the instrument containing such representation.

### **Article 3**

#### **Completion of Project**

*Section 3.1. Construction and Equipping of Project by Borrower.* In connection with the acquisition, construction, and equipping of the Project, the Borrower represents and covenants as follows:

(1) *Construction and Equipping.* The Borrower will construct and equip the Project within the boundary lines of the Project Premises and will provide all other improvements, access roads, utilities, parking facilities, and other items required for a facility fully operable for use as a multifamily residential rental property or otherwise required by the jurisdiction for which the property is located in.

(2) *Completion.* The Borrower will rehabilitate the Project as promptly as practicable with all reasonable dispatch and in any event no later than December 1, 2027, except only as completion may be delayed by strikes, riots or acts of God or the public enemy, shortages of materials or supplies or any other reason beyond the reasonable control of the Borrower for which a reasonable extension of the time of completion shall be granted as determined by the Issuer, *provided* that if the Project is not completed by that date there shall be no resulting liability on the part of the Issuer and no abatement or diminution in the payments required to be made by the Borrower under Article 4 hereof.

*Section 3.2. Payment of Project Costs by Borrower.* The Borrower agrees that it will provide any and all money required for the prompt and full payment of all sums required to complete the Project, including all of the following items (the “*Project Costs*”) which the Issuer agrees will be payable or reimbursable from available money in the Project Fund from and to the extent and in the manner provided in Section 3.5 hereof and subject to the provisions of the Act and the Code:

(1) all expenses incurred and to be incurred in connection with the acquisition, construction, improvement, equipping and operation of the Project, the contract price of all labor, services, materials, supplies and equipment furnished under any contract for construction of the Project, any developer fee or construction management fee or other amounts incurred in connection therewith, including the cost of all equipment and all appurtenances thereto, and of all rights-of-way for access and utility connections to and from the Project, and all fees required for recording all financing statements and any real estate documents;

(2) the expense of preparation of the plans and specifications for the Project, including utilities, and all other facilities necessary or desirable in connection therewith, and all other architectural, engineering and supervisory services incurred and to be incurred in the planning, construction and completion of the Project;

(3) all legal fees and expenses (including those of Bond Counsel and counsel to the Issuer, Borrower, Colliers, and Trustee), abstractors’, financial and accounting fees and expenses, administrative and rating agency fees (if any), costs and expenses of any Rebate Analyst, printing and engraving costs and other expenses incurred and to be incurred on or before or in connection with the Completion Date with respect to (i) the establishment of title to the Project Premises, (ii) the authorization, sale and issuance of the Subordinate Bonds, (iii) the preparation of this Subordinate Loan Agreement, the Subordinate Indenture, the Regulatory Agreement, and all other documents necessary to the Date of Issuance or required by this Subordinate Loan Agreement or the Subordinate Indenture, (iv) the establishment of the Completion Date, including compliance with any governmental or administrative rules or regulations on or before such date, or (v) the administrative charges imposed by the Issuer pursuant to Section 4.3(2) hereof in connection with the issuance of the Subordinate Bonds;

(4) premiums on all insurance (including any title insurance) required to be taken out and maintained during the period before the Completion Date;

(5) all expenses incurred in seeking to enforce any remedy against any contractor, or any subcontractor or any supplier in respect of any default under any contract with such Person;

(6) all deed taxes, mortgage registry taxes, recording fees and other taxes, charges and assessments and license and registration fees of every nature whatsoever incurred and to be incurred in connection with construction or completion of the Project including the financing thereof;

(7) the cost of all other labor, services, materials, supplies and equipment necessary to complete the construction and equipping of the Project;

(8) all fees and expenses of the Trustee and Paying Agent under the Subordinate Indenture that become due on or before the Completion Date or in connection with the establishment of the Completion Date; and

(9) without limitation by the foregoing, all other expenses which under accepted accounting practice constitute necessary capital expenditures for the completion of the Project or issuance of the Subordinate Bonds, not including Working Capital Expenses (all of which are nevertheless to be supplied by the Borrower from its own funds without reimbursement).

All Project Costs may be paid or reimbursed from available money in the Project Fund to the extent and in the manner permitted in Section 3.5 hereof. If, however, such money, together with and the proceeds of any other funds and any other funds of the Borrower contributed to the Project Costs or otherwise in accordance with this Subordinate Loan Agreement, is insufficient to pay in full Project Costs payable therefrom or are otherwise unavailable to pay any Project Costs, the Borrower shall nevertheless promptly pay so much of such Project Costs as may be in excess of such available money in the Project Fund or shall, at the request of the Trustee, forthwith pay over to the Trustee such money as is necessary to pay such Project Costs. The Borrower shall not by reason of the payment of such excess Project Costs be entitled to any reimbursement from the Issuer in excess of any money available therefor in the Project Fund or for any abatement or diminution of the Basic Payments or Additional Charges.

*Section 3.3. Authorization by Issuer.* In accordance with the Act, the Borrower is authorized by the Issuer, and the Borrower, pursuant to such authorization, agrees:

(1) to acquire, improve, construct and equip the Project as provided in Section 3.1 hereof, upon the Project Premises;

(2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, with any other Persons, and in general to do all things which may be requisite or proper for constructing and equipping the Project;

(3) pursuant to the provisions of this Subordinate Loan Agreement, to pay all fees, costs and expenses incurred in the construction and equipping of the Project from

funds made available therefor in accordance with this Subordinate Loan Agreement or otherwise subject to the right to contest such fees, costs and expenses; and

(4) so long as the Borrower is not in default under any of the provisions of this Subordinate Loan Agreement to exercise all authority hereby conferred, which is granted and conferred irrevocably to the Completion Date and thereafter until all activities in connection with the construction and equipping of the Project shall have been completed.

Neither the authorization granted in this Section nor any other provision of this Subordinate Loan Agreement shall be construed as making the Borrower an agent or joint venturer with the Issuer.

*Section 3.4. Issuance of Subordinate Bonds.* The Issuer and Borrower have contracted for the sale of the Subordinate Bonds authorized by the Subordinate Indenture, and the Borrower has and does approve the terms of the Subordinate Indenture. Forthwith upon execution of the Subordinate Indenture, the Subordinate Loan Documents, and all other documents required to be executed by the aforementioned documents, or as soon thereafter as practicable, the Issuer will execute the Subordinate Bonds and cause them to be authenticated by the Trustee and delivered to Colliers upon payment of the purchase price of the Subordinate Bonds and filing with the Trustee the opinion of Bond Counsel as to the validity of the Subordinate Bonds and the furnishing of all other documents required by this Subordinate Loan Agreement, the Placement Agent Agreement, and the Subordinate Indenture to be furnished before delivery.

If for any reason such documents are not furnished and the approving opinion of Bond Counsel in customary form cannot be obtained, then this Subordinate Loan Agreement shall be terminated and be void and of no effect and the Borrower shall be obligated to pay all costs and expenses enumerated in Section 3.2 hereof and incurred on or before the date of such termination.

*Section 3.5. Proceeds of Subordinate Bonds.* On the Date of Issuance, the proceeds of the Subordinate Bonds will be deposited in the various funds and accounts established under the Subordinate Indenture or disbursed for Project Costs as set forth in the Closing Memorandum.

*Section 3.6. [Reserved].*

*Section 3.7. Establishment of Completion Date.* Within one hundred eighty (180) days of the Completion Date, any balance remaining in the Project Fund shall be transferred to the Bond Fund held by the Trustee and established under the Subordinate Indenture and shall be used by the Trustee (a) to redeem the largest number of Subordinate Bonds callable, without premium or penalty, under the terms of the Subordinate Indenture at the first opportunity or (b) to pay principal due on the Subordinate Bonds, in accordance with Sections 5.4(5) and 5.5(8) of the Subordinate Indenture.

*Section 3.8. [Reserved].*

*Section 3.9. Enforcement of Contract.* In the event of default of any contractor or subcontractor under any construction contract or in the event of a breach of warranty with respect

to any materials, workmanship or performance, the Borrower will promptly proceed, either separately or in conjunction with others, to exhaust its remedies against the contractor, subcontractor or vendor in default and against any surety on a bond securing the performance of such contract, *provided, however*, that the Borrower may on the advice of its counsel and with the Trustee's consent refrain from exhausting such remedies if determined by the Borrower not to be in its best interests and not necessary to complete the Project. The Borrower will promptly advise the Trustee of the steps it intends to take in connection with any such default. Any amounts recovered pursuant to any bond or by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery, other than any amounts resulting from the loss of income, shall be paid into the Project Fund if received before the Completion Date, and otherwise shall be paid into the Bond Fund.

*Section 3.10. Title Insurance.* In connection with the issuance of the Subordinate Bonds, the Borrower agrees to furnish the Trustee with a commitment for a mortgagee's policy of title insurance and a title insurance policy issued by Title in an amount not less than the original principal amount of the Subordinate Bonds, insuring the following:

- (1) that fee title to the Project Premises in in the name of the Borrower;
- (2) that the Subordinate Mortgage is a subordinate mortgage lien upon the Project Premises subject to the Senior Mortgage and the other Permitted Exceptions; and
- (3) that the Project and its use do not violate any zoning or other use restrictions covering the Project Premises and provides the coverage included within the standard zoning endorsement.

Such title insurance policy must also waive and insure over the following standard exceptions: (a) facts which would be disclosed by a comprehensive survey of the premises; (b) mechanics', contractors', or materialmen's liens and lien claims; and (c) right of parties in possession.

Notwithstanding the foregoing, the Trustee shall have no duty to review or analyze such commitment or the insurance policy.

#### **Article 4**

### **The Subordinate Loan, Basic Payments, Additional Charges and Additional Financing**

*Section 4.1. The Subordinate Loan.* 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 Subordinate Bonds, by causing such proceeds to be deposited with the Trustee for disposition as provided herein and in the Subordinate Indenture. The amount of the Subordinate Loan shall be deemed to include any "discount" or any other amount by which the aggregate price at which the Issuer sells the Subordinate Bonds to Colliers is less than the aggregate principal amount of the Subordinate Bonds, and the obligation of the Issuer to make the Subordinate Loan shall be deemed

fully discharged upon so depositing the proceeds of the Subordinate Bonds with the Trustee. The Borrower's obligation to repay the Subordinate Loan shall be evidenced by the Subordinate Note, the form of which is attached hereto as Exhibit A.

*Section 4.2. Basic Payments.* Subject to the Borrower's right of prepayment granted in Section 8.2 hereof, the Borrower agrees to pay the Subordinate Note and repay the Subordinate Loan in installments of Basic Payments as follows:

(1) During the Term of this Subordinate Loan Agreement, and subject to the prior pledge by the Borrower to make payments under the ] Project Loan Agreement ], the Borrower shall make Basic Payments under this Subordinate Loan Agreement in immediately available funds as follows:

(a) The Borrower shall make Basic Payments as follows:

(i) with respect to the Current Interest Rate, commencing in November 1, 2027 and until Maturity, on or before each Interest Payment Date, the amount required to pay the Current Interest Rate Amount on the next succeeding Interest Payment Date for such Current Interest Rate Amount (payments of interest due on the Subordinate Bonds for the Current Interest Rate portion of the Interest Rate prior to [\_\_\_\_ 20\_\_]) shall be paid by the Trustee from capitalized interest amounts on deposit in the Current Interest Rate Account of the Bond Fund);

(ii) with respect to the Accrual Interest Rate, commencing the first month after the payment in full of all Deferred Developer Fees as certified in writing by the Borrower to the Trustee and the Issuer (in a form of certificate attached hereto as Exhibit B of the Subordinate Indenture) until Maturity, on or before each Accrual Interest Rate Payment Date, the Borrower shall pay the amount of available Surplus Cash to the accrued and unpaid Accrual Interest Rate Amount until all accrued and unpaid interest derived from the Accrual Interest Rate of the Interest Rate has been paid and when all accrued and unpaid interest derived from the Accrual Interest Rate has been paid, then the Accrual Interest Rate Amount due on the next succeeding Interest Payment Date; and

(iii) on or before May 1 of each year, commencing on May 1, 2055 and continuing thereafter, in an amount which will equal the total principal due (through maturity or as a result of mandatory sinking fund redemption) on the next Principal Payment Date (including principal due pursuant to the Mandatory Redemption Schedule after taking into account any credit to which the Borrower may be entitled under Section 3.1(2) of the Subordinate Indenture). There shall be credited against such payments amounts deposited in the Bond Fund interest earnings retained in or credited to the Bond Fund. Interest payments due pursuant to (i) above shall be made by utilizing capitalized interest deposited in the Current Interest Rate Account on the Date of Issuance and the earnings on such funds until those funds are depleted (and such transfers will be deemed to be Basic Payments of such interest by the Borrower).

