

AGENDA
SPECIAL MONTHLY MEETING OF
THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD
OF THE CITY OF CHATTANOOGA, TENNESSEE

Wednesday, November 1, 2023 @ 12:30 PM

1. Call to Order.
2. Confirmation of Meeting Advertisement and Quorum Present.
3. Approval of the Minutes for the August 21, 2023, monthly meeting.
4. Recognition of Persons Wishing to Address the Board.
5. A resolution ratifying the Chair's execution on a 2023 Supplemental Multifamily Tax-Exempt Bond Authority Firm Commitment Letter dated September 27, 2023, with the Tennessee Housing Development Agency regarding DGA Shallowford Pointe Development located at 6402 Shallowford Road, Chattanooga, TN 37421. **(HEB2023-08)**
6. A resolution ratifying the Chair's execution on a 2023 Multifamily Tax-Exempt Bond Authority Firm Commitment Letter dated September 26, 2023, with the Tennessee Housing Development Agency regarding Espero Chattanooga, LP Development located at 1815 East Main Street, Chattanooga, TN 37404. **(HEB2023-09)**
7. A resolution ratifying the Chair's execution of an Engagement of Disclosures by Underwriter Raymond James regarding the Espero Chattanooga Project Series 2023. **(HEB2023-10)**
8. Final resolution authorizing issuance of not to exceed \$10,700,000 the Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee Collateralized Multifamily Housing Bonds (Espero Chattanooga Project) Series 2023. **(HEB2023-11)**
9. Other Business.
10. Adjournment.



HEALTH, EDUCATIONAL, AND HOUSING FACILITY BOARD
City of Chattanooga, Tennessee
MONTHLY MEETING MINUTES
John P. Franklin, Sr. Council Building
Assembly Room
1000 Lindsay Street
Chattanooga, TN 37402
for
August 21, 2023
12:30 p.m.

Present were Board Members: Hicks Armor (Chair), Gregg T. Gentry (Vice-Chair), Richard Johnson (Secretary), Andrea L. Smith, and Brian Erwin. Absent was Johnika Everhart.

Also present were Phillip A. Noblett (Counsel to the Board); Rob Talbott and Craig Cobb (DGA Residential); Sandra Gober (Community Development); Jermaine Freeman (Mayor's Office); and Richard Beeland (Economic Development).



RE-ELECTION OF OFFICERS

Upon further discussion, there was a motion made by Mr. Gentry to re-elect the present officers as Hicks Armor (Chair), Gregg Gentry (Vice-Chair), and Richard Johnson (Secretary) for another term, with more intentionality about transitioning some of the officers, seconded Ms. Smith, and the motion unanimously carried.



Mr. Armor called the meeting to order, confirmed the meeting advertisement, and established that a quorum was present to conduct business.



MINUTES APPROVAL FOR THE FEBRUARY 20, 2023, MEETING

On motion of Mr. Johnson, seconded by Mr. Erwin, the minutes of the February 20, 2023, monthly meeting were unanimously approved as submitted.



Chair Armor welcomed the newest board members, Brian Erwin and Andrea Smith.

There was no one from the public wishing to comment.

RESOLUTION

On motion of Mr. Gentry, seconded by Mr. Johnson,

A RESOLUTION RATIFYING THE CHAIR'S EXECUTION OF A WRITTEN CONSENT DATED MAY 25, 2023, TO (I) THE TRANSFER OF MANAGING MEMBER IN THE OWNER FROM PENNROSE GP, LLC TO THE CHATTANOOGA HOUSING AUTHORITY; AND (II) THE CHANGE OF PROPERTY MANAGER FROM PENNROSE MANAGEMENT COMPANY TO THE CHATTANOOGA HOUSING AUTHORITY REGARDING THE MULTIFAMILY HOUSING REVENUE BONDS (MAPLE HILLS APARTMENTS PROJECT), SERIES 2011. **(HEB2023-05)**

Attorney Noblett stated in this case back in 2011 there were multifamily housing revenue bonds issued for the Maple Hills Apartment complex here in Chattanooga. The initial developer of that was the managing member was Pennrose Management Company and the manager has changed to the Chattanooga Housing Authority. The Chair is authorized by bond documents to sign any and all necessary bond documents in the resolution initially adopting the bond transfer. In this case, it occurred May 25th it was requested to be done and we are asking the Board to ratify the action taken by the Chair. This body is a membership of nine member and has to have the body's approval not just the Chair.

Chair Armor asked Attorney Noblett a question. Once the document is executed if the Board disagrees with the action of the Chair, if they refuse to ratify the signing, what would be done? Attorney Noblett stated that we would send a letter to the bond company of the failure to ratify. Essentially, even though Chair Armor has the authority to sign, should they disagree, they can overrule. Attorney Noblett said yes.

Mr. Gentry sees this as a formality and it is getting the documents right versus does not change project, does not change funding, etc. More getting documents in order. Attorney Noblett stated correct and making sure the Housing Authority will be in charge from this point on to make sure things are running correctly.

The motion carried.

ADOPTED-August 21, 2023

RESOLUTION

On motion of Mr. Gentry, seconded by Mr. Johnson,

A RESOLUTION RATIFYING THE CHAIR’S EXECUTION ON A 2023 MULTIFAMILY TAX-EXEMPT BOND AUTHORITY FIRM COMMITMENT LETTER DATED AUGUST 7, 2023, WITH THE TENNESSEE HOUSING DEVELOPMENT AGENCY REGARDING ESPERO CHATTANOOGA, LP DEVELOPMENT LOCATED AT 1815 EAST MAIN STREET, CHATTANOOGA, TN 37404. **(HEB2023-06)**

Attorney Noblett stated that this is a multifamily tax-exempt bond commitment letter by the borrower, Espero Chattanooga, LP. The Board passed a resolution authorizing the issuance of these bonds and any necessary documentation that would need to be done. This is for \$10.7 million worth of bonds that will be in a new development. They have already come to the Board for the bonds.

The motion carried.

ADOPTED-August 21, 2023

RESOLUTION

On motion of Mr. Gentry, seconded by Mr. Johnson,

A RESOLUTION RATIFYING THE CHAIR’S EXECUTION ON A 2023 MULTIFAMILY TAX-EXEMPT BOND AUTHORITY FIRM COMMITMENT LETTER DATED JUNE 21, 2023, WITH THE TENNESSEE HOUSING DEVELOPMENT AGENCY AND RATIFYING THE CHAIR’S EXECUTION ON A MTBA BORROWER ISSUER CERTIFICATION DATED AUGUST 10, 2023, REGARDING DGA SHALLOWFORD POINTE DEVELOPMENT LOCATED AT 6402 SHALLOWFORD ROAD, CHATTANOOGA, TN 37421. **(HEB2023-07)**

Attorney Noblett stated that once again this is an identical letter. These are Tennessee Housing Development Agency bonds. This one is \$14,835,000 for a new development that will be at Shallowford Pointe that will provide low and moderate income housing for people in that area based upon bonds that are issued.

The motion carried.

ADOPTED-August 21, 2023

PROJECT UPDATE

DGA SHALLOWFORD POINTE DEVELOPMENT

Mr. Craig Cobb represents DGA Shallowford Pointe as the developer. They have received the tax credit awards, signed for them, and are underway with planning the development to get it closing to break ground. DGA hopes to be going in for permits around October and hope to be closing the tax credit equity and construction and permanent financing in mid-December and hope to break ground in the beginning of January 2024.

The property is 96 units, 48 two-bedroom, and 48 three-bedroom units, all with two bathrooms, and all serving residents at or before 60% AMI. They will be seeking a PILOT at a later date. It will be 100% occupied in October 2023.

They do the same thing in Knoxville which is a three-story building instead of two stories. They are working with the height restrictions that are in place with the current zoning. This is geared more to families.

The height limitations are thirty-five (35') feet. It is R-3 Zone thirty-five feet (35') feet. Knoxville is the same. It was more of a highway there and had to go to flat roof to keep it the third story below the height restriction. It was forty-two (42') feet or so. It is good for us to know that the thirty-five (35') feet height restriction is based upon building code requirements and some requirement for structures that have to have more sprinklers or other materials. This project will also have a clubhouse, workout room, area for kids to play while parents work out, access to free computers and free internet, and playground, with nice amenity package.



PRESENTATION OF ANNUAL PILOT REPORT

Ms. Sandra Gober gave the presentation of the annual PILOT report. The presentation contained a summary of the PILOTs, the number of units, and the percentage of low income or PILOT restricted units versus market rate units.

Attorney Noblett explained what a PILOT was in which it is a Payment in Lieu of Ad Valorem Taxes. This body as an entity has the power under state law to grant PILOTs by taking ownership of property during a specific term to allow people to pay a lesser amount than they would actually pay for the ad valorem taxes on the property. This body has that authority in meetings that occur, and we will give training on how PILOTs work. AMI is Area Median Income. There are specific amounts that have to be considered by the federal government on housing benefits received here and if they are low and moderate, they have to be a certain amount of the AMI.

Ms. Gober stated the program itself has changed over the last 20 years. It started out with a certain footprint which was the downtown area. Under the Berke Administration, it was amended and 20% of the units had to be at or below AMI. The Berke Administration changed the requirements. It was extended City-wide, and at least 50% had to be at or below 80% AMI. We have two types of projects under two different resolutions.

Some of the projects based on the percentage are at or below 80% AMI. The most recent ones have actually for the most part have been at 100% of AMI. The funding has been made available for construction and renovation on some projects.

Mr. Johnson asked if anyone is not in compliance? Ms. Gober stated everyone complies. Each year they get information, reports, annual updates, and just finished some site visits and looking at the rent rolls and the income in the lease agreements. The purpose of this report is to give a quick status on the whole portfolio.

The most recent ones that are in construction or about to be finished were highlighted. The Mai Bell 2 that is located at 1715 Union was approved by the Board in 2021 and expected completion date is October 2023. They were delayed by supply issues. The Reserve at Mountain Pass is the 240 unit is all 100% at or below 80% AMI is located out in south Chattanooga at Central Avenue. The expected completion date is December 2023. They do have some units that are about to come online in phases, but all units will be complete by December 2023.

The Battery Heights was a renovation, and the name of the units was changed to Campbell Ridge Apartments. The renovations were completed in June. Ms. Gober attended the ribbon cutting session and excited about the improvements. The rest are giving information on whether they are compliant. These projects are required to be at least 50% of the units and have to be at or below 80% AMI. This resolution is the old program.

Chair Armor stated that the City is trying to provide for rehabilitation of an older building or building on property that can be used for lower income housing. They will freeze the property taxes for 10 years at the value you pick it up at. You are paying less taxes to let you provide for a lower rent. It recoups land and building back to better usage and provides for housing and financial incentive for the people doing it because otherwise they might not be able to make the numbers work. The property would be brought back to market value. A developer is incentivized financially to do it, it rehabilitates the property which eventually gives the City a better tax rate on newer things, and also provides a way for people to have housing. The City wins, the people living there win, and it makes it possible for an investor to make some money to do this. It does not impact the educational tax.

The amount of investment is also listed on the presentation and will be recouped by the City eventually at the end of the term of the PILOT. That amount in the increase of the property value will be there. Market City Center shows \$28 million thrown into that property. It probably would not occur if you did not incentivize.

Ms. Smith asked about Patton Towers. These were burned out, and the renovation was complete over year ago. All of the units are back online. The ratio is 100%.

Attorney Noblett stated that normally, a PILOT is ten years plus a three year step down. Chair Armor stated there were a couple in here that were 13 years. Ms. Gober stated they are correct. Attorney Noblett stated it is based upon the resolution we passed at the time for the PILOT. Under PILOT policies right now we got it down to ten plus three. The Reserve at Mountain Pass shows 2024-2040 which is a 16 year period. Ms. Gober stated Passenger Flats is the Choo Choo terminated that PILOT.

Ms. Gober stated the other update is on the Chattanooga Affordable Housing Fund which is the program where we are using City funds to provide up to \$40,000 per unit for projects for preservation but also provide funding for studies such as housing and feasibility analysis.

The Housing Authority project is complete that was a renovation. The Habitat for Humanity is at Alton Park and completed construction on half. CALEB was a feasibility study looking at community land trust and the report was completed in 2021. They had some issues with getting the project started so the funding was rescinded. Chattanooga Neighborhood Enterprise was also for a housing feasibility analysis. The report is complete. Another Chattanooga Neighborhood Enterprise is for affordable rental development for construction of 24 units at 621 E. M.L. King which project is under construction.

There are a total of eight PILOTs complete with full tax rate, including UTC, Walnut Commons, and Frazier Place. There were no more issues with 1400 Chestnut who was in litigation. No additional concerns on Market Street which was short term vacation rental.



OTHER BUSINESS

Richard Beeland (Administrator for the Department of Economic Development) introduced himself and has worked with Ms. Gober for quite a few years. Jermaine Freeman works closely with Economic Development and introduced himself.

Chair Armor stated that he appreciates the new members and look forward to serving with them. Attorney Noblett will have an educational session next month during the lunch session before we start.



After further discussion and there being no further business to come before the Board, a motion was made by Mr. Johnson to adjourn the meeting, seconded by Mr. Gentry, and the meeting adjourned at 1:10 p.m.

Respectfully submitted,

Richard A. Johnson, Secretary

APPROVED:

Hicks Armor, Chair

RESOLUTION

A RESOLUTION RATIFYING THE CHAIR'S EXECUTION ON A 2023 SUPPLEMENTAL MULTIFAMILY TAX-EXEMPT BOND AUTHORITY FIRM COMMITMENT LETTER DATED SEPTEMBER 27, 2023, WITH THE TENNESSEE HOUSING DEVELOPMENT AGENCY REGARDING DGA SHALLOWFORD POINTE DEVELOPMENT LOCATED AT 6402 SHALLOWFORD ROAD, CHATTANOOGA, TN 37421.