(b) In any event the sum of the Basic Payments payable under this Section and amounts deposited in the Bond Fund shall be sufficient to pay all principal, interest and premium, if any, on the Subordinate Bonds as such principal and interest become due, at Maturity, upon redemption, acceleration or otherwise, and accordingly if on the Business Day immediately preceding each Maturity Date the balance in the Bond Fund is not sufficient for this purpose, the Borrower will make a Basic Payment on such Business Day to cure the deficiency.

(c) In addition, if the Borrower has not timely made any required Basic Payments, then the Guarantor shall be requested in writing to make the payment under the terms of the Guaranty to cure such deficiency under the requirements of Section 5.5 of the Subordinate Indenture.

(d) With respect to the payments of the Accrual Interest Rate Amount as described in 4.2(1)(a)(ii) above the following concepts apply: (i) the Guaranty shall not to be drawn upon to pay the Accrual Interest Rate Amount unless the Subordinate Bonds have been accelerated or at Maturity (the payment of the Accrual Interest Rate Amount is intended to be primarily from Surplus Cash until such time as the Subordinate Bonds are accelerated or at Maturity) and (ii) the “regularly scheduled” payments of the Accrued Interest Rate Amount are intended to be paid from Surplus Cash annually after the payment of the Current Interest Rate Amount (the Current Interest Rate Amount is paid first and then the Accrual Interest Rate Amount is paid not more frequently than annually as described in the Subordinate Indenture and Section 4.2(1)(a)(ii) above).

(2) All payments of Basic Payments shall be made directly to the Trustee at its designated corporate trust office, for the account of the Issuer and shall be deposited by the Trustee in the Bond Fund. In the event the Borrower should fail to make any of the payments required in this Section 4.2, the item so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same with interest thereon (including to the extent permitted by law, interest on overdue installments of interest) at the rate borne by the respective Subordinate Bonds as to which such default exists.

(3) Except during the continuance of an Event of Default, all available remaining sums on deposit in the Bond Fund not credited against currently payable installments of Basic Payments or applied as provided in Section 7.8, 8.2 or 8.4 hereof shall be credited against the last installments of Basic Payments.

(4) In no event shall any purchase of any Subordinate Bonds made by or on behalf of the Borrower result in the discharge of either (a) the Subordinate Bonds so purchased; (b) the obligations under this Section 4.2 to make Basic Payments relating to the Subordinate Bonds so purchased; or (c) the Subordinate Note or the Subordinate Loan made hereunder to the extent of the Subordinate Bonds so purchased, unless and to the extent the Subordinate Bonds so purchased are surrendered to the Trustee and canceled.

(5) Basic Payments shall be made solely from Available Revenue.

*Section 4.3. Additional Charges.* The Borrower agrees to pay, when due, each and all of the following:

(1) to or upon the order of the Trustee, when due, all reasonable fees, costs, expenses, and charges of the Trustee for services rendered under the Subordinate Indenture, including any extraordinary services, including its Ordinary Trustee Fees and Expenses and Extraordinary Trustee Fees and Expenses and all reasonable fees, costs, expenses, and charges of the Paying Agent, registrars, legal counsel, accountants, engineers, public agencies and others incurred in the performance on request of the Trustee of services



required under the Subordinate Indenture for which the Trustee and such other Persons are entitled to payment or reimbursement, *provided* that the Borrower may, without creating a default hereunder, contest in good faith the necessity or reasonableness of any such services, fees, costs, expenses, or charges;

(2) to the Issuer, the Issuer Fee and any other Issuer Fees and Expenses (including Issuer Late Fees, if any);

(3) to the Trustee, the amount of all advances made by the Trustee, if any, with interest thereon, as provided in Section 5.4 hereof;

(4) to the Issuer or Trustee, as the case may be, interest at the rate equal to one percent (1%) over the prime rate on each payment commencing on the date when due and required in this Section to be made to the Issuer or Trustee, if not made when due and if not advanced by the Trustee under the Subordinate Indenture;

(5) any costs incurred by the Trustee or the Issuer in the preparation of printed bonds;

(6) to the Rebate Analyst, the Rebate Analyst's fees, costs, and expenses; and

(7) payments for the Issuer's Unassigned Rights and any indemnity payments required to be paid by Borrower under any of the Subordinate Loan Documents.

*Section 4.4. Borrower's Obligations Unconditional.* All Basic Payments and Additional Charges and all other payments required of the Borrower hereunder shall be paid from Available Revenue without notice or demand and without set-off, counterclaim, or defense for any reason and without abatement or deduction or defense (except as provided in Sections 8.2 and 9.13 hereof). The Borrower will not suspend or discontinue any such payments, and will perform and observe all of its other agreements in this Subordinate Loan Agreement, and, except as expressly permitted in Sections 7.8 and 8.4 hereof, will not terminate this Subordinate 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 Person, the invalidity or unenforceability or lack of due authorization or other infirmity of this Subordinate Loan Agreement, the lack of right, power or authority of the Issuer to enter into this Subordinate Loan Agreement, eviction by paramount title, commercial frustration of purpose, bankruptcy or insolvency of the Issuer or 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 Subordinate 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 and other amounts payable by the Borrower hereunder shall be paid in full when due

without any delay or diminution whatever. Pursuant to the Guaranty, the Guarantor has guaranteed the payments of the Borrower required under Sections 4.2 and 4.3 hereof.

*Section 4.5. Assignment of Issuer's Rights.* As security for the payment of the Subordinate Bonds, the Issuer will pledge the amounts payable hereunder and assign, without recourse or liability, to the Trustee, the Issuer's rights under this Subordinate Loan Agreement (excluding the Issuer's Unassigned Rights), and hereby directs the Borrower to make said payments directly to the Trustee. The Borrower herewith assents to such assignment and will make payments under this Subordinate Loan Agreement directly to the Trustee without defense or set-off by reason of any dispute between the Borrower and the Trustee.

*Section 4.6. Borrower's Remedies.* Nothing contained in this Article shall be construed to release the Issuer from the performance of any of its agreements herein, and if the Issuer should fail to perform any such agreements (subject to Section 10.11 hereof), the Borrower may institute such 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 4.3 hereof or diminish or delay the amounts required to be paid by the Borrower pursuant to Section 4.2 hereof. The Borrower acknowledges, however, and agrees that any pecuniary obligation of the Issuer created by or arising out of this Subordinate Loan Agreement shall be payable solely out of the Trust Estate.

*Section 4.7. Net Return.* The Borrower agrees that the payment under this Subordinate Loan Agreement shall be a net return to the Issuer over and above any taxes or charges of any nature whatsoever which may currently or hereafter be imposed on the receipts of the Issuer under this Subordinate Loan Agreement.

## **Article 5 Project Covenants**

*Section 5.1. Project Operation and Maintenance.* The Borrower shall pay all expenses of the operation and maintenance of the Project, including but without limitation adequate insurance thereon and insurance against all liability for injury to Persons or property arising from the operation thereof, and all taxes and special assessments levied upon or with respect to the Project and payable during the Term of Loan Agreement and further described in this Article 5.

*Section 5.2. Sale or Lease of Project.* So long as any Subordinate Bonds are Outstanding, the Borrower will not lease the Project (except tenant leases in the normal course of business), in whole or in part, nor sell, mortgage or otherwise encumber its interests in the Project, in whole or part, except as provided in Sections 7.5 and 8.1 hereof, *provided* that in no event shall such lease, assignment or sale be permitted if (1) the effect thereof would be to impair the validity or the exclusion from gross income under Section 103 of the Code of the interest on the Subordinate Bonds, (2) the effect thereof would be to impair the validity of any tax-exemption authorized by Chapter 303 of the Texas Local Government Code, or (3) if any such transaction should release the Borrower of any of its obligations under this Subordinate Loan Agreement (except as otherwise provided in Section 8.1 hereof). Before any such lease, sale or assignment, the Borrower shall

deliver to the Trustee an opinion of Bond Counsel, addressed to the Trustee and the Issuer and in form and substance satisfactory to the Trustee and the Issuer, stating in effect that such lease, sale or assignment will not cause interest on the Subordinate Bonds to be included in gross income for purposes of federal income taxation. The Borrower shall give at least thirty (30) days' notice to the Trustee and the Issuer of any such sale, assignment or lease, unless such thirty (30) day notice is waived by the Trustee and the Issuer.

*Section 5.3. Subordinate Mortgage.* In consideration of the Subordinate Loan, and as security for the Basic Payments and Additional Charges to be made by the Borrower for the payment of the Subordinate Bonds, and as security for the performance of all of the other obligations, agreements, and covenants of the Borrower to be performed and observed hereunder, the Borrower shall execute and cause to be delivered and recorded in the real estate records of the County the Subordinate Mortgage, and shall keep, perform, and observe each of its obligations thereunder.

*Section 5.4. Advances.* The Borrower acknowledges and agrees that under the Subordinate Indenture, the Trustee may take certain action and make certain advances relating to the Project or to certain other matters as expressly provided therein, and the Borrower shall be obligated to repay all such advances on demand, with interest from the date of each such advance, at the rate and under the conditions set forth in the Subordinate Indenture.

*Section 5.5. Alterations to the Project and Removal of Equipment.* The Borrower shall have the right from time to time, at its cost and expense, to remodel and make such additions, modifications, alterations, improvements and changes (collectively referred to as "*alterations*") in or to the Project or to remove any equipment therefrom as the Borrower, in its discretion, may deem to be desirable for its uses and purposes, *provided* such alterations or removal do not impair the character of the Project as a "project" within the meaning of the Act or otherwise impair the exclusion from gross income under Section 103 of the Code of the interest on the Subordinate Bonds, or impair any tax exemption authorized by Chapter 303 of the Texas Local Government Code.

*Section 5.6. Insurance.* Prior to the repayment in full of the Senior Bonds, the Borrower shall comply with the insurance requirements in the Borrower's LPA and the Senior Loan Documents. The Trustee shall be listed as an additional insured or loss payee, as applicable, on all insurance obtained by the Borrower. In addition, the Borrower shall obtain or cause the contractor to obtain, builders' risk insurance in the amount required under the financing documents for the Senior Loan. From such time as the Senior Loan are no longer outstanding, the Borrower shall maintain, or cause to be maintained, at its cost and expense, insurance as follows:

- (1) Insurance against loss and/or damage to the Project under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limiting the generality of the foregoing) fire and extended coverage in an amount not less than one hundred percent (100%) of the full insurable replacement cost of the Project but any such policy may have a deductible amount of not more than \$100,000. No policy of insurance shall be so written that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of

co-insurance provisions or otherwise, without the prior consent thereto in writing by the Trustee. The term “full insurable replacement cost” shall mean the actual replacement cost of the Project (excluding foundation and excavation costs and costs of underground flues, pipes, drains and other uninsurable items) and equipment, and shall be determined from time to time at the request of the Trustee, which request shall be made by the Trustee every five (5) years, commencing June 1, 2029, by an insurance consultant or insurer, selected and paid for by the Borrower. Unless otherwise required by the financing documents with respect to the Senior Bonds, all policies evidencing insurance required by this subsection (1) with respect to the Project shall be carried in the names of the Borrower and the Trustee as their respective interests may appear and shall contain standard mortgage clauses which provide for Net Proceeds of insurance resulting from claims per casualty thereunder to the Project which are less than \$100,000 for loss or damage covered thereby to be made payable directly to the Borrower, and Net Proceeds from such claims which are equal to or in excess of \$100,000 to be made payable directly to the Trustee. Unless otherwise required by the financing documents with respect to the Senior Bonds, the Net Proceeds of such insurance required by this subsection (1) with respect to the Project shall be applied as provided in Sections 5.7 and 5.8 hereof. Unless otherwise required by the financing documents with respect to the Senior Bonds, the Net Proceeds of such insurance required by this subsection (1) with respect to the facilities of the Borrower other than the Project shall be payable to the Borrower.

(2) Comprehensive general public liability insurance, including personal injury liability, and, if the Borrower owns or leases any automobiles, automobile insurance, including owned, non-owned and hired automobiles, against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of \$1,000,000, for public liability not arising from ownership or operation of automobiles (or other motor vehicles), and in the minimum amount of \$500,000 for each occurrence and for each year for liability arising out of ownership or operation of automobiles (or other motor vehicles) and shall be endorsed to show the Trustee and the Issuer as additional insureds.

(3) After the Project is placed in service, business interruption insurance or rental loss insurance covering actual losses in gross operating earnings of the Borrower resulting directly from necessary interruption of business caused by damage to or destruction (resulting from fire and lightning; accident to a fired-pressure vessel or machinery; and other perils, including windstorm and hail, explosion, civil commotion, aircraft and vehicles, sprinkler leakage, smoke, vandalism and malicious mischief, and accident) to real or personal property constituting part of the Project, less charges and expenses which do not necessarily continue during the interruption of business, for such length of time as may be required with the exercise of due diligence and dispatch to rebuild, repair or replace such properties as have been damaged or destroyed, with limits equal to at least the sum of twelve (12) months’ operating expenses of the Project, plus the combined maximum amount of principal of and interest payable on the outstanding Senior Loan and the Subordinate Bonds in the current or any future calendar year.

(4) Such other insurance, including workers' compensation insurance respecting all employees of the Borrower, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure, *provided* that the Borrower may be self-insured with respect to all or any part of its liability for workers' compensation.

All insurance required in this Section shall be taken out and maintained in responsible insurance companies selected by the Borrower which are authorized under the laws of the State to assume the risks covered thereby. The Borrower will annually provide to the Trustee a certificate of the Borrower Representative stating that the insurance required by this Section is in full force and effect in the amounts required above, and the Trustee shall be authorized to conclusively rely on such certificate. The Trustee has no duty or obligation to determine the sufficiency of such insurance requirements. Each policy shall contain a provision that the insurer shall not cancel nor modify it without giving written notice to the Borrower and the Trustee at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the Borrower may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

In the event the Borrower shall fail to maintain the full insurance coverage required by this Subordinate Loan Agreement or shall fail to keep the Project in the condition required hereby (except as otherwise herein permitted), the Trustee or the Subordinate Bond Purchaser may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same, or make the required repairs, renewals and replacements; and all amounts advanced therefor by the Subordinate Bond Purchaser shall become an additional obligation of the Borrower under this Subordinate Loan Agreement to the one making the advance, which amounts the Borrower agrees to pay on demand together with interest thereon at a rate which shall be 10% per annum or the maximum rate permitted by law if less than such rate.

*Section 5.7. Damage or Destruction.* The Borrower agrees to notify the Trustee immediately, in writing, in the case of damage exceeding \$250,000 in amount to, or destruction of, the Project or any portion thereof resulting from fire or other casualty. In the event that any such damage or destruction does not exceed \$250,000, the Borrower shall forthwith repair, reconstruct and restore the Project to substantially the same or an improved condition or value as existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Borrower will apply the Net Proceeds of any insurance relating to such damage received by the Borrower to the payment or reimbursement of the costs thereof. Net Proceeds of any insurance relating to such damage up to \$250,000 shall be paid directly to the Borrower.

In the event the Project or any portion thereof is destroyed by fire or other casualty and the damage or destruction is estimated to exceed \$250,000, then the Borrower shall within one hundred twenty (120) days after such damage or destruction elect one (1) of the following options by written notice of such election to the Trustee:

(1) *Option A – Repair and Restoration.* The Borrower may elect to repair, reconstruct and restore the damaged Project. In such event, the Borrower shall proceed

forthwith to repair, reconstruct and restore the damaged or destroyed Project to substantially the same condition or value as existed prior to the event causing such damage or destruction and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Borrower will apply the Net Proceeds of any insurance relating to such damage or destruction received by the Borrower from the Trustee to the payment or reimbursement of the costs thereof. So long as no Event of Default exists, any Net Proceeds of insurance relating to such damage or destruction received by the Trustee shall be released from time to time by the Trustee to the Borrower upon the receipt of:

(a) A certificate of the Borrower Representative specifying the expenditures made or to be made or the indebtedness incurred in connection with such repair, reconstruction and restoration and stating that such Net Proceeds, together with any other money legally available for such purposes, will be sufficient to complete such repair, reconstruction and restoration; and

(b) The written approval of such certificate by an Independent Engineer.

In the event the Borrower shall elect this Option A, the Borrower shall complete the repair, reconstruction and restoration of the Project, whether or not the Net Proceeds of insurance received by the Borrower for such purposes are sufficient to pay for the same. Net Proceeds not required for the repair, reconstruction and restoration of the Project or prepayment of the Senior Loan shall be applied to the prepayment of the Subordinate Bonds or used for such other purpose as the Trustee, based upon an opinion of Bond Counsel, determines will not cause interest on the Subordinate Bonds to be included in gross income for purposes of federal income taxation.

(2) *Option B – Redemption of the Subordinate Bonds.* In the event that the Borrower shall determine that it is not practical or desirable to rebuild, repair or restore the Project, or, in case the Borrower is unable to deliver the certificates or reports necessary under Option A of this Section, this Subordinate Loan Agreement shall be terminated in accordance with Section 8.4 hereof and the Subordinate Bonds shall be redeemed. If the Net Proceeds of insurance, together with all amounts then held by the Trustee under the Subordinate Indenture available to redeem or retire the Subordinate Bonds, shall be insufficient to so redeem the Subordinate Bonds (including the expenses of redemption), the Borrower shall pay such deficiency to the Trustee as a Basic Payment and the Net Proceeds of insurance, together with such Basic Payment and amounts held by the Trustee under the Subordinate Indenture, shall be applied to such redemption of the Subordinate Bonds in accordance with Section 8.4 hereof and Section 3.1 of the Subordinate Indenture. If the Subordinate Bonds have been fully paid and all obligations of the Borrower hereunder have been paid or provided for, all Net Proceeds shall be paid to the Borrower. In the event that the Borrower does not make any necessary payment to deem and prepay all Subordinate Bonds in accordance with the requirements of this Subordinate Loan Agreement, then the Trustee shall immediately provide notice to the Borrower and the Guarantor for the Guarantor to make such payment.

*Section 5.8. Condemnation.* If the Project or any material portion thereof is condemned or taken for any public or quasi-public use and title thereto vests in the party condemning or taking the same, the Borrower hereby irrevocably assigns to the Trustee, subject to the terms of the Senior Loan Documents providing for the utilization of such Net Proceeds, all the Borrower's right, title and interest in and to any Net Proceeds of any award, compensation or damages (hereinafter referred to as an "award"), payable in connection with any such condemnation or taking. The Trustee shall cooperate fully with the Borrower in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any material part thereof. The Borrower shall, within one hundred twenty (120) days after the date on which the Net Proceeds are finally determined, elect one of the following options by written notice of such election to the Trustee.

(1) *Option A – Repairs and Improvements.* The Borrower may elect to use the Net Proceeds of the award made in connection with such condemnation or taking for additions, repairs and improvements to the Project. In such event, so long as no Event of Default exists, the Borrower shall have the right to receive such Net Proceeds from the Trustee from time to time upon receipt by the Trustee of:

(a) A Certificate of the Borrower Representative specifying the expenditures made or to be made or the indebtedness incurred in connection with such repairs and improvements and stating that such Net Proceeds, together with any of the money legally available for such purposes, will be sufficient to complete such repairs and improvements; and

(b) If such Net Proceeds equal or exceed \$500,000 in amount, the written approval of such Certificate by an Independent Engineer.

The Borrower agrees to apply any such Net Proceeds so received solely to the purposes specified in such Certificate. Net Proceeds not required for the repairs and improvements or prepayment of the Senior Loan shall be applied to the prepayment of the Subordinate Bonds or in such other manner as the Trustee, based upon an opinion of Bond Counsel, determines will not cause interest on the Subordinate Bonds to be included in gross income for purposes of federal income taxation.

(2) *Option B – Redemption of the Subordinate Bonds.* The Borrower may elect that this Subordinate Loan Agreement shall be terminated in accordance with Section 8.4 hereof and the Subordinate Bonds shall be redeemed. If the Net Proceeds of condemnation, together with the amount then held by the Trustee under the Subordinate Indenture available to redeem the Subordinate Bonds shall be insufficient to redeem the Subordinate Bonds (including principal, accrued interest, and expenses of redemption), the Borrower shall pay such deficiency to the Trustee as a Basic Payment, and the Net Proceeds of condemnation, together with such Basic Payment and amounts held by the Trustee under the Subordinate Indenture shall be applied to such redemption of the Subordinate Bonds in accordance with Section 8.4 hereof and Section 3.1 of the Subordinate Indenture. If the Subordinate Bonds have been duly paid and all other obligations of the Borrower hereunder have been paid or provided for, any remaining Net Proceeds shall be paid to the Borrower.

*Section 5.9. Issuer Notice.* The Borrower or the Trustee shall provide notice to the Issuer of the choice of any option under this Article, or upon request any other information requested by the Issuer.

*Section 5.10. Hazardous Materials.* The Borrower shall not use the Project in any manner so as to violate in any material respect any applicable law, rule, regulation or ordinance of any governmental body or in such manner as to vitiate insurance upon the Project. The Borrower shall not commit or permit any waste upon the Project which would materially decrease the value of the Project. The Borrower shall comply in all material respects with all regulations concerning the environment, health and safety relating to the generation, use, handling, production, disposal, discharge and storage of Hazardous Materials, as defined herein, in, on, under, or about the Project. The Borrower shall promptly take any and all necessary action in response to the presence, storage, use, disposal, transportation or discharge of any Hazardous Materials in, on, under or about the Project by the Borrower or Persons acting on behalf of or at the direction of the Borrower as all applicable laws, rules, regulations, or ordinances may require, *provided, however*, that the Borrower shall not take any remedial action in response to the presence of any Hazardous Materials in, on, under or about the Project, nor enter into any settlement agreement, consent decree, or other compromise in respect to any claims, proceedings, lawsuits or actions, completed or threatened pursuant to any Hazardous Materials laws or in connection with any third party, if such remedial action, settlement, consent or compromise might impair the value of the Project; in the event that the presence of Hazardous Materials in, on, under, or about the Project either (1) poses an immediate threat to the health, safety, welfare or property right of any individual, or (2) is of such a nature that an immediate remedial response is necessary under applicable laws, rules, regulations, or ordinances, the Borrower shall promptly take necessary action.

In the event the Borrower undertakes any remedial action with respect to any Hazardous Materials on, under or about the Project, the Borrower shall immediately notify the Trustee, in writing, of any such remedial action, and shall conduct and complete such remedial action (a) in compliance with all applicable federal, state and local laws, regulations, rules, ordinances and policies, (b) to the reasonable satisfaction of the Trustee and (c) in accordance with the orders and directives of all federal, state and local governmental authorities. As used herein, the term “Hazardous Materials” shall mean (unless, and only to the extent that, being used in compliance with all applicable federal, state and local laws, regulations, rules, ordinances and policies): (1) oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other substances, materials or pollutants which (A) pose a hazard to the Project, to adjacent premises or to Persons on or about the Project or adjacent premises, (B) cause the Project to be in violation of any local, state or federal law, rule, regulation or ordinance, or (C) are defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” or “toxic substances” or words of similar import under any applicable local, state or federal law or under the regulations, policy guidelines or other publications adopted or promulgated pursuant thereto, including, but not limited to: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*; (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1601, *et seq.*; (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*; (iv) the Clean Air Act, 42 U.S.C. § 7412; (v) the Toxic Substance Control Act, 15 U.S.C. § 2601 *et seq.*; (vi) the Clean Water Act, 33 U.S.C. § 1317 and 1321(b)(2)A and (vii) rules,



regulations, ordinances and other publications adopted or promulgated pursuant to the aforesaid laws; (2) asbestos in any form which is or could become friable, (3) urea formaldehyde foam insulation, and (4) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety or property interests of the Borrower or its employees, the occupants of the Project or the owners or occupants of property adjacent to or surrounding the Project.