NOW THEREFORE, BE IT RESOLVED BY THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, That it is hereby ratifying the Chair's execution on a 2023 Supplemental Multifamily Tax-Exempt Bond Authority Firm Commitment Letter dated September 27, 2023, with the Tennessee Housing Development Agency regarding DGA Shallowford Pointe Development located at 6402 Shallowford Road, Chattanooga, TN 37421.

ADOPTED: November 1, 2023

THE HEALTH, EDUCATIONAL AND HOUSING
FACILITY BOARD FOR THE CITY OF
CHATTANOOGA, TENNESSEE

Hicks Armor, *Chair*

ATTEST:

Richard Johnson, *Secretary*

HEB2023-08



Tennessee Housing Development Agency

502 Deaderick St, Third Floor
Andrew Jackson Building
Nashville, Tennessee 37243
615-815-2200

Ralph M. Perrey
Executive Director

Writer's Fax Number:
615-564-2790

2023 SUPPLEMENTAL MULTIFAMILY TAX-EXEMPT BOND AUTHORITY FIRM COMMITMENT LETTER

Attention: Hicks Armor
The Health, Educational and Housing Facility Board of the City of
Chattanooga, Tennessee
1000 Lindsay Street, Chattanooga, TN 37402

Issuer: The Health, Educational and Housing Facility Board of the City of
Chattanooga, Tennessee ("Issuer")

Principal Amount of Multifamily Tax-Exempt Bond Authority ("MTBA"):
\$5,165,000.00

Borrower: DGA Shallowford LP ("Owner")

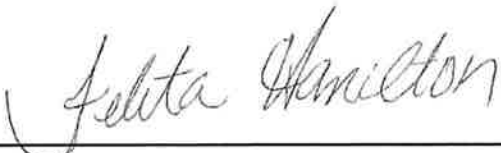
Development: TN23-216: Shallowford Pointe ("Development") 6402
Shallowford Road, Chattanooga, TN 37421
Hamilton County

1. The Development is more specifically described in that certain MTBA Application dated September 19, 2023 ("MTBA Application")
2. THDA hereby commits 2023 MTBA to Issuer above solely for the purpose of issuance and sale of tax-exempt mortgage revenue bonds ("Bonds") to finance the Development as described in the MTBA Application. This 2023 MTBA Commitment Letter ("Commitment Letter") is conditioned upon each of the following:
 - a. Satisfaction of and compliance with all applicable requirements of the Internal Revenue Code, Treasury Regulations, and the THDA 2023 MTBA Program Description;
 - b. The truth and accuracy of the information provided and representations made in the MTBA Application;
 - c. Owner must remit the \$51,650 Commitment Letter Fee by wire in accordance with the MTBA PD by October 11, 2023. Failure to remit this fee will result in a cancellation of the commitment;
 - d. Owner must remit the \$10,330 Incentive Fee by wire in accordance with the MTBA PD by October 11, 2023. Failure to remit this fee will result in a cancellation of the commitment;
 - e. Receipt by THDA, **no later than October 11, 2023**, of this Commitment Letter with original signatures of persons authorized to execute documents on behalf of the Issuer and the Owner in the THOMAS system;
 - f. Receipt by THDA, **no later than December 15, 2023**, of Bond Counsel verification in a form and with substance satisfactory to THDA, in its sole discretion, that the Bonds using the MTBA have been issued and sold, and that the sale has closed in the THOMAS system. Closing in escrow or any other form of contingent closing is not permitted;
 - g. Receipt by THDA, **no later than December 15, 2023**, of the Elected Local Approval of the Bond Issuance must be submitted in the THOMAS system.
 - h. Receipt by THDA, **no later than December 15, 2023**, of the Owner's Affirmatively Furthering Fair Housing Marketing Plan.
3. Failure to fully satisfy any of these conditions, as determined by THDA, in its sole discretion, will cause this Commitment Letter to be void and the MTBA committed hereunder shall be deemed to be recaptured by THDA.
4. This Commitment Letter is not approval of the Development for allocations from any other programs, such as, without limitation, the Low Income Housing Credit Program. The Low Income Housing Credit Program requires a separate application to be submitted to THDA in accordance with, without limitation, Section 21 of the Low Income Housing Credit 2023 Qualified Allocation Plan (the "2023 QAP"). THDA will conduct an eligibility and scoring review in conjunction with any such application. THDA retains the authority to determine eligibility for, and the amount of, any Low Income Housing Credits to be allocated to any development pursuant to the 2023 QAP.
5. This Commitment Letter is not a representation, warranty, guaranty, advice, or suggestion as to the feasibility or viability of the Development, and may not be relied on as such by the Issuer, Owner, developer, investor, tenant, lender, syndicator, or any other persons.
6. This Commitment Letter is only for the Development as described in the MTBA Application. Any changes or modifications made prior to closing the sale of the Bonds using the MTBA are subject to approval by THDA, in its sole discretion.

7. MTBA allocated pursuant to this Commitment Letter must be used to provide financing for the Development such that, as of the rehabilitation or new construction placed in service date, a minimum of fifty percent (50.0%) of the amount of MTBA closed and sold remains outstanding and such amount of bonds outstanding otherwise meets the requirements of Section 42(h)(4).

8. The issue price of the bonds may not exceed the allocation. The bonds must be sold at an issue price (including any premiums) that does not exceed the allocation.

TENNESSEE HOUSING DEVELOPMENT AGENCY SIGNATURE PAGE

BY: 


Felita Hamilton
Program Allocation Manager

Executed this 27th day of September, 2023.

ISSUER AND BORROWER SIGNATURE PAGE

Accepted by Issuer:

The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee

BY: 
Hicks Armor (Sep 27, 2023 16:21 EDT)

Hicks Armor

Executed this 27th day of September, 2023.

Accepted by Borrower(s):






2023.09.27 FCL - Supp Commitment Letter - 23-216 DGA Shallowford

Final Audit Report

2023-09-27

Created:	2023-09-27
By:	Maria Manalla (mmanalla@chattanooga.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA7pXYq2G7zxpZILQvqD8DA_Xb5mH71vA2

"2023.09.27 FCL - Supp Commitment Letter - 23-216 DGA Shallowford" History

-  Document created by Maria Manalla (mmanalla@chattanooga.gov)
2023-09-27 - 8:03:50 PM GMT- IP address: 45.43.96.8
-  Document emailed to Hicks Armor (hicksarmor@gmail.com) for signature
2023-09-27 - 8:04:19 PM GMT
-  Email viewed by Hicks Armor (hicksarmor@gmail.com)
2023-09-27 - 8:20:54 PM GMT- IP address: 69.14.236.178
-  Document e-signed by Hicks Armor (hicksarmor@gmail.com)
Signature Date: 2023-09-27 - 8:21:09 PM GMT - Time Source: server- IP address: 69.14.236.178
-  Agreement completed.
2023-09-27 - 8:21:09 PM GMT

RESOLUTION

A RESOLUTION RATIFYING THE CHAIR'S EXECUTION ON A 2023 MULTIFAMILY TAX-EXEMPT BOND AUTHORITY FIRM COMMITMENT LETTER DATED SEPTEMBER 26, 2023, WITH THE TENNESSEE HOUSING DEVELOPMENT AGENCY REGARDING ESPERO CHATTANOOGA, LP DEVELOPMENT LOCATED AT 1815 EAST MAIN STREET, CHATTANOOGA, TN 37404.

NOW THEREFORE, BE IT RESOLVED BY THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, That it is hereby ratifying the Chair's execution on a 2023 Multifamily Tax-Exempt Bond Authority Firm Commitment Letter dated September 26, 2023, with the Tennessee Housing Development Agency regarding Espero Chattanooga, LP Development located at 1815 East Main Street, Chattanooga, TN 37404.

ADOPTED: November 1, 2023

THE HEALTH, EDUCATIONAL AND HOUSING
FACILITY BOARD FOR THE CITY OF
CHATTANOOGA, TENNESSEE

Hicks Armor, *Chair*

ATTEST:

Richard Johnson, *Secretary*

HEB2023-09



Tennessee Housing Development Agency

502 Deaderick St, Third Floor
Andrew Jackson Building
Nashville, Tennessee 37243
615-815-2200

Ralph M. Perrey
Executive Director

Writer's Fax Number:
615-564-2790

2023 MULTIFAMILY TAX-EXEMPT BOND AUTHORITY FIRM COMMITMENT LETTER

Attention: Hicks Armor
Health and Ed Board of Chattanooga
1000 Lindsay Street, , Chattanooga, TN 37402

Issuer: Health and Ed Board of Chattanooga ("Issuer")

Principal Amount of Multifamily Tax-Exempt Bond Authority ("MTBA"):
\$10,700,000.00

Borrower: Espero Chattanooga, L.P. ("Owner")

Development: TN23-229: Espero Chattanooga ("Development")
1815 East Main St., Chattanooga, TN 37404
Hamilton County

1. The Development is more specifically described in that certain MTBA Application dated March 13, 2023 ("MTBA Application")
2. THDA hereby commits 2023 MTBA to Issuer above solely for the purpose of issuance and sale of tax-exempt mortgage revenue bonds ("Bonds") to finance the Development as described in the MTBA Application. This 2023 MTBA Commitment Letter ("Commitment Letter") is conditioned upon each of the following:
 - a. Satisfaction of and compliance with all applicable requirements of the Internal Revenue Code, Treasury Regulations, and the THDA 2023 MTBA Program Description;
 - b. The truth and accuracy of the information provided and representations made in the MTBA

Application;

c. Owner must remit the \$160,500 Commitment Letter Fee by wire in accordance with the MTBA PD by September 26, 2023. Failure to remit this fee will result in a cancellation of the commitment;

d. Owner must remit the \$32,100 Incentive Fee by wire in accordance with the MTBA PD by September 26, 2023. Failure to remit this fee will result in a cancellation of the commitment;

e. Receipt by THDA, **no later than September 26, 2023**, of this Commitment Letter with original signatures of persons authorized to execute documents on behalf of the Issuer and the Owner in the THOMAS system;

f. Receipt by THDA, **no later than November 22, 2023**, of Bond Counsel verification in a form and with substance satisfactory to THDA, in its sole discretion, that the Bonds using the MTBA have been issued and sold, and that the sale has closed in the THOMAS system. Closing in escrow or any other form of contingent closing is not permitted;

g. Receipt by THDA, **no later than November 22, 2023**, of the Elected Local Approval of the Bond Issuance must be submitted in the THOMAS system.

h. Receipt by THDA, **no later than November 22, 2023**, of the Owner's Affirmatively Furthering Fair Housing Marketing Plan.

3. Failure to fully satisfy any of these conditions, as determined by THDA, in its sole discretion, will cause this Commitment Letter to be void and the MTBA committed hereunder shall be deemed to be recaptured by THDA.

4. This Commitment Letter is not approval of the Development for allocations from any other programs, such as, without limitation, the Low Income Housing Credit Program. The Low Income Housing Credit Program requires a separate application to be submitted to THDA in accordance with, without limitation, Section 20 of the Low Income Housing Credit 2023 Qualified Allocation Plan (the "2023 QAP"). THDA will conduct an eligibility and scoring review in conjunction with any such application. THDA retains the authority to determine eligibility for, and the amount of, any Low Income Housing Credits to be allocated to any development pursuant to the 2023 QAP.

5. This Commitment Letter is not a representation, warranty, guaranty, advice, or suggestion as to the feasibility or viability of the Development, and may not be relied on as such by the Issuer, Owner, developer, investor, tenant, lender, syndicator, or any other persons.

6. This Commitment Letter is only for the Development as described in the MTBA Application. Any changes or modifications made prior to closing the sale of the Bonds using the MTBA are subject to approval by THDA, in its sole discretion.

7. MTBA allocated pursuant to this Commitment Letter must be used to provide financing for the Development such that, as of the rehabilitation or new construction placed in service date, a minimum of fifty percent (50.0%) of the amount of MTBA closed and sold remains outstanding and such amount of bonds outstanding otherwise meets the requirements of Section 42(h)(4).

8. The issue price of the bonds may not exceed the allocation. The bonds must be sold at an issue price (including any premiums) that does not exceed the allocation.

TENNESSEE HOUSING DEVELOPMENT AGENCY SIGNATURE PAGE

BY: 

Felita Hamilton
Program Allocation Manager

Executed this 12th day of September, 2023.

ISSUER AND BORROWER SIGNATURE PAGE

Accepted by Issuer:

Health and Ed Board of Chattanooga

BY: 
Hicks Armor (Sep 26, 2023 08:37 EDT)
Hicks Armor

Executed this 26th day of September, 2023.

Accepted by Borrower(s):

BY: _____
Espero GP Corp
Chattanooga Housing Authority
Elizabeth McCright, Officer

Executed this _____ day of _____, 2023.






2023.09.26 FCL - Firm Commitment Letter - 23-229 (1) Espero

Final Audit Report

2023-09-26

Created:	2023-09-26
By:	Maria Manalla (mmanalla@chattanooga.gov)
Status:	Signed
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"2023.09.26 FCL - Firm Commitment Letter - 23-229 (1) Espero" History

-  Document created by Maria Manalla (mmanalla@chattanooga.gov)
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2023-09-26 - 12:37:10 PM GMT- IP address: 68.169.183.199
-  Document e-signed by Hicks Armor (hicksarmor@gmail.com)
Signature Date: 2023-09-26 - 12:37:29 PM GMT - Time Source: server- IP address: 68.169.183.199
-  Agreement completed.
2023-09-26 - 12:37:29 PM GMT



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RESOLUTION

A RESOLUTION RATIFYING THE CHAIR'S EXECUTION OF AN ENGAGEMENT OF DISCLOSURES BY UNDERWRITER RAYMOND JAMES REGARDING THE ESPERO CHATTANOOGA PROJECT SERIES 2023.