*Section 5.11. Release of Real Property.* The Borrower shall have the right, at any time and from time to time, to a release of any portion of the Project Premises from the Subordinate Mortgage, but only as follows:

(1) If the Senior Loan is Outstanding, the Borrower has received the required releases and approvals under the Senior Loan Documents for such release and the items set forth below in this Section 5.11.

(2) If the Senior Loan is no longer Outstanding, then the Borrower shall receive the following: the Project Premises not containing any permanent structure necessary for the total operating unity and efficiency of the Project may be released for the purpose of selling the same to a third person or to facilitate the construction or financing of additions to the Project or additional structures not related to the Project on such portion of the Project Premises, but only upon receipt by the Trustee and the Issuer of the following:

(a) A Certificate of a Borrower Representative setting forth in substance as follows:

(i) The address and legal description of the portion of the Project to be released;

(ii) The number of square feet of the property to be released;

(iii) A certification that (a) the portion of the Project to be released is not needed for the operation of the Project and is not necessary for the total operating unity and efficiency of the Project, and the release will not cause a reduction in the net revenues of the Project; (b) the release will not impair the structural integrity of the Project or the usefulness of the Project; and (c) the release will not inhibit adequate means of ingress to or egress from the Project;

(iv) No Event of Default exists under this Subordinate Loan Agreement; and

(v) All conditions precedent herein provided for relating to such release have been complied with.

(b) An ALTA survey prepared by a registered land surveyor describing and showing the Project Premises, after giving effect to such release.

(c) An opinion of counsel stating that the certificates, opinions and other instruments which have been or are therewith delivered to and deposited with the Trustee and the Issuer conform to the requirements of this Subordinate Loan Agreement and that, upon the basis of such application, the property may be released from the lien of the Subordinate Mortgage, and that all conditions precedent herein provided for relating to such release have been complied with.

(d) If the Senior Loan is outstanding, evidence that the [Credit Bank][Senior Bond Purchaser] (as defined in the Funding Loan Agreement) has consented in writing to the release of such real property and evidence of such written approval is provided to the Trustee or, if the Permanent Phase Senior Loan is outstanding, evidence that the Initial Funding Lender has consented in writing to the release of such real property and evidence of such written approval is provided to the Initial Funding Lender.

(3) The Borrower may at any time or times grant easements, licenses, rights of way and other rights or privileges in the nature of easements with respect to the Project Premises, free from the lien of the Subordinate Mortgage, or the Borrower may release existing easements, licenses, rights of way and other rights or privileges with or without consideration, and the Trustee will execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right of way or privilege, *provided, however*, that prior to any such grant or release, there shall have been supplied to the Trustee and the Issuer a certificate of the Borrower Representative and, if requested by the Trustee, of an Independent Engineer to the effect that (i) such grant or release is not detrimental to the proper operation of the Project and (ii) such grant or release will not impair the operating unity or the efficiency of the Project on such Project Premises or materially and adversely affect the character thereof.

## **Article 6**

### **Damage, Destruction and Condemnation**

*Section 6.1. Damage and Destruction.* Pursuant to Section 5.7 hereof, if there are any Outstanding Subordinate Bonds when the Project is damaged or destroyed by fire or other casualty, the Borrower shall either restore the Project to the extent permitted or required by this Subordinate Loan Agreement, the Subordinate Indenture, the Subordinate Mortgage, or, if Section 8.4 hereof is applicable, exercise its option to prepay the Subordinate Note and the Subordinate Loan pursuant to said Section.

*Section 6.2. Condemnation.* Pursuant to Section 5.8 hereof, if there are any Outstanding Subordinate Bonds when the Project or any part thereof is taken by Condemnation, the Borrower shall either restore the Project to the extent permitted or required by this Subordinate Loan Agreement, the Subordinate Indenture, the Subordinate Mortgage, or, if Section 8.4 hereof is applicable, exercise its option to prepay the Subordinate Note and the Subordinate Loan pursuant to said Section.

## **Article 7**

### **Borrower's Covenants**

*Section 7.1. Covenant for the Benefit of the Trustee and Bondholders.* The Borrower recognizes the authority of the Issuer to assign its interest in and pledge money receivable under the Subordinate Note and this Subordinate Loan Agreement (excluding the Issuer's Unassigned Rights) to the Trustee as security for the payment of the principal and purchase price of and interest and redemption premiums, if any, on the Subordinate Bonds, and the payment of all fees and expenses of the Trustee, and hereby agrees to be bound by, and joins with the Issuer in the grant of, a security interest to the Trustee in any right and interest the Borrower may have in sums held in the funds described in Article 5 of the Subordinate Indenture, pursuant to the terms and conditions thereof, to secure payment of the Subordinate Bonds. Each of the terms and provisions of this Subordinate Loan Agreement is a covenant for the use and benefit of the Trustee and Holders of the Subordinate Bonds, so long as any thereof shall remain Outstanding, but upon payment in full of the Subordinate Bonds in accordance with Article 7 of the Subordinate Indenture and of all fees and charges of the Trustee and Paying Agent, all references in this Subordinate Loan Agreement to the Subordinate Bonds, the Holders thereof and the Trustee shall be ineffective, and neither the Trustee nor the Holders of any of the Subordinate Bonds shall thereafter have any rights hereunder, save and except those that shall have theretofore vested or that arise from provisions hereunder which survive termination of this Subordinate Loan Agreement.

*Section 7.2. Inspection and Access.* The Borrower agrees that the Trustee and its duly authorized agents shall have the right at all reasonable times upon prior written notice to examine and inspect, and for that purpose to enter upon, subject to the rights of tenants, the Project Premises, 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 5 hereof and the applicable provisions of the Subordinate Mortgage in the event of failure by the Borrower to perform these obligations.

*Section 7.3. Annual Statement, Audit, Certificate of Compliance and Other Reports.*  
(1) Commencing with the fiscal year ending December 31, 2027, and continuing thereafter, the Borrower shall furnish to the Trustee by no later than one hundred twenty (120) days after the close of each fiscal year of the Borrower during the term hereof, a copy of annual financial statements of the Borrower for the preceding fiscal year, including a balance sheet and operating statements (such statements are required to be audited by an Independent Accountant commencing with the fiscal year ending December 31, 2027). The Borrower also agrees to furnish to the Trustee by no later than forty-five (45) days after the close of each fiscal quarter, commencing with the fiscal quarter ending December 31, 2027, a copy of unaudited, internally prepared financial statements of the Borrower presented in a manner similar to the annual audited financial statements, as well as physical and economic occupancy statistics for such quarter.

(2) At the time the Borrower causes to be furnished the annual financial statements, the Borrower shall also furnish the Trustee and the Issuer with a certificate executed by the Borrower

Representative, declaring that during the same fiscal year covered by the statements and continuing to the date of execution of the certificate:

(a) a review of the activities of the Borrower during such fiscal year and of performance hereunder has been made under the Borrower Representative's supervision; and

(b) the Borrower Representative is familiar with the provisions of this Subordinate Loan Agreement and the Tax Certificate, and to the best of the Borrower Representative's knowledge, based on such review and familiarity, the Borrower has fulfilled all its obligations hereunder and thereunder throughout such fiscal year, and there have been no defaults under this Subordinate Loan Agreement or the Tax Certificate or, if there has been a default in the fulfillment of any such obligation in such fiscal year, specifying each such default known to the Borrower Representative and the nature and status thereof and the actions taken or being taken to correct such default.

(3) The Borrower will furnish the Issuer and the Trustee with all reports required pursuant to law and regulations of the Act.

(4) The Borrower will, and at the request of the Issuer or Trustee at the Borrower's expense, furnish to the Trustee and the Issuer at such times and in such form as the Issuer and Trustee, may reasonably require (A) a copy of such other reports containing such information as is necessary to comply with any lawful reporting or continuing registration requirements imposed by any agency of the State under the Act or any other applicable state law as it now exists or may hereafter be amended or by any agency of any other state in which the Subordinate Bonds have been sold, or (B) such information as is necessary to comply with federal securities law.

(5) The Trustee and the Issuer shall have no duty to review or analyze any such financial statements, reports, or certificates. The Trustee and the Issuer shall not be deemed to have notice of any information contained therein or event of default which may be disclosed in any manner therein.

*Section 7.4. Indemnity by Borrower.* (1) THE BORROWER AGREES TO PAY, DEFEND, PROTECT, INDEMNIFY, AND HOLD EACH OF THE INDEMNIFIED PARTIES HARMLESS FOR, FROM AND AGAINST ANY AND ALL LIABILITIES DIRECTLY OR INDIRECTLY ARISING FROM OR RELATING TO THE SUBORDINATE BONDS, THE SUBORDINATE LOAN, THIS SUBORDINATE LOAN AGREEMENT, THE PROJECT, THE REGULATORY AGREEMENT, THE SUBORDINATE INDENTURE, OR ANY DOCUMENT RELATED TO THE ISSUANCE AND SALE OF THE SUBORDINATE BONDS, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

(A) 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;

(B) VIOLATION OF ANY AGREEMENT, COVENANT, OR CONDITION OF ANY OF THE BORROWER DOCUMENTS;

(C) VIOLATION OF ANY AGREEMENT, CONTRACT, OR RESTRICTION RELATING TO THE PROJECT;

(D) VIOLATION OF ANY LAW, ORDINANCE, OR REGULATION AFFECTING THE PROJECT OR ANY PART THEREOF OR THE OWNERSHIP, OCCUPANCY, OR USE THEREOF;

(E) THE ISSUANCE AND SALE OF THE SUBORDINATE BONDS; AND

(F) ANY STATEMENT, INFORMATION, OR CERTIFICATE FURNISHED BY THE BORROWER TO THE ISSUER WHICH IS MISLEADING, UNTRUE, INCOMPLETE, OR INCORRECT IN ANY RESPECT.

(2) THE BORROWER ALSO AGREES TO PAY, DEFEND, PROTECT, INDEMNIFY, AND HOLD EACH OF THE ISSUER INDEMNIFIED PARTIES HARMLESS FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES DIRECTLY OR INDIRECTLY ARISING FROM OR RELATING TO (A) ANY ERRORS OR OMISSIONS OF ANY NATURE WHATSOEVER CONTAINED IN ANY LEGAL PROCEEDINGS OR OTHER OFFICIAL REPRESENTATION OR INDUCEMENT MADE BY OR TO THE ISSUER PERTAINING TO THE SUBORDINATE BONDS, AND (B) ANY FRAUD OR MISREPRESENTATIONS OR OMISSIONS CONTAINED IN THE PROCEEDINGS OF THE ISSUER RELATING TO THE ISSUANCE OF THE SUBORDINATE BONDS OR PERTAINING TO THE FINANCIAL CONDITION OF THE BORROWER OR THE GUARANTOR WHICH, IF KNOWN TO COLLIER, MIGHT BE CONSIDERED A FACTOR IN SUCH PERSON'S DECISION TO PURCHASE THE SUBORDINATE BONDS; *PROVIDED, HOWEVER*, NOTHING IN THIS SUBSECTION SHALL BE DEEMED TO PROVIDE THE ISSUER WITH INDEMNIFICATION FOR THE ISSUER'S OMISSIONS OR MISSTATEMENTS CONTAINED IN THE LIMITED OFFERING MEMORANDUM UNDER THE CAPTIONS "THE ISSUER" OR "ABSENCE OF MATERIAL LITIGATION – THE ISSUER", AS IT RELATES TO THE ISSUER.

(3) PARAGRAPHS (1) AND (2) ABOVE ARE INTENDED TO PROVIDE INDEMNIFICATION TO EACH ISSUER INDEMNIFIED PARTY FOR HIS OR HER ACTIVE OR PASSIVE NEGLIGENCE OR MISCONDUCT; *PROVIDED, HOWEVER*, THAT NOTHING IN PARAGRAPHS (1) AND (2) ABOVE SHALL BE DEEMED TO PROVIDE INDEMNIFICATION (I) TO ANY TRUSTEE INDEMNIFIED PARTY WITH RESPECT TO LIABILITIES DIRECTLY CAUSED BY THE GROSS NEGLIGENCE, UNLAWFUL ACTS OR WILLFUL MISCONDUCT OF SUCH TRUSTEE INDEMNIFIED PARTY, OR (II) TO ANY ISSUER INDEMNIFIED PARTY WITH RESPECT TO ANY LIABILITIES ARISING FROM THE SUCCESSFUL ALLEGATION OF FRAUD OR WILLFUL MISCONDUCT OF SUCH ISSUER INDEMNIFIED PARTY, AS DETERMINED BY A FINAL DECISION OF A COURT OF COMPETENT JURISDICTION.

(4) Any party entitled to indemnification hereunder shall notify the Borrower of the existence of any claim, demand, or other matter to which the Borrower's indemnification obligation applies, and shall give the Borrower a reasonable opportunity to defend the same at its own 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 the Indemnified Party is advised in an opinion of counsel that there may be legal defenses available to it which are different from or in addition to those available to the Borrower or if the Borrower shall, after receiving notice of the Borrower's indemnification obligation and within a period of time necessary to preserve any and all defenses to any claim asserted, fails 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 to compromise or settle the claim or other matter on behalf of, for the account of, and at the risk of, the Borrower. The Borrower shall be responsible for the reasonable counsel fees, costs, and expenses of the Indemnified Party in conducting its defense.

The Indemnified Parties' right to indemnification hereunder shall survive payment of the Subordinate Bonds, termination of the Subordinate Indenture and this Subordinate Loan Agreement and resignation or removal of the Trustee.

*Section 7.5. Status of Borrower.* Throughout the Term of Loan Agreement, the Borrower will maintain its existence as a limited partnership organized under the laws of the State of Texas and a Single Purpose Entity and will not wind up or otherwise dispose of all or substantially all of its assets, *provided* that subject to the sale restrictions in Section 5.2 hereof and the assignment and transfer conditions in Section 8.1 hereof, the Borrower may sell or otherwise transfer to another Person all or substantially all of its assets in its entirety and thereafter wind up if the transferee Person assumes all of the obligations of the Borrower under the Subordinate Loan Documents to which it is a party by written instrument delivered to the Issuer and the Trustee. Every such transferee shall be bound by all of the covenants and agreements of the Borrower herein with respect to any further sale or transfer.

Upon any change in the identity of its general partner by way of substitution, sale or otherwise of the Borrower, the Trustee shall be promptly informed and, if requested, each and every general partner of the Borrower as newly constituted shall deliver to the Trustee for the benefit of the Issuer and Bondholders an instrument in form satisfactory to the Trustee affirming the joint and several liability of all then existing general partners for the obligations of the Borrower hereunder for which the general partners are liable (subject in all instances, to Section 9.13 hereof).

The Issuer and Borrower agree that, upon any change in the status of the Borrower, including a change in the identity of its general partner, so long as the requirements, restrictions and conditions of Sections 5.2 and 8.1 hereof and the Regulatory Agreement with respect to such change have been satisfied as provided therein, the general partner involved shall be discharged from liability hereunder. The Trustee by execution of the Subordinate Indenture shall be deemed to have agreed to execute such documents as may be necessary or desirable to indicate such discharge upon receipt of evidence satisfactory to said parties that the requirements for this Section, Sections 5.2 and 8.1 hereof, and the Regulatory Agreement have been satisfied, and

provided that no Event of Default under this Subordinate Loan Agreement shall have happened and be continuing on the date of the discharge.

The Borrower shall not effect such transfer or change if the result thereof would be to violate any sale restrictions set forth in Section 5.2 hereof, or to subject the interest payable on the Subordinate Bonds (in the hands of any Person who is not a Substantial User of the Project or a Related Person) to federal income taxes under Section 103 of the Code.

Notwithstanding anything to the contrary contained herein or in any other loan document (1) the assignment of class A limited partner, class B limited partner, special limited partner or investor limited partner interests in the Borrower, (2) the removal of the general partner, class A limited partner and/or class B limited partner of the Borrower and replacement thereof pursuant to the terms of the limited liability limited partnership agreement of the Borrower, (3) the transfer of interests within the investor limited partner of the Borrower so long as such investor limited partner remains controlled by or under common control with [\_\_\_\_\_] and (4) the transfer of interests of the investor limited partner to [\_\_\_\_\_] or an affiliate thereof (whether from [\_\_\_\_\_] or another investor limited partner), each shall not be deemed an Event of Default hereunder or under any other loan document and shall not require the consent of the Issuer or the Trustee. Further, the pledge or assignment of any general partner, class A limited partner, or class B limited partner interests (i) to the [Senior Bond Purchaser][Credit Provider] during the construction phase of the Senior Loan as provided in the Senior Loan Documents (within the meaning given to such term in the Funding Loan Agreement) [or to the Initial Funding Lender or Freddie Mac (as defined in the Senior Funding Loan Agreement) during the permanent phase of the Senior Loan as provided in the Financing Documents (as defined in the Senior Funding Loan Agreement)] or (ii) to the Equity Bridge Bond Purchaser or the Taxable construction Lender, during the construction phase of the Senior Loan as provided in the Equity Bridge Loan Documents and the Taxable Loan Documents, as applicable, shall not be deemed an Event of Default hereunder or under any other Subordinate Loan Document and shall not require the consent of the Issuer or the Trustee; *provided, however*, that any subsequent foreclosures of such interests shall require written notice to and the consent of the Issuer.

*Section 7.6. Filing of Financing Statements.* The Borrower agrees that it will, at its sole expense, file any financing statements required to perfect the security interest granted to the Trustee under the Subordinate Indenture in this Subordinate Loan Agreement and the payments. The Trustee shall not be responsible for filing or for the sufficiency or accuracy of any financing statements initially filed to perfect security interests granted under the Subordinate Indenture or this Subordinate Loan Agreement. The Trustee shall file continuation statements with respect to each UCC financing statement relating to the Trust Estate filed by the Borrower at the time of the issuance of the Subordinate Bonds on which the Trustee is named as a secured party; *provided that* a copy of the filed initial financing statement is timely delivered to the Trustee. In addition, unless the Trustee shall have been notified in writing by the Issuer or the Borrower that any such initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in (a) relying on such initial filing and descriptions in filing any financing or continuation statements or modifications thereto pursuant to this section and (b) filing any continuation statements in the same filing offices as the initial filings were made. The Borrower shall be responsible for the customary fees charged by the Trustee for the preparation and filing of such

continuation statements and for the reasonable costs incurred by the Trustee in the preparation and filing of all continuation statements hereunder, including attorneys' fees and expenses. These fees shall be considered "Extraordinary Services" fees.

*Section 7.7. Assurance of Tax Exemption.* In order to assure that the interest on the Subordinate Bonds shall at all times be excluded from gross income for the purposes of federal income taxation, the Borrower represents and covenants with the Issuer, Trustee and all Holders of the Subordinate Bonds as follows:

(1) The Borrower will fulfill all continuing conditions specified in Section 142 of the Code and Regulation 1.103-8(b) promulgated thereunder, to qualify the Subordinate Bonds as residential rental property bonds thereunder, and the Borrower shall fulfill its obligations under the Regulatory Agreement.

(2) The Borrower will not use (or permit to be used) the Project, any funds provided by the Issuer hereunder, or any other funds of the Borrower, or use or invest (or permit to be used or invested), directly or indirectly, the proceeds of the Subordinate Bonds or any other sums treated as "bond proceeds" under Section 148 of the Code and applicable federal income tax regulations, including "investment proceeds", "invested sinking funds" and "replacement proceeds", in a manner which would, or enter into, or allow any Related Person to enter into, any arrangement, formal or informal, for the purchase of the Subordinate Bonds that would, or take or omit to take any action that would, to the knowledge of the Borrower, cause the Subordinate Bonds to be an "arbitrage bond" within the meaning of Section 148 of the Code or "federally guaranteed" within the meaning Section 149(b) of the Code and the applicable regulations promulgated from time to time thereunder. The Borrower further covenants to comply with the covenants and procedures set forth in the Tax Certificate and Article 6 of the Subordinate Indenture and to deposit in the Rebate Fund such amount as may be necessary to maintain the deposit in the Rebate Fund as the Rebate Requirement. Finally, the Borrower covenants to pay to the Trustee on demand all sums necessary to retain or pay the fees and expenses of the Rebate Analyst.

(3) At least ninety-five percent (95%) of Net Bond Proceeds will be used to finance costs properly chargeable to the capital account of a qualified residential rental project within the meaning of Section 142(d) and functionally related and subordinate property thereto.

(4) The Borrower has not permitted and will not permit any obligation or obligations other than the Senior Bonds, the Governmental Note, and the Equity Bridge Bonds to be issued within the meaning of Section 103(b) of the Code so as to cause such obligations to become part of the same "issue of obligations" as the Subordinate Bonds.

(5) No portion of the proceeds of the Subordinate Bonds will to be used to provide any airplanes, skybox, or other private luxury box, health club facility, facility primarily used for gambling or liquor store.



(6) No portion of the proceeds of the Subordinate Bonds will be used to acquire (a) property to be leased to the government of the United States of America or to any department, agency or instrumentality of the government of the United States of America, (b) any property not part of the residential rental housing portion of the Project, or (c) any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard and ice-skating), racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility or racetrack.

(7) No portion of the proceeds of the Subordinate Bonds (including investment earnings) shall be used (directly or indirectly) for the acquisition of land (or an interest therein) to be used for farming purposes, and less than twenty-five percent (25%) of the proceeds of the Obligations (including investment earnings thereon) shall be used (directly or indirectly) for the acquisition of land to be used for purposes other than farming purposes.

(8) The Borrower understands that the Code imposes a penalty for failure to file with the Secretary of the Treasury an annual certification of compliance with low income occupancy requirements, and if the requirements for a “qualified residential rental project” are not met, does not allow deduction for interest paid on the Subordinate Bonds which accrues during the period beginning on the first day of the taxable year in which the Project ceases to meet such requirements and ending on the date the Project again meets such requirements.

(9) The average maturity of the Obligations does not and will not exceed 120% of the average reasonably expected remaining economic life of the Project within the meaning of Section 147(b) of the Code.

(10) The Borrower shall provide the Issuer on or prior to the Date of Issuance with all information required to satisfy the informational requirements set forth in Section 149(e) of the Code including the information necessary to complete IRS Form 8038.

(11) No money in the Bond Fund or the Project Fund shall be invested in investments which cause the Subordinate Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code. If at any time the moneys in such funds exceed, within the meaning of Section 149(b) of the Code, (i) amounts invested for an initial temporary period until the moneys are needed for the purpose for which the Subordinate Bonds were issued, (ii) investments of a bona fide debt service fund, and (iii) investments of a reserve which meet the requirement of Section 148(c) and (d) of the Code, such excess moneys shall be invested in only those Permitted Investments or Government Obligations, as otherwise appropriate, which are (a) obligations issued by the United States Treasury, (b) other investments permitted under regulations, or (c) obligations which are (1) not issued by, or guaranteed by, or insured by, the United States or any agency or instrumentality thereof or (2) not federally insured deposits or accounts, all within the meaning of Section 149(b)(3)(B) of the Code.