NOW THEREFORE, BE IT RESOLVED BY THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, That it is hereby ratifying the Chair's execution of an Engagement of Disclosures by Underwriter Raymond James regarding the Espero Chattanooga Project Series 2023.

ADOPTED: November 1, 2023

THE HEALTH, EDUCATIONAL AND HOUSING
FACILITY BOARD FOR THE CITY OF
CHATTANOOGA, TENNESSEE

Hicks Armor, *Chair*

ATTEST:

Richard Johnson, *Secretary*

RAYMOND JAMES®

10/20/2023

The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee
100 E. 11th Street, Suite 200
Chattanooga, Tennessee 37402

Attn: Hicks Armor, Chairman

Re: Engagement of and Disclosures by Underwriter
Pursuant to SEC Municipal Advisor Rule and MSRB Rule G-17
The Health, Educational and Housing Facility Board of the City of Chattanooga,
Tennessee, Collateralized Multifamily Housing Bonds (Espero Chattanooga
Project), Series 2023

Dear Mr. Armor:

We are writing to confirm our underwriting engagement and provide you, as Chairman of The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee ("Issuer"), and an official of the Issuer with the authority to bind the Issuer by contract, with certain disclosures relating to the captioned bond issue (the "Bonds"), as required by the Securities and Exchange Commission's Municipal Advisor Rule, and the Municipal Securities Rulemaking Board ("MSRB") Rule G-17 as set forth in MSRB Notice 2019-20 (Nov. 8, 2019).¹

The Issuer hereby confirms and engages Raymond James & Associates, Inc. ("RJA"), to serve as an underwriter, and not as a financial advisor or municipal advisor, in connection with the issuance of the Bonds.

As part of our services as underwriter, RJA may provide advice concerning the structure, timing, terms, and other similar matters concerning the issuance of the Bonds.

As the issuer of the Bonds, you will be a party to the bond purchase agreement and certain other legal documents to be entered into in connection with the issuance of the Bonds, but the material financial risks described in this letter will be borne by the obligor or borrower ("Obligor") as set forth in those legal documents. A copy of this letter is also being sent to the Obligor.

The following G-17 conflict of interest disclosures are now broken down into three types, including: (I) dealer-specific conflicts of interest disclosures (if applicable), (II) transaction-specific disclosures (if applicable), and (III) standard disclosures.

I. Dealer-Specific Conflicts of Interest Disclosures

RJA has identified the following potential or actual dealer-specific material conflicts or business relationships we wish to call to your attention. When we refer to *potential* material conflicts throughout this letter, we refer to ones that are reasonably likely to mature into *actual* material conflicts during the course of the transaction, which is the standard required by MSRB Rule G-17.

¹ Revised Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (effective Mar. 31, 2021).

In the ordinary course of its various business activities, RJA and its affiliates, officers, directors, and employees may purchase, sell or hold a broad array of investments and may actively trade securities, derivatives, loans, commodities, currencies, credit default swaps, and other financial instruments for their own account and for the accounts of customers. Such investment and trading activities may involve or relate to assets, securities and/or instruments of the Issuer (whether directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with the Issuer. RJA and its affiliates also may communicate independent investment recommendations, market advice or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and at any time may hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

- Other Conflicts of Interest Disclosure
 - RJA may also act as bidding agent for the competitive bidding process with regards to the collateral for the bonds and will receive compensation from the Obligor.

II. Transaction-Specific Disclosures

- Disclosures Concerning Complex Municipal Securities Financing:
 - Because we have recommended to the Issuer a financing structure that may be a “complex municipal securities financing” for purposes of MSRB Rule G-17, attached is a description of the material financial characteristics of that financing structure as well as the material financial risks of the financing that are known to us and reasonably foreseeable at this time.

III. Standard Disclosures

- Disclosures Concerning the Underwriters' Role:
 - MSRB Rule G-17 requires an underwriter to deal fairly at all times with both issuers and investors.
 - The underwriters' primary role is to purchase the Bonds with a view to distribution in an arm's-length commercial transaction with the Issuer. The underwriters have financial and other interests that differ from those of the Issuer.
 - Unlike a municipal advisor, an underwriter does not have a fiduciary duty to the Issuer under the federal securities laws and is, therefore, not required by federal law to act in the best interests of the Issuer without regard to its own financial or other interests.
 - The Issuer may choose to engage the services of a municipal advisor with a fiduciary obligation to represent the Issuer's interest in this transaction.
 - The underwriters have a duty to purchase the Bonds from the Issuer at a fair and reasonable price, but must balance that duty with their duty to sell the Bonds to investors at prices that are fair and reasonable.

- The underwriters will review the official statement for the Bonds in accordance with, and a part of, their respective responsibilities to investors under the federal securities laws, as applied to the facts and circumstances of this transaction. Under federal securities law, an issuer of securities has the primary responsibility for disclosure to investors. The review of the official statement by the underwriters is solely for purposes of satisfying the underwriters' obligations under the federal securities laws and such review should not be construed by an issuer as a guarantee of the accuracy or completeness of the information in the official statement.
- Disclosures Concerning the Underwriters' Compensation:
 - The underwriters will be compensated by a fee and/or an underwriting discount that will be set forth in the bond purchase agreement to be negotiated and entered into in connection with the issuance of the Bonds. Payment or receipt of the underwriting fee or discount will be contingent on the closing of the transaction and the amount of the fee or discount may be based, in whole or in part, on a percentage of the principal amount of the Bonds. While this form of compensation is customary in the municipal securities market, it presents a conflict of interest since the underwriters may have an incentive to recommend to the Issuer a transaction that is unnecessary or to recommend that the size of the transaction be larger than is necessary.

If you or any other Issuer officials have any questions or concerns about these disclosures, please make those questions or concerns known immediately to the undersigned. In addition, you should consult with the Issuer's own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent you deem appropriate.

Please note that nothing in this letter should be viewed as a commitment by the underwriters to purchase or sell all the Bonds and any such commitment will only exist upon the execution of any bond purchase agreement or similar agreement and then only in accordance with the terms and conditions thereof.

You have been identified by the Issuer as a primary contact for the Issuer's receipt of these disclosures, and that you are not a party to any disclosed conflict of interest relating to the subject transaction. If our understanding is incorrect, please notify the undersigned immediately.

Under SEC and MSRB Rules, we are required to both (i) confirm our role and engagement as underwriter of the Bonds, and (ii) seek your acknowledgement that you have received this letter. Accordingly, please send me an email **both** (1) confirming that RJA is engaged as underwriter of the Bonds, **and** (2) acknowledging your receipt hereof. Alternatively, you may sign, scan, and return this letter to me via email.

Depending on the structure of the transaction that the Issuer decides to pursue, or if additional actual or potential material conflicts are identified, we may be required to send you additional disclosures regarding the material financial characteristics and risks of such transaction and/or describing those conflicts. At that time, we also will seek your acknowledgement of receipt of any such additional disclosures.

We look forward to working with you and the Issuer in connection with the issuance of the Bonds. We appreciate your business.

Sincerely,

RAYMOND JAMES & ASSOCIATES, INC.



By: _____

Confirmed and Acknowledged:

The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee

By:  _____
Hicks Armor (Oct 25, 2023 09:09 EDT)
Hicks Armor, Chairman

Date: Oct 25, 2023

Attached: Financing Disclosures

Fixed Rate Structure Disclosure (3.31.21)

The following is a general description of the financial characteristics and security structures of fixed rate municipal bonds ("Fixed Rate Bonds"), as well as a general description of certain financial risks that are known to us and reasonably foreseeable at this time and that you should consider before deciding whether to issue Fixed Rate Bonds. If you have any questions or concerns about these disclosures, please make those questions or concerns known immediately to us. In addition, you should consult with your financial and/or municipal, legal, accounting, tax, and other advisors, as applicable, to the extent you deem appropriate.

As the issuer of the Bonds, you will be a party to the bond purchase agreement and certain other legal documents to be entered into in connection with the issuance of the Bonds, but the material financial risks described below will be borne by the obligor, as set forth in those legal documents. A copy of our disclosure letter is also being sent to the obligor. In such case, any reference below to "you" or "your" shall refer to the obligor, unless otherwise noted because of transaction's terms.

Financial Characteristics

Maturity and Interest. Fixed Rate Bonds are interest-bearing debt securities issued by state and local governments, political subdivisions and agencies and authorities, whether for their benefit or as a conduit issuer for a nongovernmental entity. Maturity dates for Fixed Rate Bonds are fixed at the time of issuance and may include serial maturities (specified principal amounts are payable on the same date in each year until final maturity) or one or more term maturities (specified principal amounts are payable on each term maturity date) or a combination of serial and term maturities. The final maturity date typically will range between 10 and 30 years from the date of issuance. Interest on the Fixed Rate Bonds typically is paid semiannually at a stated fixed rate or rates for each maturity date.

Redemption. Fixed Rate Bonds may be subject to optional redemption, which allows you, at your option, to redeem some or all the bonds on a date prior to scheduled maturity, such as in connection with the issuance of refunding bonds to take advantage of lower interest rates. Fixed Rate Bonds will be subject to optional redemption only after the passage of a specified period, often approximately ten years from the date of issuance, and upon payment of the redemption price set forth in the bonds, which may include a redemption premium. You will be required to send out a notice of optional redemption to the holders of the bonds, usually not less than 30 days prior to the redemption date. Fixed Rate Bonds with term maturity dates also may be subject to mandatory sinking fund redemption, which requires you to redeem specified principal amounts of the bonds annually in advance of the term maturity date. The mandatory sinking fund redemption price is 100% of the principal amount of the bonds to be redeemed.

Security

Payment of principal of and interest on a municipal security, including Fixed Rate Bonds, may be backed by various types of pledges and forms of security, some of which are described below.¹

General Obligation Bonds. "General obligation (GO) bonds" are debt securities to which your full faith and credit is pledged to pay principal and interest. If you have taxing power, generally you will pledge to use your ad valorem (property) taxing power to pay principal and interest. The debt service on "unlimited tax" GO bonds are paid from ad valorem taxes which are not subject to state

¹ The discussion of security characteristics is limited to general obligation and revenue bond structures. This summary should be expanded and modified, as necessary, for other security structures, such as bonds that are secured by a double-barreled pledge (general obligation and revenues), annual appropriations or a moral obligation of the issuer or another governmental entity. If the security for the bonds is known at the time this disclosure is provided to the issuer, include only those portions relevant to the actual security for the bonds.

constitutional property tax millage limits, whereas “limited tax” GO Bonds are subject to such limits.

General obligation bonds constitute a debt and, depending on applicable state law, may require that you obtain approval by voters prior to issuance. In the event of default in required payments of interest or principal, the holders of general obligation bonds generally will have certain rights under state law to compel you to impose a tax levy.

Revenue Bonds. “Revenue bonds” are debt securities that are payable only from a specific source or sources of revenues. Revenue bonds are not a pledge of your full faith and credit, and you (or, if you are a conduit issuer, the obligor, as described in the following paragraph) are obligated to pay principal and interest on your revenue bonds only from the revenue source(s) specifically pledged to the bonds. Revenue bonds do not permit the bondholders to compel you to impose a tax levy for payment of debt service. Pledged revenues may be derived from operation of the financed project or system, grants or excise or other specified taxes. Generally, subject to state law or local charter requirements, you are not required to obtain voter approval prior to issuance of revenue bonds. If the specified source(s) of revenue become inadequate, a default in payment of principal or interest may occur. Various types of pledges of revenue may be used to secure interest and principal payments on revenue bonds. The nature of these pledges may differ widely based on state law, the type of issuer, the type of revenue stream and other factors.

Some revenue bonds (conduit revenue bonds) may be issued by a governmental issuer acting as a conduit for the benefit of a private sector entity or a 501(c)(3) organization (the obligor). Conduit revenue bonds commonly are issued for not-for-profit hospitals, educational institutions, single and multi-family housing, airports, industrial or economic development projects, and student loan programs, among other obligors. Principal and interest on conduit revenue bonds normally are paid exclusively from revenues pledged by the obligor. Unless otherwise specified under the terms of the bonds, you are not required to make payments of principal or interest if the obligor defaults.

The description above regarding “Security” is only a summary of certain possible security provisions for the bonds and is not intended as legal advice. You should consult with your bond counsel for further information regarding the security for the bonds.

Financial Risk Considerations

Certain risks may arise in connection with your issuance of Fixed Rate Bonds, including some or all the following (generally, the obligor, rather than the issuer, will bear these risks for conduit revenue bonds):

Issuer Default Risk. You may be in default if the funds pledged to secure your bonds are not enough to pay debt service on the bonds when due. The consequences of a default may be serious for you and, depending on applicable state law and the terms of the authorizing documents, the holders of the bonds, the trustee and any credit support provider may be able to exercise a range of available remedies against you. For example, if the bonds are secured by a general obligation pledge, you may be ordered by a court to raise taxes. Other budgetary adjustments also may be necessary to enable you to provide sufficient funds to pay debt service on the bonds. If the bonds are revenue bonds, you may be required to take steps to increase the available revenues that are pledged as security for the bonds. A default may negatively impact your credit ratings and may effectively limit your ability to publicly offer bonds or other securities at market interest rate levels. Further, if you are unable to provide sufficient funds to remedy the default, subject to applicable state law and the terms of the authorizing documents, you may find it necessary to consider available alternatives under state law, including (for some issuers) state-mandated receivership or bankruptcy. A default also may occur if you are unable to comply with covenants or other provisions agreed to in connection with the issuance of the bonds.