(12) The Borrower on behalf of the Issuer shall pay to the United States, as a rebate, an amount equal to the sum of (a) the excess of (i) the aggregate amount earned on all nonpurpose investments (other than investments attributable to an excess described in this clause), over (ii) the amount which would have been earned if all nonpurpose investments were invested at a rate equal to the yield on the Obligations, plus (b) any income attributable to the excess described in clause (a), at the times and in the amounts required by Section 148(f) of the Code, all within the meaning of Section 148(f) of the Code. The Borrower and the Trustee shall maintain detailed records of the interest rates borne by the Obligations and the investments of the Project Fund and the Bond Fund (and any other fund created under the Subordinate Indenture) and earnings thereon. The Borrower shall engage the Rebate Analyst to calculate the amount of any rebate required to be made to the United States at times and in installments which satisfy Section 148(f) of the Code and the Regulations, at least once every 5 years and within 60 days after the day on which the last of the Obligations are redeemed, and the Trustee shall be immediately furnished with such calculations. If the Trustee is not furnished with such calculations, the Trustee may undertake to have such calculations made by the Rebate Analyst at the expense of the Borrower. Such calculations shall be retained until 6 years after the retirement of the last Subordinate Bond. The rebate shall be calculated as provided in Section 148(f) of the Code and Sections 1.148-0 through 1.148-9 of the Treasury Regulations, including taking into account the gain or loss on the disposition of nonpurpose investments but not gross earnings of up to \$100,000 on the portion, if any, of the Bond Fund constituting a bona fide debt service fund. The Borrower shall acquire, and shall cause the Trustee to acquire all nonpurpose investments at their fair market value in arm's length transactions. The Trustee may conclusively rely upon the calculation made by the Rebate Analyst and shall not be liable or responsible therefor. The Borrower shall comply with Section 5.7 of the Subordinate Indenture.

(13) The Borrower will not permit more than two percent (2%) of the proceeds of the Obligations to be expended (or to be used to reimburse any person for an expenditure) to pay Issuance Expenses as provided by Section 147(g) of the Code.

(14) In order to qualify the Subordinate Bonds and this Subordinate Loan Agreement under the "program investment" provisions of Section 1.148-2(d)(2)(iii) of the Treasury Regulations, the Borrower (and any Related Person thereto) will take no action the effect of which would be to disqualify this Subordinate Loan Agreement as a "program investment" as defined in Section 1.148-1(b) of the Treasury Regulations, including but not limited to entering into any arrangement, formal or informal, for the Borrower to purchase bonds or notes of the Issuer in an amount related to the amount of the Subordinate Bonds.

(15) The Borrower will not otherwise use proceeds of the Subordinate Bonds, including expenses, earnings thereon, or take, or permit or cause to be taken, any action that would adversely affect the exclusion from gross income of the interest on the Subordinate Bonds, nor otherwise omit to take or cause to be taken any action necessary to maintain such exclusion from gross income, and if it should take or permit, or omit to take or cause to be taken, as appropriate, any such action, the Borrower shall take all lawful

actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

(16) All of the proceeds of the Subordinate Bonds, except those portions of the proceeds used to pay for Issuance Expenses, if applicable, shall, for federal income tax purposes, be (i) allocated to the Project and the land on which the building is located and (ii) be used to pay costs of the acquisition and construction of the Project which are includible in the aggregate basis of the building and the land on which the building is located, in a manner such that the Project satisfies the requirements of Section 42(h)(4)(B) of the Code.

(17) The Borrower will at all times comply with the terms of the Tax Certificate and the Regulatory Agreement.

(18) Notwithstanding any provisions of this Section 7.7, if the Borrower shall provide to the Issuer and the Trustee an opinion of Bond Counsel addressed to the Issuer that any specified action required under this Section or Article 6 of the Subordinate Indenture is no longer required or that some further or different action is required to maintain the exclusion from federal income tax of interest on the Subordinate Bonds, the Issuer, the Trustee and the Borrower may conclusively rely on such opinion in complying with the requirements of this Section 7.7 and Article 6 of the Subordinate Indenture and be protected in so doing, and the covenants hereunder shall be deemed to be modified to that extent.

In the event of a conflict between the terms and requirements of this Section 7.7 and the Tax Certificate, the terms and requirements of the Tax Certificate shall control.

*Section 7.8. Determination of Taxability.* (1) Promptly after the occurrence of a Determination of Taxability, the Borrower shall give written notice to the Issuer and Trustee of the Determination of Taxability and the Borrower shall provide to the Trustee in immediately available funds, an amount which when added to the amounts on deposit in the funds, will equal the principal amount of all the Unpaid Bonds plus accrued interest thereon to the Redemption Date, and the Subordinate Bonds shall be redeemed pursuant to Article 3 of the Subordinate Indenture.

(2) Upon a Determination of Taxability the Borrower shall also pay to the Trustee an amount equal to the Paying Agent's and Trustee's fees, accrued and to accrue until final payment and redemption of the Subordinate Bonds, all other advances, fees, costs and expenses (including attorneys' fees and expenses) reasonably incurred by the Trustee, the Paying Agent, and Bond Counsel, and all Issuer Fees and Expenses.

(3) If this Subordinate Loan Agreement has not been terminated under Section 8.4 hereof prior to the Redemption Date for the Subordinate Bonds, this Subordinate Loan Agreement shall be terminated on said Redemption Date and the closing for the termination of this Subordinate Loan Agreement shall be completed otherwise as provided for termination of this Subordinate Loan Agreement upon exercise of the Borrower's options under Section 8.4 hereof.

(4) Neither the Borrower nor any Holder shall be required to contest or appeal any notice of deficiency, ruling, decision or legislative enactment which may give rise to a Determination of Taxability, and the expenses of any such contest or appeal shall be paid by the party initiating the contest or appeal.

*Section 7.9. Subordination of Management Fees.* As long as Dominion Texas Management Services, LLC (including its successors and assigns), or an affiliate thereof, is the manager of the Project, any management fees payable by the Borrower with respect to the Project will be wholly subordinate and junior in right of payment to all sums payable under this Subordinate Loan Agreement with respect to the Subordinate Bonds. Without limiting the foregoing, during the continuance of an Event of Default hereunder, no payment of such management fees shall be made by the Borrower. Further, the Borrower will not pay any such management fees if such payment will cause an Event of Default hereunder.

*Section 7.10. Continuing Disclosure.* The Borrower hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Subordinate Loan Agreement or the Subordinate Indenture, failure of the Borrower to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default hereunder or under the Subordinate Indenture or a default with respect to the Subordinate Bonds or the Subordinate Loan Documents.

## **Article 8 Borrower's Options**

*Section 8.1. Assignment and Transfer.* The Borrower may assign its rights and obligations under this Subordinate Loan Agreement and, as an incident thereto, transfer its interest in the Project without prior consent of the Issuer or the Trustee, but subject to the provisions of Sections 5.2 and 7.5 hereof.

*Section 8.2. Prepayment.* (1) The Borrower shall have the option to direct the Trustee to call for redemption and prepayment of the Outstanding Subordinate Bonds in whole or in part to the extent and upon the terms provided in Section 3.1 of the Subordinate Indenture. The Subordinate Bonds to be redeemed shall be redeemed at a price equal to their principal amount plus accrued interest set forth in Section 3.1 of the Subordinate Indenture. In the event the Subordinate Bonds are called for redemption in whole or in part, the Borrower shall make a Basic Payment as provided in Section 4.2 hereof on such Redemption Date.

(2) If, after the Borrower exercises its option to redeem all Subordinate Bonds, no Subordinate Bonds remain Outstanding, the Subordinate Indenture is discharged, and the Borrower has satisfied all of its obligations hereunder and under the Subordinate Note, the Trustee and the Issuer shall (at the sole cost and expense of the Borrower) execute and deliver to the Borrower such release and other instruments as the Borrower reasonably determines are necessary to terminate this Subordinate Loan Agreement. All further obligations of the Borrower hereunder, except as set forth in Section 10.10 hereof, shall thereupon terminate.

*Section 8.3. Direction of Investments.* Except during the continuance of an Event of Default, the Borrower shall have the duty during the Term of Loan Agreement to direct the Trustee to invest or reinvest all money held for the credit of funds established by Article 5 of the Subordinate Indenture in such securities as are authorized by law for such funds, subject, however, to the further conditions of Article 6 of the Subordinate Indenture and Section 7.7 hereof.

The Borrower acknowledges that regulations of the Comptroller of the Currency grant the Borrower the right to receive brokerage confirmations of security transactions as they occur. The Borrower specifically waives such right to notification to the extent permitted by law and acknowledges that it will receive periodic transaction statements that will detail all investment transactions.

*Section 8.4. Termination of Loan Agreement.* Except during the continuance of an Event of Default, the Borrower shall have the option of terminating this Subordinate Loan Agreement subject to the following conditions:

(1) The Senior Loan is paid in full.

(2) Such option may be exercised if one of the events described in Section 5.7 or 5.8 hereof shall have occurred or if as a result of any changes in the Constitution of the State or the Constitution of the United States of America, or of any legislative or administrative action, whether state or federal, or of any final decree, judgment or order of any court or administrative body, whether state or federal, entered after the contest thereof by the Borrower in good faith, the agreements contained in this Subordinate Loan Agreement shall have become impossible of performance in accordance with the intent and purposes of the parties as expressed herein, or unreasonable burdens or excessive liabilities shall have been imposed upon the Borrower, including but not limited to the imposition of new state or local ad valorem, property, income or other taxes not imposed on the date of this Subordinate Loan Agreement, other than ad valorem taxes upon privately owned property and for the same general purpose as the Project and special assessments levied in amounts proportionate to and not exceeding the benefits of future public improvements to the land included in the Project.

(3) With respect to any of the events stated in subsection (2), if the Borrower determines to exercise its option to terminate this Subordinate Loan Agreement, with approval of the investor limited partner of the Borrower, it must give written notice to the Issuer and Trustee of its decision to exercise its option within one hundred twenty (120) days after such event.

(4) The Borrower shall give written notice to the Issuer and Trustee of its intention to exercise the option, with approval of the investor limited partner of the Borrower, stating therein a termination date not less than forty-five (45) nor more than ninety (90) days after the date the notice is mailed, but in no event prior to the date on which all Outstanding Subordinate Bonds shall be deemed discharged under Article 9 of the Subordinate Indenture, and the Borrower shall make arrangements satisfactory to the

Trustee for the giving of any notice required for redemption of all of the Outstanding Subordinate Bonds on the date on which the Subordinate Bonds are to be redeemed.

(5) The Borrower shall make a Basic Payment as provided in Section 4.2 hereof on the Redemption Date.

(6) The Borrower shall pay to the Trustee at least five (5) days prior to the Discharge Date, an amount equal to the Trustee's and Paying Agent's fees and expenses under the Subordinate Indenture, accrued and to accrue until final payment and redemption of the Subordinate Bonds and all other advances, fees, costs and expenses reasonably incurred and to be incurred on or before the termination date by the Trustee and Paying Agent under the Subordinate Indenture and the Issuer Fees and Expenses under this Subordinate Loan Agreement.

(7) On the termination date, the Issuer and Trustee shall (at the sole cost and expense of the Borrower), upon acknowledgment of receipt of the sum set forth in subsection (5) above, execute and deliver to the Borrower such release and other instruments as the Borrower reasonably determines are necessary to terminate this Subordinate Loan Agreement. All further obligations of the Borrower hereunder, except as provided in Section 10.10 hereof, shall thereupon terminate, *provided, however*, that the Borrower shall also remain obligated to pay or reimburse the Issuer and Trustee for the payment of all other fees, costs and expenses unaccounted for in the sum paid in accordance with subsection (6) above and reasonably incurred before or subsequent to such closing in connection with the Subordinate Bonds, as applicable.

## **Article 9**

### **Events of Default and Remedies**

*Section 9.1. Events of Default.* Any one or more of the following events is an Event of Default under this Subordinate 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:

(1) if the Borrower shall fail to pay any Basic Payments on the date due under this Subordinate Loan Agreement;

(2) if the Borrower shall fail to pay any Additional Charges on or before the date that the payment is due, and shall continue to be in arrears for thirty (30) days after mailing of a notice to it by the Issuer or the Trustee that said Additional Charges have not been received on the due date;

(3) if the Borrower shall fail to observe and perform or shall breach any other covenant, condition or agreement on its part under this Subordinate Loan Agreement for a

period of forty-five (45) days after mailing of a notice to it by the Issuer or the Trustee, stating that it is a “Notice of Default” hereunder and specifying such default or breach and requesting that it be remedied;

(4) if the Borrower shall be dissolved or liquidated (other than when a new entity assumes the obligations of the Borrower under the conditions permitting such action contained in Section 7.5 hereof);

(5) if any representation or warranty made by the Borrower herein, or by a general partner or Borrower Representative in any document or certificate furnished to the Trustee or the Issuer or Colliers in connection herewith or therewith or pursuant hereto or thereto, shall prove at any time to be, in any material respect, incorrect or misleading as of the date made; or

(6) if an event of default occurs and is continuing under the Subordinate Indenture, any other Subordinate Loan Document, any Senior Loan Document, any Equity Bridge Loan Document, or any Subordination Agreement, subject to applicable notice and cure periods.