This description is only a summary of issues relating to defaults and is not intended as legal advice. You should consult with your bond counsel for further information regarding defaults and remedies.

Redemption Risk. Your ability to redeem the bonds prior to maturity may be limited, depending on the terms of any optional redemption provisions. If interest rates decline, you may be unable to take advantage of the lower interest rates to reduce debt service.

Refinancing Risk. If your financing plan contemplates refinancing some or all the bonds at maturity (for example, if you have term maturities or if you choose a shorter final maturity than might otherwise be permitted under the applicable federal tax rules), market conditions or changes in law may limit or prevent you from refinancing those bonds when required.

Reinvestment Risk. You may have proceeds from the issuance of the bonds available to invest prior to the time that you are able to spend those proceeds for the authorized purpose. Depending on market conditions, you may not be able to invest those proceeds at or near the rate of interest that you are paying on the bonds, which is referred to as “negative arbitrage”.

Tax Compliance Risk. The issuance of tax-exempt bonds is subject to several requirements under the United States Internal Revenue Code, as enforced by the Internal Revenue Service (IRS). You must take certain steps and make certain representations prior to the issuance of tax-exempt bonds. You also must covenant to take certain additional actions after issuance of tax-exempt bonds. A breach of your representations or your failure to comply with certain tax-related covenants may cause the interest on bonds to become taxable retroactively to the date of issuance of the bonds, which may result in an increase in the interest rate that you pay on the bonds or the mandatory redemption of the bonds. The IRS also may audit you or your bonds, in some cases on a random basis and in other cases targeted to specific types of bond issues or tax concerns. If tax-exempt bonds are declared taxable, or if you are subject to audit, the market price of your bonds may be adversely affected. Further, your ability to issue other tax-exempt bonds also may be limited.

This description of tax compliance risks is not intended as legal advice and you should consult with your bond counsel regarding tax implications of issuing the bonds.






Raymond James - LOI & G-17 Disclosures - Espero Chattanooga Series 2023 (2023-10-20)

Final Audit Report

2023-10-25

Created:	2023-10-25
By:	Maria Manalla (mmanalla@chattanooga.gov)
Status:	Signed
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**FINAL RESOLUTION AUTHORIZING ISSUANCE OF NOT TO
EXCEED \$10,700,000 THE HEALTH, EDUCATIONAL AND
HOUSING FACILITY BOARD OF THE
CITY OF CHATTANOOGA, TENNESSEE
COLLATERALIZED MULTIFAMILY HOUSING BONDS
(ESPERO CHATTANOOGA PROJECT) SERIES 2023**

WHEREAS, the Board of Directors of The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee (the "Issuer"), has met pursuant to proper notice on October 16, 2023; and

WHEREAS, Espero Chattanooga, LP, a Tennessee limited partnership (the "Borrower"), has requested the Issuer to finance the acquisition, construction and equipping of an approximately 60-unit housing facility for low and moderate-income citizens to be known as Espero Chattanooga located in Chattanooga, Tennessee (the "Project"), which project is of the character and will accomplish the purposes of Part 3 of Chapter 101 of Title 48 of the Tennessee Code Annotated, as amended (the "Act"); and

WHEREAS, the Issuer proposes to finance the Project by the issuance and sale of its revenue bonds in an amount not to exceed \$10,700,000; and

WHEREAS, the Issuer previously held a public hearing with respect to the issuance of Bonds, as required under Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, there have been submitted to the Issuer at the meeting on October 16, 2023, the forms of the following instruments which the Issuer proposes to execute to carry out the transactions described above, copies of which instruments shall be filed with the records of the Issuer:

(a) Bond Purchase Agreement (the "Purchase Agreement") by and among the Issuer, the Borrower, and the purchaser thereof (the "Bond Purchaser");

(b) Trust Indenture (the "Indenture") between the Issuer and a designated trustee (the "Trustee");

(c) The form of the Issuer's Collateralized Multifamily Housing Bonds (Espero Chattanooga Project), Series 2023 (the "Bonds");

(d) Loan Agreement (the "Loan Agreement") between the Issuer and the Borrower, to provide for the loan of the proceeds of the Bonds to the Borrower and for the repayment of such loan.

(HEB2023-11)

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE:

1. It is hereby found and determined that the financing of the Project will assist the Borrower in connection with its mission of providing safe, affordable housing to the citizens of the State of Tennessee, thereby improving their health and wellbeing and promoting the purposes of the Act.

2. It is hereby found to be most advantageous to sell the Bonds, upon the terms and conditions set forth in the Purchase Agreement.

3. The Chair or Vice Chair of the Issuer is hereby authorized and directed to execute and either is authorized to deliver the Purchase Agreement to the other parties thereto.

4. The Chair or Vice Chair of the Issuer is hereby authorized and directed to execute, and the Secretary or Assistant Secretary of the Issuer is authorized to attest, and either is authorized and directed to deliver the Indenture to the Trustee.

5. The Chair or Vice Chair of the Issuer is hereby authorized and directed to execute, and the Secretary or Assistant Secretary of the Issuer is authorized to attest, and either is authorized to deliver the Loan Agreement to the Borrower, the Trustee and the Lender.

6. The Chair or Vice Chair of the Issuer is hereby authorized and directed to execute by facsimile or manual signature, attested by the facsimile or manual signature of its Secretary or Assistant Secretary, and either is authorized and directed to deliver the Bonds to the Trustee for authentication and delivery to the Bond Purchaser thereof upon payment of the purchase price therefor.

7. The Purchase Agreement, the Indenture, the Loan Agreement and the Bonds shall be in substantially the forms submitted, which are hereby approved, with such completions, omissions, insertions and changes as may be approved by the officers executing them, their execution to constitute conclusive evidence of their approval of any such omissions, insertions and changes (which such changes may include, without limitation, changes to permit a cash backed forward structure, the addition of different interest rate modes and a long term direct placement mode); provided, however, that the Bonds shall bear interest at a

(HEB2023-11)

rate or rates not to exceed the maximum rate permitted by law and the Bonds shall mature on or before forty (40) years after the issuance thereof.

8. The Issuer hereby authorizes and approves the preparation, use and circulation of a Private Placement Memorandum, Preliminary Official Statement and a Final Official Statement, which describes the Bonds and the financing documents related to the Bonds and which will be used to market and sell the Bonds. The Issuer hereby authorizes and approves the preparation, use and circulation of a Remarketing Circular or similar offering document, which describes the Bonds and the financing documents related to the Bonds and which will be used in connection with any remarketing of the Bonds, as provided for in the Indenture.

9. The officers of the Issuer are hereby authorized and directed to execute, deliver and file all certificates and instruments, including Internal Revenue Service Form 8038, financing statements to evidence security interests created under the Indenture, a Tax Exemption Certificate and Agreement, a land use restriction agreement and an informational statement to be filed with the State of Tennessee, and to take all such further action as they may consider necessary or desirable in connection with the issuance and sale of the Bonds and the financing of the Project.

10. Any authorization herein to execute any document shall include authorization to record such document where appropriate.

11. All other acts of the officers of the Issuer which are in conformity with the purposes and intent of this resolution and in furtherance of the issuance and sale of the Bonds and the financing of the Project are hereby approved and confirmed.

(HEB2023-11)

I hereby certify that attached hereto is a resolution of The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee, duly and lawfully adopted by its Board of Directors on November 1, 2023, at a meeting at which a quorum was acting throughout and I furthermore certify that such resolution has not been amended or modified in any respect.

THE HEALTH, EDUCATIONAL AND HOUSING
FACILITY BOARD OF THE CITY OF
CHATTANOOGA, TENNESSEE

By: _____
Name: Hicks Armor
Title: Chair

ATTEST:

Richard Johnson, *Secretary*

36509339.1

(HEB2023-11)

LOAN AGREEMENT

Dated as of November 1, 2023

between

THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD
OF THE CITY OF CHATTANOOGA, TENNESSEE

and

ESPERO CHATTANOOGA, LP

\$10,700,000

The Health, Educational and Housing Facility Board
of the City of Chattanooga, Tennessee
Collateralized Multifamily Housing Bonds
(Espero Chattanooga Project)
Series 2023

INDEX

	<u>Page</u>
Article 1 DEFINITIONS	1
Section 1.1. Use of Defined Terms.	1
Section 1.2. Interpretation.	1
Section 1.3. Captions and Headings.	2
Article 2 REPRESENTATIONS	2
Section 2.1. Representations of the Issuer.	2
Section 2.2. Representations and Covenants of the Borrower.	2
Article 3 PLAN OF FINANCING	6
Section 3.1. Issuance of Bonds; Application of Proceeds.	6
Section 3.2. The Loan.	6
Section 3.3. Mortgage Loan to Borrower.	6
Section 3.4. Acquisition, Construction, Installation, Equipping and Improvement.	6
Section 3.5. Plans and Specifications.	7
Section 3.6. Disbursements from the Project Fund.	7
Section 3.7. Loan Disbursement Agreement.	8
Section 3.8. Borrower Required to Pay Costs in Event Project Fund Insufficient.	8
Section 3.9. Completion Date.	8
Section 3.10. Remarketing of Bonds.	8
Section 3.11. Investment of Fund Money.	8
Article 4 LOAN PAYMENTS; COLLATERAL PAYMENTS AND ADDITIONAL PAYMENTS	9
Section 4.1. Loan Repayment; Delivery of Note.	9
Section 4.2. Collateral Payments.	10
Section 4.3. Bond Fund and Collateral Fund.	10
Section 4.4. Additional Payments.	10
Section 4.5. Place of Payments.	12
Section 4.6. Obligations Unconditional.	12
Section 4.7. Assignment of Agreement and Revenues; Trustee is Third Party Beneficiary.	12

INDEX
(continued)

	<u>Page</u>
Article 5 ADDITIONAL AGREEMENTS AND COVENANTS	12
Section 5.1. Right of Inspection.....	12
Section 5.2. Borrower to Maintain its Existence; Sale of Project While the Bonds are Outstanding.....	13
Section 5.3. Indemnification.....	14
Section 5.4. Tax-Exempt Status of the Bonds.....	16
Section 5.5. Affirmative Covenants.....	17
Section 5.6. Negative Covenants.....	19
Section 5.7. Additional Indebtedness.....	19
Section 5.8. Continuing Disclosure.....	19
Section 5.9. Delivery of Borrowers' Post-Issuance Tax Compliance Procedures.....	20
Section 5.10. Reliance.....	20
Article 6 PREPAYMENT AND TERMINATION	20
Section 6.1. Prepayment.....	20
Section 6.2. Borrower's Obligations Upon Tender of Bonds.....	20
Section 6.3. Option to Terminate.....	20
Article 7 EVENTS OF DEFAULT AND REMEDIES	21
Section 7.1. Events of Default.....	21
Section 7.2. Remedies on Default.....	22
Section 7.3. No Remedy Exclusive.....	23
Section 7.4. Agreement to Pay Attorneys' Fees and Expenses.....	24
Section 7.5. No Waiver.....	24
Section 7.6. Notice of Default.....	24
Section 7.7. Investor Limited Partner's Cure Rights.....	24
Article 8 MISCELLANEOUS	24
Section 8.1. Term of Agreement.....	24
Section 8.2. Amounts Remaining in Funds.....	24
Section 8.3. Notices.....	25
Section 8.4. Extent of Covenants of the Issuer; No Personal Liability.....	25
Section 8.5. Limited Liability of the Issuer.....	25

INDEX
(continued)

	<u>Page</u>
Section 8.6. Limited Liability of Borrower.....	26
Section 8.7. Binding Effect.	27
Section 8.8. Amendments and Supplements.	27
Section 8.9. Execution Counterparts.	27
Section 8.10. Severability.	27
Section 8.11. Governing Law.....	27
Section 8.12. Mortgage Loan Documents and Regulations Control.....	27

LOAN AGREEMENT

THIS LOAN AGREEMENT made and entered into as of November 1, 2023 (this "Agreement") between **THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE**, a public nonprofit corporation and an instrumentality of the City of Chattanooga, Tennessee (the "Issuer"), and **ESPERO CHATTANOOGA, LP**, a Tennessee limited partnership (the "Borrower"), under the following circumstances summarized in the following recitals (the capitalized terms not defined in the recitals being used therein as defined in Article I hereof):

- A. Pursuant to the Act, the Issuer has determined to issue, sell and deliver its Bonds, and to make a loan with the proceeds derived from the sale thereof to the Borrower to assist in the financing of the Project to be undertaken by the Borrower.
- B. To provide and secure amounts to repay to the Issuer the Loan of the Bond proceeds, the Borrower will obtain the Mortgage Loan from the Lender and cause the Lender to make certain payments to **[Trustee Name]**, as trustee under the Indenture referred to in Article I hereof, for the benefit of the Issuer.
- C. The Issuer and the Borrower each have full right and lawful authority to enter into this Agreement and to perform and observe the provisions hereof on their respective parts to be performed and observed.

NOW THEREFORE, in consideration of the premises and the mutual representations and agreements hereinafter contained, the Issuer and the Borrower agree as follows (provided that any obligation of the Issuer created by or arising out of this Agreement shall never constitute a general debt of the Issuer or give rise to any pecuniary liability of the Issuer but shall be payable solely out of the Revenues):

ARTICLE 1 DEFINITIONS

Section 1.1. Use of Defined Terms.

In addition to the words and terms defined elsewhere in this Agreement, the words and terms in this Agreement shall have the meanings set forth in the Trust Indenture dated as of November 1, 2023 (the "Indenture"), between the Issuer and **[Trustee Name]**, as trustee (the "Trustee").

Section 1.2. Interpretation.

Any reference herein to the Issuer, to the Governing Body or to any member, director, officer or employee of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Tennessee Code Annotated or to any statute of the United

States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision, if it constitutes in any way an impairment of the rights or obligations of the Issuer, the Holders, the Trustee or the Borrower under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms "hereof," "hereby," "herein," "hereto," "hereunder" and similar terms refer to this Agreement; and the term "hereafter" means after, and the term "heretofore" means before, the date of delivery of the Bonds. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 1.3. Captions and Headings.

The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

**ARTICLE 2
REPRESENTATIONS**

Section 2.1. Representations of the Issuer.

The Issuer represents that: (a) it is a public nonprofit corporation organized and existing under the laws of the State; (b) it has or will have as of the Closing Date duly accomplished all conditions necessary to be accomplished by it prior to the issuance and delivery of the Bonds and the execution and delivery of the Issuer Documents; (c) it is not in violation of or in conflict with any provisions of the laws of the State that would impair its ability to carry out its obligations contained in the Issuer Documents; (d) it has the legal right and is empowered to enter into the transactions contemplated by the Issuer Documents; (e) it has duly authorized the execution, delivery and performance of the Issuer Documents; and (f) it will do all things in its power in order to maintain its existence. THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, THAT (A) THE PROCEEDS OF THE BONDS WILL BE SUFFICIENT TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) THE PROJECT WILL BE ADEQUATE OR SUFFICIENT FOR THE BORROWER'S INTENDED PURPOSE OR (C) WITH RESPECT TO THE HABITABILITY OF THE PROJECT, THE MERCHANTABILITY THEREOF, THE DESIGN OR CONDITIONS THEREOF, THE WORKMANSHIP, QUALITY, OR CAPACITY THEREOF, LATENT DEFECTS THEREON, THE VALUE THEREOF, FUTURE PERFORMANCE OR THE COMPLIANCE THEREOF WITH ANY LEGAL REQUIREMENT.

Section 2.2. Representations and Covenants of the Borrower.

The Borrower represents and covenants that:

(a) The Borrower (i) is a limited partnership duly formed and validly existing under the laws of the State of Tennessee, (ii) is in good standing and duly qualified to

transact business in the State, (iii) is not in violation of any provision of the Borrower's Organizational Documents and (iv) is authorized to own and operate the Project in the State.

(b) It has full power and authority to execute, deliver and perform the Borrower Documents and to enter into and carry out the transactions contemplated by those documents. The execution, delivery and performance of the Borrower Documents do not, and will not, to the Borrower's knowledge, violate any provision of law applicable to the Borrower and do not, and will not, conflict with or result in a default in any material respect under any agreement or instrument to which the Borrower is a party or by which it is bound. The Borrower Documents have, by proper action, been duly authorized, executed and delivered by the Borrower and all steps necessary have been taken to constitute the Borrower Documents valid and binding obligations of the Borrower, enforceable in accordance with their terms except as may be limited by laws relating to bankruptcy, insolvency, reorganization or moratorium or other similar laws affecting creditors' rights.

(c) The Borrower was formed on January 31, 2023. The general partner of the Borrower is Espero GP Corporation, a Tennessee nonprofit corporation (the "General Partner"). The Borrower does not currently operate or conduct any business except as related to the financing, ownership, construction and operation of the Project. The Borrower has no material assets or property other than its anticipated interest in the Project.

(d) The General Partner (1) is a nonprofit corporation, duly organized under the laws of the State of Tennessee, and (2) has the requisite legal authority to become and to act as the General Partner of the Borrower.

(e) The provision of financial assistance to be made available to it under this Agreement and the commitments therefor made by the Issuer have induced the Borrower to undertake the transactions contemplated by this Agreement.

(f) The Borrower will use and operate the Project in a manner consistent with the Act and in accordance with the Land Use Restriction Agreement for as long as required by the Act and the Code and knows of no reason why the Project will not be so operated. If, in the future, there is a cessation of that operation, it will use its best efforts to resume that operation or accomplish an alternate use by the Borrower or others approved by the Issuer which will be consistent with the Act, the Code and the Land Use Restriction Agreement.

(g) The Project will be completed generally in accordance with the Plans and Specifications, as revised and updated from time to time, and the portion of the Project funded with the proceeds of the Bonds will constitute a "qualified residential rental project" within the meaning of Section 142(d) of the Code and will be operated and maintained in such manner as to conform in all material respects with all applicable zoning, planning, building, environmental and other applicable Governmental regulations and as to be consistent with the Act.

(h) The Project will be located entirely within the City of Chattanooga, Tennessee.

(i) The Borrower has obtained or will obtain all consents, approvals, permits, authorizations and orders of any governmental or regulatory agency that are required to be obtained by the Borrower as a condition precedent to the issuance of the Bonds, the execution and delivery of the Borrower Documents or the performance by the Borrower of its obligations thereunder, or that were or are required for the acquisition, construction and/or operation of the Project.

(j) No litigation at law or in equity or proceeding before any governmental agency involving the Borrower is pending or, to the best of its knowledge, threatened in which any liability of the Borrower is not adequately covered by insurance or in which any judgment or order would have a material adverse effect upon the business or assets of the Borrower or that would affect its existence or authority to do business, the acquisition, construction, equipping or operation of the Project, the validity of any Borrower Documents or the performance of its obligations thereunder.

(k) The Borrower is not in default in the payment of the principal of or interest on any of its indebtedness for borrowed money and is not in material default under any instrument under and subject to which any indebtedness has been incurred, and no event has occurred and is continuing that, under the provisions of any such agreement, with the lapse of time or the giving of notice, or both, would constitute an event of default by the Borrower thereunder.

(l) The Borrower is not in default under or in violation of, and the execution, delivery and compliance by the Borrower with the terms and conditions of the Borrower Documents do not and will not conflict with or constitute or result in a default by the Borrower in any material respect under or violate (i) the Borrower's Organizational Documents, (ii) any agreement or other instrument to which the Borrower is a party or by which it or its assets are bound, or (iii) to the best of its knowledge, any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the Borrower or its property, and no event has occurred and is continuing which, with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation.

(m) The Borrower has received and reviewed a copy of the Indenture and approves the terms and conditions thereof and agrees to the terms thereof.

(n) The Borrower has filed or caused to be filed all federal, state and local tax returns that are required to be filed or has obtained appropriate extensions therefor, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due.

(o) Neither the Borrower nor any related Person thereto shall acquire any Bonds in any amount.

(p) The Borrower owns (for federal tax purposes) the real property and improvements and the personal property comprising the Project, and there are no liens or encumbrances against such property other than the liens contemplated by the Mortgage Loan Documents and the Permitted Liens.

(q) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing of the Project; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it or the Issuer is a party or of which it is a beneficiary; that it understands the risks inherent in such transactions, including, without limitation, the risk of loss of the Project; and that it has not relied on the Issuer or its counsel for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Agreement and the Indenture or otherwise relied on the Issuer or its counsel in any manner.

(r) The Project will be, as of the date of the closing of the Mortgage Loan, in compliance in all material respects with all applicable requirements of the Land Use Restriction Agreement, including all applicable requirements of the Act and Code. The Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Land Use Restriction Agreement, including all applicable requirements of the Code. To the Borrower's knowledge, all future leases will comply, with all applicable laws and the Land Use Restriction Agreement. The Project meets the requirements of this Agreement, the Land Use Restriction Agreement and the Code with respect to multifamily rental housing.

(s) The proceeds of the Bonds shall be used or deemed used exclusively to finance costs that (i) are (A) capital expenditures (as defined in Section 1.150-1(a) of the Code's regulations) and (B) not made for the acquisition of existing property, to the extent prohibited in Section 147(d) of the Code, and (ii) are made exclusively with respect to a "qualified residential rental project" within the meaning of Section 142(d) of the Code and that for the greatest number of buildings the proceeds of the Bonds shall be deemed allocated on a pro rata basis to each building in the Project and the land on which it is located so that each building and the land on which it is located will have been financed fifty percent (50%) or more by the proceeds of the Bonds for the purpose of complying with Section 42(h)(4)(B) of the Code; provided, however, the foregoing representation, covenant and warranty is made for the benefit of the Borrower and its partners and neither the Trustee nor the Issuer shall have any obligation to enforce this covenant nor shall they incur any liability to any Person, including without limitation, the Borrower, the partners of the Borrower, any other affiliate of the Borrower or the holders of the Bonds for any failure to meet the intent expressed in the foregoing representation, covenant and warranty; and provided further, failure to comply with this representation, covenant and warranty shall not constitute a default or "Event of Default" under this Agreement or the Indenture.

The Borrower acknowledges that the representations and covenants herein made by the Borrower have been expressly and specifically relied upon by the Issuer in determining to make the Loan to the Borrower and the Loan would not have been made but for such representations and covenants. All material information provided by the Borrower to the Issuer concerning the Project

and the Borrower was and is on the date of execution of this Agreement true and correct in all material respects.

ARTICLE 3 PLAN OF FINANCING

Section 3.1. Issuance of Bonds; Application of Proceeds.

To provide funds to finance the Loan for purposes of assisting the Borrower in financing Costs of the Project, the Issuer shall simultaneously with the execution and delivery hereof proceed with the issuance and delivery of the Bonds upon receipt by the Trustee of the items listed in Section 2.11 of the Indenture. The Issuer agrees to deposit the proceeds of sale of the Bonds in accordance with the Indenture.

The Bonds will be issued pursuant to the Indenture in the aggregate principal amount, will bear interest, will be subject to mandatory tender and remarketing and will mature as set forth therein. The Borrower hereby approves the terms and conditions of the Indenture and the Bonds, and the terms and conditions under which the Bonds will be issued, sold and delivered and will comply with those provisions of the Indenture that contemplate action by the Borrower, all as if the Borrower were a party to the Indenture.

Pending disbursement pursuant to Section 3.6 hereof, the proceeds of the Bonds deposited in the Project Fund, together with any investment earnings thereon, shall constitute a part of the Revenues assigned by the Issuer to the Trustee as security for the payment of Bond Service Charges as provided in the Indenture.

Section 3.2. The Loan.

The Issuer agrees, upon the terms and conditions herein, to make the Loan to the Borrower with the proceeds received by the Issuer from the sale of the Bonds by causing such proceeds to be deposited with the Trustee for disposition as provided in the Indenture. The obligation of the Issuer to finance the Loan shall be deemed fully discharged upon the deposit of the proceeds of the Bonds with the Trustee. The Loan shall be evidenced by the Note payable to the Trustee.

Section 3.3. Mortgage Loan to Borrower.

To provide and secure funds for the repayment of the Loan, and to provide for the delivery Eligible Funds, the Borrower shall proceed with obtaining the Mortgage Loan from the Lender and entering into the Loan Disbursement Agreement with the Lender and the Trustee. In particular, the Borrower will promptly take all necessary actions on its part to close the Mortgage Loan and satisfy all other terms and conditions and requirements of the Lender.

Section 3.4. Acquisition, Construction, Installation, Equipping and Improvement.

The Borrower (a) has acquired, or is in the process of acquiring, the Project site and shall construct, improve and equip the Project with all reasonable dispatch and generally in accordance with the Plans and Specifications, as amended and updated from time to time, (b) shall pay when due all fees, costs and expenses incurred in connection with that acquisition, construction,

installation, equipping and improvement from funds made available therefor in accordance with this Agreement or otherwise, except to the extent being contested in good faith, and (c) shall ask for, demand, sue for, levy, recover and receive all those sums of money, debts and other demands whatsoever which may be due, owing and payable under the terms of any contract, order, receipt, writing and instruction in connection with the acquisition, construction, improvement and equipping of the Project, and shall enforce the material provisions of any contract, agreement, obligation, bond or other performance security with respect thereto. It is understood that the Project is that of the Borrower and any contracts made by the Borrower with respect thereto, whether acquisition contracts, construction contracts or otherwise, or any work to be done by the Borrower on the Project are made or done by the Borrower in its own behalf and not as agent or contractor for the Issuer. The Borrower agrees that it will compensate all workers it has employed in the construction, improvement and equipping of the Project, if any, as required by law.

Section 3.5. Plans and Specifications.

The Plans and Specifications have been filed with the Lender. The Borrower may revise the Plans and Specifications from time to time, provided that no revision shall be made which would change the purpose of the Project to other than purposes permitted by the Act and the Land Use Restriction Agreement.

Section 3.6. Disbursements from the Project Fund.

Subject to the provisions below and so long as no Event of Default hereunder has occurred and is continuing for which the principal amount of the Bonds has been declared to be immediately due and payable pursuant to Section 7.2 hereof and Section 6.03 of the Indenture, disbursements from the Project Fund shall be made only to pay or finance Costs of the Project.

Any disbursements from the Project Fund to pay or finance Costs of the Project shall be made by the Trustee only upon the receipt by the Trustee of: (a) a disbursement request in the form attached hereto as Exhibit B; and (b) Eligible Funds in an amount equal to the amount of any such disbursement request for deposit in the Collateral Fund as provided in Section 4.2 hereof. The Borrower hereby acknowledges and agrees that it shall submit disbursement requests to the Trustee no more frequently than once each calendar month. Each such disbursement request shall be consecutively numbered and, if and to the extent such disbursement request relates to an advance of the Mortgage Loan, shall be accompanied by a confirmation that an advance in such amount is being made under the Mortgage Loan to be deposited into the Collateral Fund with a like amount being disbursed concurrently from the Project Fund to pay Costs of the Project.

The Borrower's right to request disbursements from the Project Fund is limited to the principal amount of the Loan, which may be less than the principal amount of the Mortgage Loan.