A copy of any notice of an Event of Default hereunder given to the Borrower shall also be given to the Borrower’s investor limited partner and special limited partner at the addresses set forth in Section 10.2 hereof. The investor limited partner, special limited partner, class A limited partner, and class B limited partner of the Borrower shall have the right, but not the obligation, to cure Events of Default on behalf of the Borrower, and the Issuer and Trustee shall accept such cure as if it were made by the Borrower itself.

*Section 9.2. Remedies.* The following remedies are all subject to the terms of the Subordination Agreements.

(1) Whenever any Event of Default shall have happened and be subsisting the Trustee may by written notice to the Borrower, declare all the Basic Payments payable for the remainder of the Term of Loan Agreement (an amount equal to that necessary to pay in full all Outstanding Subordinate Bonds and the interest thereon assuming acceleration of the Subordinate Bonds under the Subordinate 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. The provisions of this Section 9.2 do not limit the application of Section 9.1 hereof.

(2) Upon the occurrence of an Event of Default, but subject to the terms of the Subordination Agreements, the Trustee may also 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 Subordinate Loan Agreement, or any Collateral Documents, or to otherwise compensate the Issuer, Trustee or Bondholders for any damages on account of such Event of Default.

(3) Whenever any Event of Default has occurred and is continuing, the Trustee may, but except as otherwise provided in the Subordinate Indenture shall not be obligated to, exercise any or all of the rights of the Issuer under this Article, upon notice as required to the Issuer. In addition, the Trustee shall have available to it all of the remedies prescribed by the Subordinate Indenture. 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, then the Issuer may, without the consent of the Trustee, take whatever action at law or in equity may appear necessary or appropriate to enforce the Issuer's Unassigned Rights and to collect all sums then due and thereafter to become due to the Issuer under this Subordinate Loan Agreement.

*Section 9.3. Disposition of Funds.* Any amounts collected pursuant to action taken under Section 9.2 hereof (other than sums collected for the Issuer on account of the Issuer's Unassigned Rights, which sums shall be paid directly to the Issuer) shall be applied in accordance with the provisions of the Subordinate Indenture.

*Section 9.4. Nonexclusive Remedies.* No remedy herein conferred upon or reserved to the Issuer or 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 Subordinate 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 Trustee) to exercise any remedy reserved to it 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 9.5. Attorneys' Fees and Expenses.* If an Event of Default shall exist under this Subordinate Loan Agreement and the Issuer or Trustee should 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 will upon demand pay to the Issuer or Trustee the reasonable fees and expenses of such attorneys and such other expenses so incurred.

*Section 9.6. Effect of Waiver.* In the event any agreement contained in this Subordinate Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

*Section 9.7. Waiver of Stay or Extension.* The Borrower covenants (to the extent that it may lawfully do so) 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 Subordinate Loan Agreement, and the Borrower (to the extent that it may lawfully do so) 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



Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

*Section 9.8. Trustee or Issuer 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:

(1) 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 Bondholders) (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

(2) to collect and receive any money or other property payable or deliverable on any such claims, and to distribute the same.

*Section 9.9. Restoration of Positions.* If the Issuer or Trustee have instituted any proceeding to enforce any right or remedy under this Subordinate 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, 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 thirty (30) days' prior written notice from the Trustee or the Issuer, the Trustee and the Issuer shall have power to (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 Subordinate Loan Agreement, and such suits and proceedings as the Trustee or the Issuer 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 Bondholders.

*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 the Issuer or the Trustee of any such performance by third parties shall not in any way diminish or absolve the Borrower of primary liability hereunder.

*Section 9.12. Exercise of the Issuer's Remedies by Trustee.* Whenever any Event of Default shall have happened and be subsisting the Trustee may, but except as otherwise provided

in the Subordinate Indenture shall not be obliged to, exercise any or all of the rights of the Issuer under this Article 9, upon notice to the Issuer.

*Section 9.13. Limited Recourse.* Notwithstanding any provision or obligation to the contrary set forth in this Subordinate Loan Agreement, (1) the liability of the Borrower and any partner, trustee, director, officer, employee, or agent thereof (collectively, “*Borrower Parties*”) under this Subordinate Loan Agreement or the Subordinate Mortgage shall be limited to the Mortgaged Property or to such other security as may from time to time be given or have been given for payment of the Borrower’s obligations under this Subordinate Loan Agreement and Subordinate Bonds, and any judgment rendered against the Borrower Parties under this Subordinate Loan Agreement or the Subordinate Mortgage and the Subordinate Bonds shall be limited to the Mortgaged Property and any other security so given for satisfaction thereof; and (2) no deficiency or other personal judgment nor any order or decree of specific performance shall be sought or rendered against the Borrower Parties, their respective members and/or partners, successors, transferees or assigns, in any action or proceeding arising out of this Subordinate Loan Agreement, the Subordinate Mortgage, the Subordinate Bonds, or any judgment, order or decree rendered pursuant to any such action or proceeding, *provided, however*, that nothing in this Subordinate Loan Agreement, the Subordinate Mortgage, or the Subordinate Bonds shall limit the Issuer’s or Trustee’s ability to exercise any right or remedy that it may have with respect to any property pledged or granted to the Issuer or the Trustee, or both of them, or to exercise any right against the Borrower, the general partner of the Borrower or any other person or entity on account of any damage caused by fraud or intentional misrepresentation by the Borrower or any intentional damage of the property subject to the Subordinate Mortgage. Furthermore, the Borrower shall be fully liable for the misapplication of (a) proceeds paid prior to any foreclosure under any and all insurance policies, under which the Trustee and/or the Issuer is named as insured, by reason of damage, loss or destruction to any portion of the property subject to the Subordinate Mortgage, to the full extent of such misapplied proceeds and awards, (b) proceeds or awards resulting from the condemnation, or other taking in lieu of condemnation, prior to any foreclosure of the property subject to the Subordinate Mortgage, to the full extent of such misapplied proceeds and awards, (c) rents, issues, profits and revenues received or applicable to a period subsequent to the occurrence of a default under this Subordinate Loan Agreement, the Subordinate Mortgage, and the Subordinate Bonds but prior to foreclosure, and (d) proceeds from the sale of all or any part of the property subject to the Subordinate Mortgage and any other proceeds that, under the terms hereof, should have been paid to the Issuer or the Trustee. Furthermore, the Borrower shall be fully liable for the breach of the Borrower’s covenants contained in Sections 3.2, 4.3(1), (2) and (3), 7.4, 9.5, 10.8, 10.11, 10.12, and 10.13 of this Subordinate Loan Agreement, *provided, however*, in no event shall the Borrower or any Borrower Parties be personally liable for payment of the principal of, premium, if any, or interest on the Subordinate Bonds. The limit on the Borrower’s liability set forth in this paragraph shall not, however, be construed, and is not intended in any way, to constitute a release, in whole or in part, of the Borrower’s obligations under this Subordinate Loan Agreement or a release, in whole or in part, or an impairment of the lien and security interest of this Subordinate Loan Agreement, the Subordinate Mortgage, and the Subordinate Bonds upon the properties described therein, or to preclude the Issuer or the Trustee from foreclosing the Subordinate Mortgage in case of any default or enforcing any other right of the Issuer or the Trustee, or to alter, limit or affect the liability of any person or party who may now or hereafter or prior hereto guarantee, or pledge, grant or assign its assets or collateral as



320 South Canal Street, 27th Floor  
Chicago, Illinois 60606  
Attn: Ryan J. Bowen

To the Trustee:

BOKF, NA  
1401 McKinney, Suite 1000  
Houston, Texas 77010  
Attn: Rosalyn Davis

To the Borrower:

Manor Leased Housing Associates I, Limited Partnership  
c/o Dominion Development & Acquisition, LLC  
4835 Lyndon B Johnson Fwy, Suite 1000  
Dallas, Texas 75244  
Attn: Neal Route

With copies to:

Winthrop & Weinstine, P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, Minnesota 55402-4629  
Attn: Paul Manda

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*Section 10.3. Binding Effect.* This Subordinate Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer and Borrower and their respective successors and assigns.

*Section 10.4. Severability.* In the event any provisions of this Subordinate Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

*Section 10.5. Amendments, Changes, and Modifications.* Except as otherwise provided in this Subordinate Loan Agreement or in the Subordinate Indenture, subsequent to the issuance of the Subordinate Bonds and before the lien of the Subordinate Indenture is satisfied and discharged in accordance with its terms, this Subordinate Loan Agreement may not be effectively amended, changed, modified, altered or terminated except in accordance with the provisions of Article 11 of the Subordinate Indenture, as applicable.

*Section 10.6. Execution Counterparts.* This Subordinate 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 10.7. Required Approvals.* Consents and approvals required by this Subordinate Loan Agreement to be obtained from the Borrower, the Issuer or the Trustee shall be in writing and shall not be unreasonably withheld or delayed.

*Section 10.8. Limitation on Issuer's Liability.*

(1) *Reliance by Issuer on Facts or Certificates.* Anything in this Subordinate Loan Agreement to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice, or other instrument furnished to the Issuer by the Guarantor, the Trustee or the Borrower as to the existence of any fact or state of affairs required hereunder to be noticed by the Issuer.

(2) *Immunity of Issuer Indemnified Parties.* No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of the Issuer contained in this Subordinate Loan Agreement, any other Issuer Documents, or in any Subordinate Bond or for any claim based hereon or otherwise in respect hereof or upon any obligation, covenant, promise, or agreement of the Issuer contained in any agreement, instrument, or certificate executed in connection with the Project or the issuance and sale of the Subordinate Bonds, against any Issuer Indemnified Party, whether by virtue of any Constitutional provision, statute, or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that no personal liability whatsoever shall attach to, or be incurred by, any Issuer Indemnified Party, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into by the Issuer with the Guarantor, the Borrower or the Trustee to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against each and every Issuer Indemnified Party is, by the execution of the Subordinate Bonds, this Subordinate Loan Agreement, and the other Issuer Documents, and as a condition of, and as part of the consideration for, the execution of the Subordinate Bonds, this Subordinate Loan Agreement, and the other Issuer Documents, expressly waived and released.

(3) *No Pecuniary Liability of Issuer.* No agreements or provisions contained herein, nor any agreement, covenant, or undertaking by the Issuer in connection with the Project or the issuance, sale, and/or delivery of the Subordinate Bonds shall give rise to any pecuniary liability of the Issuer or a charge against its general credit, or shall obligate the Issuer financially in any way, except as may be payable from the revenues pledged hereby for the payment of the Subordinate Bonds and their application as provided in the Subordinate Indenture. No failure of the Issuer to comply with any term, covenant, or agreement contained in the Subordinate Bonds, this Subordinate Loan Agreement, or the Subordinate Indenture, or in any document executed by the Issuer in connection with the Project or the issuance and sale of the Subordinate Bonds, shall subject the Issuer to liability for any claim for damages, costs, or other financial or pecuniary charge, except to the extent that the same can be paid or recovered from the revenues pledged for the payment of the Subordinate Bonds. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, 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 revenues pledged in the Subordinate Indenture for the payment of the Subordinate Bonds. No provision, covenant, or agreement contained herein, or any obligations imposed upon the Issuer, or the breach thereof, shall constitute an indebtedness of the Issuer within the meaning of any State constitutional or statutory limitation or shall constitute or give rise to a charge against its general credit. In making the agreements, provisions, and covenants set forth in this Subordinate Loan Agreement, the Issuer has not obligated itself, except with respect to the application of the revenues pledged in the Subordinate Indenture for the payment of the Subordinate Bonds.