Any money in the Project Fund remaining after the Completion Date and payment, or provision for payment, in full of the Costs of the Project, at the direction of the Authorized Borrower Representative, promptly shall be paid into the Bond Fund for payment of Bond Service Charges provided the Borrower obtains an opinion of Bond Counsel that such deposit will not adversely affect the Federal Tax Status of the Bonds.

Notwithstanding any provision of this Agreement or any provision of the Indenture to the contrary, the Trustee shall not disburse funds from the Project Fund unless and until the Trustee confirms that Eligible Funds in the Collateral Fund plus Eligible Funds in the Project Fund, less the amount of the requested disbursement from the Project Fund, is at least equal to the then-outstanding principal amount of the Bonds.

Section 3.7. Loan Disbursement Agreement.

The Borrower shall execute the Loan Disbursement Agreement to coordinate the financing of a portion of the Costs of the Project with proceeds of the Bonds by the Lender delivering to the Trustee Eligible Funds representing all or a portion of the advances under the Mortgage Loan in connection with, and as a condition to, disbursement of an equal amount of Bond proceeds from the Project Fund to pay or finance Costs of the Project pursuant to and consistent with Sections 3.6 and 4.2 hereof and Sections 4.04 and 4.06 of the Indenture.

Section 3.8. Borrower Required to Pay Costs in Event Project Fund Insufficient.

If money in the Project Fund is not sufficient to pay all Costs of the Project, the Borrower, nonetheless, will complete the Project in accordance with the Plans and Specifications and shall pay all such additional Costs of the Project from its own funds. The Borrower shall pay all Costs of Issuance of the Bonds in excess of the amounts deposited in the Costs of Issuance Fund. The Borrower shall not be entitled to any reimbursement for any such additional Costs of the Project or payment of Costs of Issuance from the Issuer, the Trustee or any Holder; nor shall it be entitled to any abatement, diminution or postponement of any Loan Payments or other amounts to be paid under this Agreement.

Section 3.9. Completion Date.

The Borrower shall notify the Issuer and the Trustee of the Completion Date by the delivery of a Completion Certificate signed by the Authorized Borrower Representative substantially in the form of Exhibit C attached hereto. The Completion Certificate shall be delivered as promptly as practicable after the occurrence of the events and conditions referred to in paragraphs (a) and (b) of the Completion Certificate.

Section 3.10. Remarketing of Bonds.

The Borrower is hereby granted the right to (a) give notice of a remarketing of the Bonds in the manner and to the extent set forth in Section 3.03 of the Indenture and (b) designate the length of the Remarketing Period and the related Mandatory Tender Date in the manner and to the extent set forth in Sections 3.01 and 3.03 of the Indenture.

Section 3.11. Investment of Fund Money.

At the written request of the Authorized Borrower Representative, any money held as part of the Bond Fund, the Project Fund and the Collateral Fund shall be invested or reinvested by the Trustee in Eligible Investments as provided in the Indenture. The Issuer (to the extent within its control) and the Borrower each hereby covenants that it will restrict the investment and reinvestment and the use of the proceeds of the Bonds, and moneys on deposit in or credited to the

Collateral Fund and the Negative Arbitrage Account of the Bond Fund, in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time of delivery of and payment for the Bonds or subsequent intentional acts, so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. No provision of this Agreement shall be construed to impose upon the Trustee any obligation or responsibility for compliance with arbitrage regulations.

The Borrower shall provide the Issuer with, and the Issuer may base its certifications as authorized by the Tax Agreement on, a certificate of an Authorized Borrower Representative for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the Borrower on the date of delivery of and payment for the Bonds regarding the amount and use of the proceeds of the Bonds and the facts, estimates and circumstances on which those expectations are based.

ARTICLE 4

LOAN PAYMENTS; ELIGIBLE FUNDS AND ADDITIONAL PAYMENTS

Section 4.1. Loan Repayment; Delivery of Note.

In consideration of and in repayment of the Loan, the Borrower shall deliver or cause to be delivered to the Trustee on or before each Bond Payment Date, a Loan Payment in an amount equal to the amount necessary to pay Bond Service Charges due on such Bond Payment Date. All such Loan Payments shall be paid to the Trustee in accordance with the terms of the Note for the account of the Issuer and shall be held and disbursed in accordance with the provisions of the Indenture and this Agreement.

The Borrower shall be entitled to a credit against the Loan Payments required to be made with respect to the Bonds on any date equal to the available money in the Bond Fund or money transferred thereto from the Collateral Fund or the Project Fund for the payment of Bond Service Charges on that date.

To secure the Borrower's performance of its obligations under this Agreement, the Borrower shall execute and deliver, concurrently with the issuance and delivery of the Bonds, the Note and the Land Use Restriction Agreement.

The Note shall secure equally and ratably all Outstanding Bonds, except that, so long as no Event of Default has occurred and is continuing hereunder, payments by the Borrower on the Note shall be used by the Trustee to make a like payment of Bond Service Charges and shall constitute Loan Payments.

Upon payment in full, in accordance with the Indenture, of the Bond Service Charges on any or all Bonds, whether at maturity or otherwise, or upon provision for the payment thereof having been made in accordance with the provisions of the Indenture, (a) the Note shall be deemed fully paid, the obligations of the Borrower thereunder shall be terminated, and the Note shall be surrendered by the Trustee to the Borrower, and shall be canceled by the Trustee, or (b) an appropriate notation shall be endorsed thereon evidencing the date and amount of the principal payment (or prepayment) equal to the Bonds so paid, or with respect to which provision for

payment has been made, and that Note shall be surrendered by the Trustee to the Borrower for cancellation if all Bonds shall have been paid (or provision made therefor) and canceled as aforesaid. Unless the Borrower is entitled to a credit under express terms of this Agreement or the Note, all payments on the Note shall be in the full amount required thereunder.

Section 4.2. Eligible Funds.

In consideration of and as a condition to the disbursement of Bond proceeds in the Project Fund to pay or finance Costs of the Project, and to secure the Borrower's obligation to make Loan Payments, the Borrower shall direct the Lender (pursuant to the terms of the Loan Disbursement Agreement) to deliver or cause to be delivered to the Trustee Eligible Funds equal to the amount of the proposed disbursement. All such Eligible Funds shall be paid to the Trustee for the account of the Issuer and shall be held in the Collateral Fund and disbursed in accordance with the provisions of the Indenture.

Notwithstanding any provisions to the contrary, upon receipt of a deposit of Eligible Funds from Lender, the Trustee shall be unconditionally and irrevocably obligated to promptly disburse funds in the same amount from the Project Fund in accordance with the applicable requisition, but the Trustee shall only be obligated to make such a disbursement to the extent of the amount of proceeds of the Bonds remaining in the Project Fund, and if the Trustee received a deposit of Eligible Funds from the Lender in excess of the available amount, the Trustee shall promptly return the excess to the Lender.

Section 4.3. Bond Fund and Collateral Fund.

The Borrower and the Issuer each acknowledge that neither the Borrower nor the Issuer has any interest in the Bond Fund or the Collateral Fund and any money deposited therein shall be in the custody of and held by the Trustee in trust for the benefit of the Holders, subject, however, to the provisions of this Agreement and the Indenture.

Section 4.4. Additional Payments.

The Borrower shall pay as Additional Payments hereunder the following:

- (a) Whether out of the proceeds of the Mortgage Loan or other funds, all Costs of Issuance of the Bonds, and all expenses incurred in closing the Mortgage Loan.
- (b) All Extension Payments and other sums required under Section 3.03 of the Indenture in order to revise or extend the Mandatory Tender Date or remarket the Bonds, and the Borrower further agrees to execute any and all certificates required by the Issuer, the Trustee or the Remarketing Agent in order to effectuate such revision, extension or remarketing.
- (c) To the Trustee, (i) the Ordinary Trustee Fees and Expenses to the extent that the funds available in the Expense Fund under the Indenture for the payment thereof are not sufficient and available therefor and (ii) the Extraordinary Trustee Fees and Expenses.
- (d) To the Issuer, the Extraordinary Issuer's Fees and Expenses.

(e) All costs of printing any replacement Bonds required to be issued under the Indenture to the extent such costs are not paid by the Holders.

(f) To the extent not paid by the Trustee from the Expense Fund, all of the fees and expenses of any necessary consultant employed by the Borrower, the Trustee or the Issuer in connection with any of the requirements imposed by Section 4.09 of the Indenture and the Tax Agreement to the extent funds available under the Indenture are not sufficient and applied therefor. The Borrower shall provide or cause to be provided all information and money to the Trustee to enable the Trustee to comply with the Indenture and the Tax Agreement.

(g) To the Dissemination Agent, the Dissemination Agent Fee, to the extent funds available in the Expense Fund under the Indenture are not sufficient and applied therefor, as well as any other costs and expenses in order to provide for compliance with the terms of the Continuing Disclosure Agreement.

(h) To the Remarketing Agent, the Remarketing Agent Fee and any Remarketing Expenses.

In the event the Borrower is in default under any provision of any of the Borrower Documents and such default is not cured after expiration of all applicable notice and cure provisions, the Borrower shall be liable to, and upon demand shall pay to, the Issuer, the Trustee and the Lender all reasonable fees and disbursements of such persons and their agents (including attorneys' fees and expenses) which are reasonably connected therewith or incidental thereto except to the extent such fees and disbursements are paid from money available therefor under the Indenture.

To provide for certain of the anticipated Additional Payments, the Borrower agrees to cause to be deposited a portion of the Initial Borrower Deposit into the Costs of Issuance Fund as required under the Indenture, and authorizes the Trustee to pay, from money on deposit in the Costs of Issuance Fund, the amounts provided to be paid from the Costs of Issuance Fund in accordance with Section 4.05 of the Indenture. All such amounts shall be paid directly to the parties entitled thereto for their own account as and when such amounts become due and payable.

Upon the payment, prepayment, or incurrence of any such cost, expense, or liability described in this Section by any such party, the Additional Payments in respect thereof shall be payable upon written demand to the Borrower, which demand shall be accompanied by invoices or other appropriate documentation concerning the nature, amount and incurrence of such cost, expense or liability. If the Additional Payments payable under this Section are not paid upon such demand, such Additional Payments shall bear interest from the date of such payment or the incurrence thereof at the Interest Rate for Advances until the amount due shall have been fully paid.

Except as otherwise provided herein, the obligations of the Borrower under this Section shall survive the termination of this Agreement and the payment and performance of all of the other obligations of the Borrower hereunder and under the other Borrower Documents, unless and

until the Borrower has transferred the Project to an unaffiliated entity with the prior written consent of the Issuer, which transferee assumes the obligations of the Borrower pursuant to this Section.

Section 4.5. Place of Payments.

The Borrower shall make or cause to be made all Loan Payments directly to the Trustee at its Designated Office. The Borrower shall direct the Lender to make all Collateral Payments directly to the Trustee at its Designated Office. Additional Payments shall be made by the Borrower directly to the person or entity to whom or to which they are due.

Section 4.6. Obligations Unconditional.

The obligations of the Borrower to make Loan Payments, Additional Payments and any payments required of the Borrower under Section 5.3 hereof and Sections 4.08 and 4.09 of the Indenture shall be absolute and unconditional, and the Borrower shall make such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set off, recoupment or counterclaim which the Borrower may have or assert against the Issuer, the Trustee or any other Person; provided that the Borrower may contest or dispute the amount of any such obligation arising under Section 4.08 of the Indenture so long as such dispute or contest does not result in an Event of Default under the Indenture.

Section 4.7. Assignment of Agreement and Revenues; Trustee is Third Party Beneficiary.

To secure the payment of Bond Service Charges, the Issuer shall assign to the Trustee, by the Indenture, its rights under and interest in this Agreement (except for the Reserved Rights). The Borrower hereby agrees and consents to those assignments. The Issuer shall not attempt to further assign, transfer or convey its interest in the Revenues or this Agreement or create any pledge or lien of any form or nature with respect to the Revenues, Loan Payments or Collateral Payments hereunder.

The Trustee shall be a third-party beneficiary to this Agreement.

**ARTICLE 5
ADDITIONAL AGREEMENTS AND COVENANTS**

Section 5.1. Right of Inspection.

At all reasonable times and upon reasonable advance notice, the Borrower shall allow any duly authorized representative of the Issuer or the Trustee to visit and inspect the Project, to examine and make copies of and from its books of record and account, and to discuss its affairs, finances, and accounts with its officers, and shall furnish to the Issuer and the Trustee any information reasonably required regarding its business affairs and financial condition within a reasonable time after receipt of written request therefor.

Section 5.2. Borrower to Maintain its Existence; Sale of Project While the Bonds are Outstanding.

The Borrower shall maintain its existence, not dissolve or sell, transfer or otherwise dispose of all or substantially all of its assets and not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; provided, that it may do so if the surviving, resulting or transferee entity assumes in writing all of the obligations of the Borrower under the Borrower Documents. The Borrower shall not permit one or more other entities to consolidate with or merge into it, or take any action or allow any action to be taken to terminate the existence of the Borrower except as provided herein.

No sale, assignment or transfer of title to the Project, except as may be otherwise required by the Lender, shall be made unless (a) the Lender consents to such assignment or transfer if the Mortgage Loan remains outstanding, (b) the transferee or assignee, as the case may be, assumes all the duties of the Borrower under the Borrower documents, provided that such assumption may contain an exculpation of the assignee from personal liability with respect to any obligation hereunder arising prior to such sale, assignment or transfer, and (c) no Event of Default as certified in writing to the Trustee by the Borrower shall have occurred and be continuing under the Indenture or this Agreement. The Trustee shall consent to any such assignment or transfer if (i) the Lender notifies it in writing that the Lender has determined that the aforesaid conditions have been satisfied, (ii) the Trustee receives an Opinion of Bond Counsel to the effect that such transfer or assignment would not adversely affect the Federal Tax Status of the Bonds, and (iii) the Trustee receives written confirmation from the Rating Agency that such transfer or assignment will not result in a withdrawal or reduction in any rating on the Outstanding Bonds by the Rating Agency (if the Bonds are then rated by the Rating Agency). Upon the assumption of the duties of the Borrower by a purchaser, assignee or transferee as provided herein, the outgoing Borrower shall be released from all executory obligations so assumed; provided, however, the Borrower shall not be released from its obligation (x) to pay or reimburse the fees and expenses of the Issuer and the Trustee incurred prior to such sale, assignment or transfer and (y) to indemnify the Trustee and the Issuer with respect to any obligation, event or action incurred or arising prior to such sale, assignment or transfer. Nothing contained in this Section shall be construed to supersede any provisions regarding assignment and transfer of the Project contained in the Mortgage Loan Documents.

Notwithstanding anything to the contrary contained herein or in any other Borrower Document, the following shall be permitted and shall not require the prior written approval of the Issuer, the Lender or the Trustee: (a) the admission of RSEP Holding, LLC or affiliates thereof or other tax credit investors designated by the Authorized Borrower Representative in accordance with the Indenture, as partners in the Borrower, which is expected to occur on the date of the closing of the Mortgage Loan, (b) the transfer by the Investor Limited Partner of its interest in the Borrower in accordance with the terms of the Borrower's Organizational Documents, (c) the removal of the General Partner in accordance with Borrower's Organizational Documents and the replacement thereof with the Investor Limited Partner or any of its affiliates, (d) the transfer of ownership interests in the Investor Limited Partner or the General Partner, (e) upon the expiration of the tax credit compliance period, the transfer of the interests of the Investor Limited Partner in the Borrower to the Borrower's general partner or any of its affiliates, (f) any amendment to the Organizational Documents to memorialize the transfers or removal described above and (g)

transfers in connection with the PILOT Lease. The parties agree that this section shall control to the extent of any conflict in any Borrower Documents.

Section 5.3. Indemnification.

The Borrower shall indemnify and save harmless the Issuer and the Trustee and their respective past, present and future officers, directors, employees and agents and any person who "controls" the Issuer, the Trustee or the Purchaser within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20(a) of the Securities Exchange Act of 1934, as amended (each, an "Indemnified Party"), from and against all liabilities, obligations, claims, damages, penalties, fines, losses, costs and expenses ("Damages") in connection with the transactions contemplated hereby or the Project, including without limitation:

(a) all amounts paid in settlement of any litigation in connection with the Project or the transactions to be consummated in connection therewith commenced or threatened against any Indemnified Party if such settlement is effected with the consent of the Borrower,

(b) all expenses reasonably incurred in the investigation of, preparation for or defense of any litigation, proceeding or investigation in connection with the Project or the transactions to be consummated in connection therewith of any nature whatsoever, commenced or threatened against the Borrower, the Project or any Indemnified Party,

(c) any or all liability or loss, cost or expense, including attorneys' fees, arising out of or in connection with, or pertaining to the issuance, sale or delivery of the Bonds, including, but not limited to, liabilities arising under the Securities Act of 1933, the Securities Exchange Act of 1934 or any applicable state securities laws, but such indemnity for securities liabilities shall be subject to the limitation that such indemnity shall not have been determined by a binding legal precedent to be void as contrary to public policy and such indemnity for securities liability shall not include any liability or loss, cost or expense including attorneys' fees if determined to be so void,

(d) any judgments, penalties, fines, damages, assessments, indemnities or contributions, and

(e) the reasonable fees of attorneys, auditors, and consultants;

provided that the Damages arise out of:

(i) failure by the Borrower or its agents to comply with the terms of any Borrower Documents and any agreements, covenants, obligations, or prohibitions set forth therein,

(ii) any action, suit, claim or demand contesting or affecting the title of the Project,

(iii) any breach of any representation or warranty set forth in the Borrower Documents or any certificate delivered pursuant thereto (other than a representation or warranty made by the Issuer or the Trustee),

(iv) any action, suit, claim, proceeding or investigation of a judicial, legislative, administrative or regulatory nature (A) arising from or in connection with the acquisition, expansion, ownership, operation, occupation or use of the Project, including without limitation any action to recover damages for injury to person or property or (B) concerning or related to interest payable on the Bonds not being exempt from federal or state income taxation,

(v) any suit, action, administrative proceeding, enforcement action, or governmental or private action of any kind whatsoever commenced against the Borrower, the Project or any Indemnified Party which might adversely affect the validity or enforceability of the Bonds, the Borrower Documents, or the performance by the Borrower or any Indemnified Party of any of their respective obligations thereunder, or

(vi) any untrue statement or alleged untrue statement of a material fact made by the Borrower and contained in the Borrower Documents or in any information submitted by the Borrower to the Issuer or to the Purchaser in connection with the issuance and purchase of the Bonds, or any omission or alleged omission of any material fact necessary to be stated therein in order to make the statements therein not misleading or incomplete.

The Borrower furthermore releases the Issuer and the Trustee from, agrees that the Issuer and the Trustee shall not be liable for, and indemnifies, defends and holds the Issuer and the Trustee harmless against, all liabilities, claims, costs and expenses and attorneys' fees imposed upon, incurred or asserted against the Issuer or the Trustee on account of: (a) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquisition, financing, construction, occupation, design, possession, management, equipping, furnishing, maintenance, operation and use of the Project or from any work or thing done in or about the Project site, or any sidewalks, passageways, driveways, curbs, vaults and vault space, streets or parking areas on the Project site or adjacent thereto; (b) any breach or default on the part of the Borrower in the performance of any covenant or agreement of the Borrower under this Agreement, the Land Use Restriction Agreement, the Note or any related document, or arising from any act or failure to act by the Borrower, or any of its agents, contractors, servants, employees or licensees; (c) the Borrower's failure to comply with any requirement of this Agreement including the covenant in Section 5.4 hereof; (d) any action taken or omitted to be taken by the Issuer or the Trustee at the request of or with the consent of the Borrower; (e) the issuance, offering, sale, delivery or remarketing of the Bonds; and (f) any claim, action, investigation, audit or proceeding brought with respect to any matter set forth in clause (a), (b), (c), (d) or (e) above; provided, however, that the indemnification provided in this Section shall not apply to any matter arising or resulting from the willful misconduct of the Issuer or the gross negligence or willful misconduct of the Trustee or any information provided by the Issuer or the Trustee in writing for use in connection with the offering and sale of the Bonds.

The Borrower furthermore agrees to indemnify the Trustee for and to hold it harmless against all liabilities, claims, costs and expenses incurred without negligence, breach of contract or willful misconduct on the part of the Trustee, on account of any action taken or omitted to be taken by the Trustee in accordance with the terms of the Bonds or the Financing Documents or any action taken at the request of or with the consent of the Borrower, including the costs and expenses of the Trustee in defending itself against any such claim, action or proceeding brought in connection with the exercise or performance of any of its powers or duties under the Bonds or the Financing Documents.

If any action, suit or proceeding is brought against any Indemnified Party for Damages for which the Borrower is required to provide indemnification under this section, the Borrower, upon request, shall at its own expense resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by the Indemnified Party and approved by the Borrower, which approval shall not be unreasonably withheld. The Issuer may retain its own counsel and such expenses shall be borne by the Borrower. The Borrower shall not be liable for any settlement of any such action, suit or proceeding made without its consent, but if settled with the consent of the Borrower or if there be a final judgment for the plaintiff in any such action, the Borrower shall indemnify and hold harmless the Indemnified Parties from and against any Damages by reason of such settlement or judgment. The obligations of the Borrower under this Section 5.3 shall survive payment of the Bonds. Nothing contained herein shall require the Borrower to indemnify any Indemnified Party for any Damages resulting from the gross negligence or willful, wrongful acts of such Indemnified Party. When the Issuer incurs expenses or renders service in connection with any bankruptcy or insolvency proceeding, such expenses (including the reasonable fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally. Amounts payable to the Issuer hereunder shall be due and payable five days after demand and will accrue interest at the maximum rate allowed by law, commencing with the expiration of the five-day period.

The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers and employees of the Issuer and the Trustee, and any predecessor Trustee, respectively. That indemnification is intended to and shall be enforceable by the Issuer and the Trustee, respectively, to the full extent permitted by law, subject to the terms and conditions of this Agreement.

The obligations of the Borrower under this Section shall survive the termination of this Agreement and the payment and performance of all of the other obligations of the Borrower hereunder and under the other Borrower Documents, unless and until the Borrower has transferred the Project to an unaffiliated entity and the transferee has assumed the obligations of the Borrower pursuant to this Section.

Section 5.4. Tax-Exempt Status of the Bonds.

The Borrower covenants that it will comply with the requirements and conditions of the Tax Agreement and the Land Use Restriction Agreement and that it will requisition proceeds of the Bonds in accordance with the requirements of the Tax Agreement. The Borrower will not take or permit any action (other than an action required by the Mortgage Loan Documents) that would

adversely affect the Federal Tax Status of the Bonds or the exemption from personal income taxes of the State of the interest on the Bonds and, if it should take or permit any such action, it shall take all lawful actions that it can take to rescind such action promptly upon having knowledge thereof; and it will take such action or actions, including amendment of this Agreement and the Land Use Restriction Agreement, as may be necessary, in the opinion of Bond Counsel, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service from time to time pertaining to obligations the interest on which is excludable from gross income for federal income tax purposes and affecting the Project. If the Borrower becomes aware of any situation, event or condition which would result in the interest on the Bonds becoming subject to inclusion in gross income for federal income tax purposes or subject to personal income taxation by the State, the Borrower shall promptly give written notice thereof to the Issuer, the Servicer, and the Trustee. The covenants contained in this Section 5.4 with respect to the preservation of the tax-exempt status of the Bonds are made expressly subject to the Mortgage Loan Documents.

Section 5.5. Affirmative Covenants.

(a) Maintenance of Project. The Borrower shall maintain and preserve the Project in good working order and condition, ordinary wear and tear excepted, and shall from time to time make all necessary repairs, renewals, replacements, additions and improvements to the Project. All damage to apartment units shall be repaired promptly and apartment units shall be maintained so as to be available at substantially all times for habitation.

(b) Keeping of Records and Books of Account. The Borrower shall keep adequate records and books of account in which complete entries will be made in accordance with GAAP or indicating deviations therefrom, reflecting all financial transactions.

(c) Payment of Taxes, Etc. The Borrower shall promptly pay and discharge: all taxes, assessments, fees, and other Governmental charges or levies or imposed upon it or upon any of its properties, income or profits, before the same shall become delinquent; all lawful claims of materialmen, mechanics, carriers, warehousemen, landlords and other similar Persons for labor, materials, supplies and rentals, which if unpaid might by law become a lien upon its properties; any indebtedness heretofore or hereafter incurred by it when due, and discharge, perform and observe covenants, provisions and conditions to be discharged, performed and observed by it in connection therewith, or in connection with any agreement or other instrument relating thereto or in connection with any lien existing at any time upon any of its properties; provided, however, that the Borrower shall not be required to pay any of the foregoing if (a) the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings, (b) the Borrower shall have set aside on its books adequate reserves with respect thereto and (c) the title of the Borrower to, and its right to use, its properties is not materially and adversely affected thereby. The Borrower hereby agrees that, in the event it fails to pay or cause to be paid taxes, assessments, fees and other Governmental charges or levies or the premium on any required insurance, the Trustee may make such payment, but is not obligated to do so, and

the Trustee shall be reimbursed by the Borrower therefor with interest on the amount so advanced at the Interest Rate for Advances.

(d) Insurance. The Borrower shall at all times maintain or cause to be maintained insurance of such types and in such amounts as may be required by the Mortgage Loan Documents.

(e) Notice of Material Litigation. The Borrower shall promptly notify the Trustee and the Issuer in writing of any litigation, arbitration proceeding or administrative investigation, inquiry or other proceeding to which it may hereafter become a party or be subject to which may involve any material risk of any material judgment or liability (unless fully covered by insurance) or which may otherwise result in any material adverse change in the business or assets or in the condition, financial or otherwise, of the Borrower or which may materially impair the ability of the Borrower to perform the Borrower Documents, or any other agreement or instrument herein or therein contemplated.

(f) Notice of Default. In the event that any Event of Default occurs, the Borrower shall give prompt notice in writing of such happening to the Trustee and the Issuer.

(g) Performance of Contracts, Etc. Except to the extent contested in good faith, the Borrower shall perform according to and shall comply with all of its contractual obligations and all requirements of law if nonperformance thereof would materially and adversely affect the business or credit of the Borrower on an individual basis or would materially impair the ability of the Borrower to perform this Agreement, the Land Use Restriction Agreement or the Note or any other agreement or instrument herein or therein contemplated.

(h) Notice of Other Matters. The Borrower shall promptly notify the Trustee and the Issuer in writing of any of the following events:

(i) Any material change with respect to the business, assets, liabilities, financial condition, results of operations or business prospects of the Borrower other than changes in the ordinary course of business the effects of which have not been materially adverse.

(ii) A default by the Borrower in any material respect under any material agreement to which the Borrower is a party or by which the Borrower or its properties or assets may be bound, giving in each case the details thereof and specifying the action proposed to be taken with respect thereto.