(4) *No Warranty by Issuer.* The Borrower recognizes that, because the components of the Project have been and are to be designated and selected by it, the Issuer has not made an inspection of the Project, if and when acquired, 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, any additional 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, any additional 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 10.9. Representations of Borrower.* All representations made in this Subordinate Loan Agreement by the Borrower are based on the best of the Borrower's knowledge of the facts and law, and no such representations are made in reliance upon any representations made or legal advice given by the Issuer, its Bond Counsel, or any other Issuer Indemnified Parties.

*Section 10.10. Termination.* At any time when no Subordinate Bonds remain Outstanding and arrangements satisfactory to the Issuer and Trustee have been made for the discharge of all liabilities under the Subordinate Note and this Subordinate Loan Agreement, this Subordinate Loan Agreement shall terminate. Notwithstanding the payment in full of the Subordinate Bonds, the discharge of the Subordinate Indenture, and the termination or expiration of this Subordinate Loan Agreement, all provisions in this Subordinate Loan Agreement concerning (1) the tax-exempt status of the Subordinate Bonds (including, but not limited to, provisions concerning rebate), (2) the interpretation of this Subordinate Loan Agreement, (3) the governing law, (4) the forum for resolving disputes, (5) the Issuer's right to rely on facts or certificates, (6) the indemnity of the Issuer Indemnified Parties from liability (pecuniary or otherwise) and their rights to receive payment and or reimbursement with respect thereto, and (7) the lack of pecuniary liability of the Issuer and the State, including without limitation all obligations of the Borrower under Sections 7.4, 7.7, 7.8, 10.12, 10.13, and 10.14 hereof, shall survive and remain in full force and effect.

*Section 10.11. Issuer's Performance.* The Issuer shall have no liability or obligation with respect to the payment of the purchase price of the Subordinate Bonds. None of the provisions of this Subordinate Loan Agreement shall require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless payable from the revenues pledged under the Subordinate Indenture, or the Issuer shall first have been adequately indemnified to its satisfaction against the cost, expense, and liability which may be incurred thereby. The Issuer shall not be under any obligation hereunder to perform any record keeping or to provide any legal services, it being understood that such services related to the Subordinate Bonds or the Subordinate Loan shall be performed or provided by the Trustee or the Borrower. The Issuer covenants that it will faithfully perform (to the extent within its reasonable control) at all times any and all covenants, undertakings, stipulations, and provisions expressly contained in this Subordinate Loan Agreement, the Subordinate Indenture, or in any and every Bond executed, authenticated, and delivered under the Subordinate Indenture; *provided, however,* that the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof until (i) it shall have been requested to do so by the Guarantor, the Borrower or the Trustee, and (ii) the Issuer shall have received the instrument to be executed, and, at the Issuer's option, shall have received from the Borrower assurance satisfactory to the Issuer that the Issuer shall be reimbursed for its expenses incurred or to be incurred in connection with taking such action or executing such instrument.

*Section 10.12. Administrative Fees, Attorneys' Fees and Costs.* The Borrower shall reimburse the Issuer, upon demand, for all costs and expenses, including without limitation attorneys' fees and expenses, paid or incurred by the Issuer in connection with (i) the discussion, negotiation, preparation, approval, execution and delivery of the Subordinate Bonds, the Subordinate Indenture, this Subordinate Loan Agreement, and the documents and instruments related hereto or thereto; (ii) any amendments or modifications to any of the foregoing documents, instruments or agreements and the discussion, negotiation, preparation, approval, execution and delivery of any and all documents necessary or desirable to effect such amendments or modifications; (iii) the servicing and administration of the Subordinate Loan during the Term of Loan Agreement or thereafter; and (iv) the enforcement by the Issuer during the term hereof or thereafter of any of the rights or remedies of the Issuer hereunder or under the foregoing documents, or any document, instrument or agreement related hereto or thereto, including, without limitation, costs and expenses of collection in the Event of Default, whether or not suit is filed with respect thereto.

*Section 10.13. Release.* The Borrower hereby acknowledges and agrees that none of the Issuer Indemnified Parties shall be liable to the Borrower, and hereby releases and discharges the Issuer Indemnified Parties from any liability, for any and all Liabilities paid, incurred or sustained by any Issuer Indemnified Party or the Borrower as a result of or relating to any action, or failure or refusal to act, on the part of the Trustee or any other party with respect to the Subordinate Bonds, the Subordinate Indenture, this Subordinate Loan Agreement, or the documents and transactions related hereto or thereto or contemplated hereby or thereby, including, without limitation, the exercise by the Trustee or any third party of any of its rights or remedies pursuant to any of such documents.

*Section 10.14. Audit Expenses.* The Borrower agrees to pay any costs incurred by the Issuer as a result of the Issuer's compliance with an audit or inquiry, random or otherwise, by the Internal Revenue Service, the [\_\_\_\_\_] Department of Revenue, the [\_\_\_\_\_] General Auditor, or any other governmental agency with respect to the Subordinate Bonds or the Project.

*Section 10.15. Electronic Signatures.* The parties agree that the electronic signature of a party to this Subordinate Loan Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Subordinate Loan Agreement. For purposes hereof, (i) "electronic signature" means a manually signed original signature that is then transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating image attached to an electronic mail or internet message.

*Section 10.16. Third-Party Beneficiaries.* Each of the Issuer Indemnified Parties, other than the Issuer, is an intended third-party beneficiary of this Subordinate Loan Agreement. Nothing in this Subordinate Loan Agreement shall confer any right upon any person other than parties hereto, and those specifically designated as third-party beneficiaries of this Subordinate Loan Agreement.

*Section 10.17. Governing Law and Venue.* The laws of the State of Texas shall govern the construction of this Subordinate Indenture and of all subordinate Bonds issued hereunder. The parties hereby (i) irrevocably submit to the exclusive jurisdiction of any federal or state court sitting in Dallas County, Texas, (ii) waive any objection to laying of venue in any such action or proceeding in such courts, and (iii) waive any objection that such courts are an inconvenient forum or do not have jurisdiction over any party. Each of the parties hereto hereby waives the right to trial by jury with respect to any litigation directly or indirectly arising out of, under or in connection with this Indenture.

*Section 10.18. Reserved.*

*Section 10.19. Patriot Act.* To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust or other legal entity the Trustee will request documentation to verify its formation and existence as a legal entity. Furthermore, if required by the Patriot Act, Trustee may request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The Borrower covenants and agrees to provide documentation as reasonably requested or required by the Trustee to enable the Trustee to comply with the requirements of the Patriot Act.

*Section 10.20. Subordination.* The terms and conditions of this Subordinate Loan Agreement and all Subordinate Loan Documents are subject to the Subordination Agreements and, if any of the terms and conditions herein conflict with the terms of the Subordination Agreements, the terms of the Subordination Agreements shall control.



In Witness Whereof, the Issuer and the Borrower have caused this Subordinate Loan Agreement to be executed by their duly authorized officers as of the date and year first written above.

**Issuer:**

Manor Housing Public Facility Corporation, a  
Texas public facility corporation  
as Issuer

By: \_\_\_\_\_  
Scott Moore  
General Manager

Execution page of the Borrower to the Subordinate Loan Agreement, dated as of the date and year first written above.

Manor Leased Housing Associates I, Limited  
Partnership, a Texas limited partnership

By: MHPFC TRGP1, LLC, a Texas limited  
liability company, its general partner

By: Manor Housing Public Facility  
Corporation, a Texas public facility  
corporation, its sole member

By: \_\_\_\_\_  
Scott Moore  
General Manager

## Exhibit A

### Form of Subordinate Note

After the endorsement as hereon provided and pledge of this Subordinate Note, this Subordinate Note may not be assigned, pledged, endorsed or otherwise transferred except in accordance with the Subordinate Indenture (as defined herein).

\$\_\_\_\_\_

October \_\_, 2024

For Value Received,

Manor Leased Housing Associates I, Limited Partnership, a Texas limited partnership (the "*Borrower*"), by this promissory note hereby promises to pay to the order of Manor Housing Public Facility Corporation (the "*Issuer*") the principal sum of not to exceed [\_\_\_\_\_] and no/100 Dollars (\$\_\_\_\_\_), together with interest on the unpaid principal amount hereof, from the Date of Issuance (as defined in the Subordinate Indenture referenced below) until paid in full, at a rate per annum equal to the rate of interest borne by the Subordinate Bonds (as hereinafter defined) and premium, if any, on the Subordinate Bonds. All such payments of principal, interest and premium, if any, shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the designated corporate trust office of BOKF, NA, or its successor as trustee under the Subordinate Indenture.

The principal amount and interest shall be payable on the dates and in the amounts set forth in the Subordinate Loan Agreement (as hereinafter defined) and any other date that any payment of interest, premium, if any, or principal is required to be made in respect of the Subordinate Bonds pursuant to the Subordinate Indenture whether at maturity, upon acceleration or by sinking fund redemption or mandatory redemption, until the principal of, premium, if any, and interest on the Subordinate Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Subordinate Indenture, a sum which will enable the Trustee to pay the amount payable on such date as principal of (whether at maturity or upon mandatory redemption or acceleration or otherwise), premium, if any, and interest on the Subordinate Bonds, as provided in the Subordinate Indenture, subject to prepayment as provided in the Subordinate Indenture and the Subordinate Loan Agreement.

This promissory note is the "Subordinate Note" referred to in the Subordinate Loan Agreement, dated as of October 1, 2024 (as the same may be amended, modified or supplemented from time to time, the "*Subordinate Loan Agreement*") by and between the Borrower and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

This Subordinate Note is evidence of indebtedness and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to BOKF, NA, as trustee (the "*Trustee*") under the Subordinate Indenture of Trust, dated as of October 1, 2024 (as the same may be amended, modified or supplemented from time to time, the "*Subordinate Indenture*"), by and between the Issuer and the Trustee, and such payments will be

made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of \$4,000,000, in aggregate principal amount of the Issuer's Subordinate Multifamily Housing Revenue Bonds (Tower Road), Series 2024 (the "*Subordinate Bonds*"), issued by the Issuer pursuant to the Subordinate Indenture. All the terms, conditions and provisions of the Subordinate Indenture, the Subordinate Loan Agreement and the Subordinate Bonds are hereby incorporated as a part of this Subordinate Note.

Concurrently with the issuance of the Subordinate Bonds, the Issuer will issue Multifamily Housing Revenue Note (Tower Road), Series 2024 (the "Senior Loan") to be executed and delivered by the Issuer pursuant to a Funding Loan Agreement among the Issuer, BOKF, NA, as fiscal agent, the proceeds of which will be utilized to fund loans to the Borrower. The Senior Loan is senior in priority to the Subordinate Bonds.

Under certain circumstances, the Borrower may at its option and may be required to, prepay all or any part of the amount due on this Subordinate Note, together with accrued interest thereon, as provided in the Subordinate Loan Agreement.

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

Time is of the essence under this Subordinate Note and in the performance of every term, covenant and obligation contained herein.

On and subject to the terms and exceptions set forth in Section 9.13 of the Subordinate Loan Agreement, the obligations under this Subordinate Note are non-recourse to the Borrower and its partners.

The Borrower hereby promises to pay costs of collection and attorneys' fees and expenses in case of an Event of Default on this Subordinate Note, as set forth in the Subordinate Loan Agreement.

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

**Borrower:**

Manor Leased Housing Associates I, Limited  
Partnership, a Texas limited partnership

By: MHPFC TRGP1, LLC, a Texas limited  
liability company, its general partner

By: Manor Housing Public Facility  
Corporation, a Texas public facility  
corporation, its sole member

By: \_\_\_\_\_  
Scott Moore  
General Manager

**Endorsement**

Pay to the order of BOKF, NA, without recourse or warranty, as Trustee under the Subordinate Indenture, as security for such Subordinate Bonds issued under such Subordinate Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Subordinate Note.

Manor Housing Public Facility Corporation

By: \_\_\_\_\_

Scott Moore  
General Manager

Dated: October \_\_, 2024