(i) Cooperation in Perfecting Security Interests, Etc. The Borrower shall promptly perform, upon request of the Trustee, such acts as may be necessary or advisable to perfect and maintain any lien provided for in this Agreement or in any agreement or document contemplated herein or therein, or otherwise to carry out the intent of this Agreement. The Borrower shall promptly execute, deliver and perform or cause to be done, executed, delivered and performed, on request of the Trustee, all such documents,

instruments, agreements, things and acts, including, without limitation, financing statements, continuation statements and mortgages as may be necessary or advisable to perfect or maintain a lien on any and all assets or rights owned by the Borrower, or any interest of the Borrower therein, and the Trustee and its officers, employees and authorized agents, or any of them, are hereby irrevocably appointed the attorneys in fact of the Borrower to do all acts and things which the Trustee may deem necessary or advisable to preserve, perfect and continue perfected any lien in favor of the Trustee. Notwithstanding the foregoing, the Trustee shall not be responsible for the initial filing of financing statements or continuation statements.

(j) Environmental Matters. The Borrower will take and continue to take prompt action to remedy all environmental pollution and contamination, hazardous waste disposal and other environmental cleanup problems, if any, whether or not such cleanup problems have resulted from the order or request of a municipal, state, federal, administrative or judicial authority, or otherwise. The foregoing covenant shall not constitute or create a waiver of any rights the Borrower may have to pursue any legal rights or remedies against any third party for any environmental claims.

Section 5.6. Negative Covenants.

(a) Non-discrimination. The Borrower will not and will require each contractor, subcontractor and commercial tenant of the Project to covenant that it will not discriminate by reason of race, color, creed, handicap, national origin or sex in the employment of any Person employed by it in connection with the Project or working in or on the Project. The Borrower will require each manager of the Project to covenant that in the leasing of the Project it will not discriminate by reason of age, race, color, creed, handicap, national origin, sex, marital status, sexual orientation or gender identity, and will not discriminate against persons with minor dependents.

(b) Nature of Business. The Borrower will not change the general character of its business as conducted at the date hereof, or engage in any type of business not reasonably related to its business as normally conducted.

Section 5.7. Additional Indebtedness.

So long as no Event of Default or Default hereunder shall have occurred and be continuing, the Borrower shall be permitted to incur any indebtedness for any Project Cost or other obligation or payment due under this Agreement, the Indenture or the Land Use Restriction Agreement, or otherwise, including indebtedness to the Seller of the Project.

Section 5.8. 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 Agreement or the Indenture, failure of the Borrower to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default hereunder or under the Indenture or a default with respect to the Bonds or the Mortgage Loan Documents. The Borrower will provide

to the Trustee and the Issuer electronic copies of the annual financial statements of the Project and notices of material events provided pursuant to the Continuing Disclosure Agreement.

Section 5.9. Delivery of Borrowers' Post-Issuance Tax Compliance Procedures.

The Borrower agrees (i) that it will have adopted within 45 days of the issuance of the Bonds, written procedures as to post-issuance compliance with the requirements of the Code relevant to the Project and the Bonds, (ii) to provide the Issuer with a copy of such procedures and any periodic report (not less frequently than annually) that is produced as a result of its implementation of the Borrower's post-issuance tax compliance procedures and (iii) to provide notice to the Issuer of all remedial actions taken to ensure that all non-qualified bonds, if any, are remediated as and when required under the applicable provisions of the Code and Treasury Regulations.

Section 5.10. Reliance.

It is expressly understood and agreed by the parties to this Agreement that: (1) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to it by the Trustee, any Holder or the Borrower as to the existence of a fact or state of affairs required under this Agreement to be noticed by the Issuer; (2) the Issuer shall not be under any obligation to perform any recordkeeping or to provide any legal service, it being understood that such services shall be performed by the Trustee or the Borrower; and (3) none of the provisions of this Agreement shall require the Issuer to expend or risk its own funds (apart from the proceeds of Bonds issued under this Indenture) or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights under this Agreement unless it first shall have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking such action.

**ARTICLE 6
PREPAYMENT AND TERMINATION**

Section 6.1. Prepayment.

The Loan is not subject to prepayment.

Section 6.2. Borrower's Obligations Upon Tender of Bonds.

If any Tendered Bond is not remarketed on any Mandatory Tender Date and a sufficient amount is not available in the Special Funds for the purpose of paying the purchase price of such Bond pursuant to Section 3.01 of the Indenture, the Borrower will cause to be paid to the Trustee as set forth in the Indenture, an amount equal to the amount by which the principal purchase price of all Bonds tendered and not remarketed exceeds the amount otherwise available pursuant to Section 3.01(e) of the Indenture.

Section 6.3. Option to Terminate.

The Borrower shall have the option to cancel or terminate this Agreement at any time when (a) the Indenture shall have been released in accordance with its provisions, and (b) sufficient

money or security acceptable to the Issuer and the Trustee are on deposit with the Trustee or the Issuer, or both, to meet all Loan Payments and Additional Payments due or to become due through the date on which the last of the Bonds is then scheduled to be retired or redeemed or, with respect to Additional Payments to become due, provisions satisfactory to the Trustee and the Issuer are made for paying such amounts as they come due. Such option shall be exercised by the Authorized Borrower Representative, on behalf of the Borrower, giving the Issuer and the Trustee five days' notice in writing of such cancellation or termination and such cancellation or termination shall become effective at the end of such notice period. The provisions of this Section shall not be deemed to permit a prepayment of the Note other than in accordance with its terms.

ARTICLE 7 EVENTS OF DEFAULT AND REMEDIES

Section 7.1. Events of Default.

Subject to all applicable notice and cure periods, each of the following shall be an "Event of Default" hereunder:

(a) The Borrower shall fail to pay any Loan Payment on or prior to the date on which that Loan Payment is due and payable to the extent Borrower receives ten (10) day prior written notice that amounts on deposit in the Bond Fund, including amounts credited as paid and/or transferred from the Collateral Fund and the Project Fund are insufficient to pay the Bond Service Charges due on the next Bond Payment Date;

(b) The Borrower shall fail to observe and perform any other agreement, term or condition contained in this Agreement and the continuation of such failure for a period of 30 days after written notice thereof shall have been given to the Borrower by the Issuer or the Trustee, or for such longer period as the Issuer and the Trustee may agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the Borrower institutes curative action within the applicable period and diligently pursues that action to completion, which must be resolved within 180 days after the aforementioned notice;

(c) The Borrower shall: (i) admit in writing its inability to pay its debts generally as they become due; (ii) have an order for relief entered in any case commenced by or against it under the federal bankruptcy laws, as now or hereafter in effect, which is not dismissed within 90 days; (iii) commence a proceeding under any other federal or state bankruptcy, insolvency, reorganization or similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undischarged and unstayed for ninety days; (iv) make an assignment for the benefit of creditors; or (v) have a receiver or trustee appointed for it or for the whole or any substantial part of its property which appointment is not vacated within a period of 90 days;

(d) Any representation or warranty made by the Borrower herein or any statement in any report, certificate, financial statement or other instrument furnished in

connection with this Agreement or with the purchase of the Bonds shall at any time prove to have been false or misleading in any adverse material respect when made or given;

(e) There shall occur an "Event of Default" as defined in the Indenture; and

(f) There shall occur a default by the Borrower under the Land Use Restriction Agreement that is continuing after any applicable notice and cure period.

Notwithstanding the foregoing, if, by reason of Force Majeure, the Borrower is unable to perform or observe any agreement, term or condition hereof which would give rise to an Event of Default under subsection (b) hereof, the Borrower shall not be deemed in default during the continuance of such inability. However, the Borrower shall promptly give notice to the Trustee and the Issuer of the existence of an event of Force Majeure and shall use commercially reasonable efforts to remove the effects thereof; provided that the settlement of strikes or other industrial disturbances shall be entirely within its discretion.

The term "Force Majeure" shall mean, without limitation, the following:

(i) acts of God; strikes, lockouts or other industrial disturbances; acts of terrorism or of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornados; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; or

(ii) any cause, circumstance or event not reasonably within the control of the Borrower.

The declaration of an Event of Default under subsection (c) above, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding that declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

Section 7.2. Remedies on Default.

Whenever an Event of Default shall have happened and be continuing, any one or more of the following remedial steps may be taken:

(a) If acceleration of the principal amount of the Bonds has been declared pursuant to Section 6.03 of the Indenture, the Trustee shall declare all Loan Payments to be due and payable together until any other amounts payable by the Borrower under this Agreement and the Note whereupon the same shall become immediately due and payable;

(b) The Trustee may exercise any or all or any combination of the remedies specified in this Agreement;

(c) The Issuer or the Trustee may have access to, inspect, examine and make copies of the books, records, accounts and financial data of the Borrower pertaining to the Project; or

(d) The Issuer or the Trustee may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Agreement and the Land Use Restriction Agreement and the Note or to enforce the performance and observance of any other obligation or agreement of the Borrower under those instruments.

Notwithstanding the foregoing, neither the Issuer nor the Trustee shall be obligated to take any step which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until satisfactory indemnity has been furnished to the Issuer or the Trustee at no cost or expense to the Issuer or the Trustee. Any amounts collected as Loan Payments or applicable to Loan Payments and any other amounts which would be applicable to payment of Bond Service Charges collected pursuant to action taken under this Section shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture or, if the Outstanding Bonds have been paid and discharged in accordance with the provisions of the Indenture, shall be paid as provided in Section 4.14 of the Indenture for transfers of remaining amounts in the Bond Fund.

The provisions of this Section are subject to the further limitation that the rescission by the Trustee of its declaration that all of the Bonds are immediately due and payable also shall constitute an annulment of any corresponding declaration made pursuant to paragraph (a) of this Section and a waiver and rescission of the consequences of that declaration and of the Event of Default with respect to which that declaration has been made, provided that no such waiver or rescission shall extend to or affect any subsequent or other default or impair any right consequent thereon.

Notwithstanding anything in this Agreement to the contrary, the Issuer shall have the right to independently enforce the Reserved Rights and shall not be required to obtain the consent of the Trustee, the Holders or any other person or entity in order to enforce any of the Reserved Rights.

Section 7.3. No Remedy Exclusive.

No remedy conferred upon or reserved to the Issuer or the Trustee by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, the Land Use Restriction Agreement or the Note, or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made herein.

Section 7.4. Agreement to Pay Attorneys' Fees and Expenses.

If an Event of Default should occur and the Issuer or the Trustee should incur expenses, including attorneys' fees, in connection with the enforcement of this Agreement, the Land Use Restriction Agreement or the Note or the collection of sums due thereunder, the Borrower shall reimburse the Issuer and the Trustee, as applicable, for the expenses reasonably incurred upon demand.

Section 7.5. No Waiver.

No failure by the Issuer or the Trustee to insist upon the strict performance by the Borrower of any provision hereof shall constitute a waiver of their right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the Borrower to observe or comply with any provision hereof.

Section 7.6. Notice of Default.

The Borrower shall notify the Trustee, the Investor Limited Partner and the Issuer immediately if it becomes aware of the occurrence of any Event of Default hereunder or of any fact, condition or event which, with the giving of notice or passage of time or both, would become an Event of Default.

Section 7.7. Investor Limited Partner's Cure Rights.

The Issuer hereby agrees that any cure of any Event of Default hereunder made or tendered by the Investor Limited Partner shall be deemed to be cured by the Borrower, and shall be accepted or rejected by the Issuer on the same basis as if made or tendered by the Borrower.

**ARTICLE 8
MISCELLANEOUS**

Section 8.1. Term of Agreement.

This Agreement shall be and remain in full force and effect from the date of delivery of the Bonds to the Holder until such time as all of the Bonds shall have been fully paid (or provision made for such payment) pursuant to the Indenture and all other sums payable by the Borrower under this Agreement and the Note shall have been paid, except for obligations of the Borrower under Sections 4.4, 5.3 and 5.4 hereof, which shall survive any termination of this Agreement as provided herein.

Section 8.2. Amounts Remaining in Funds.

Pursuant to Section 4.13 of the Indenture, any amounts in the Bond Fund remaining unclaimed by the Holders of Bonds for two years after the due date thereof (whether at stated maturity or otherwise), shall be deemed to belong to and shall be paid, at the written request of the Borrower, to the Borrower by the Trustee as overpayment of Loan Payments. With respect to that principal of and interest on the Bonds to be paid from money paid to the Borrower pursuant to the preceding sentence, the Holders of the Bonds entitled to such money shall look solely to the

Borrower for the payment of such money. Further, any amounts remaining in the Bond Fund, the Collateral Fund or any other fund or account (except the Project Fund and the Rebate Fund) after all of the Outstanding Bonds shall be deemed to have been paid and discharged under the provisions of the Indenture and all other amounts required to be paid under this Agreement, the Note and the Indenture have been paid, shall, subject to Section 4.14 of the Indenture, be paid to the Borrower to the extent that such money are in excess of the amounts necessary to effect the payment and discharge of the Outstanding Bonds. Any excess funds in the Project Fund shall be applied as provided in Section 3.6 of this Agreement and in Section 4.14 of the Indenture.

Section 8.3. Notices.

All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by first class mail, postage prepaid, or forwarded by overnight courier service, delivery charges prepaid, and addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate, request or other communication given hereunder to the Issuer, the Borrower, the Investor Limited Partner, the Lender or the Trustee shall also be given to the others. The Borrower, the Issuer, the Lender, Investor Limited Partner and the Trustee, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Section 8.4. Extent of Covenants of the Issuer; No Personal Liability.

All covenants, obligations and agreements of the Issuer contained in this Agreement and the Indenture shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future director, member, officer, employee or agent of the Issuer or the Governing Body in other than his official capacity, and neither the members of the Governing Body nor any official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof or by reason of the covenants, obligations or agreements of the Issuer contained in this Agreement or in the Indenture.

Section 8.5. Limited Liability of the Issuer.

(a) All obligations of the Issuer incurred hereunder and under the Indenture shall be limited obligations of the Issuer, payable solely and only from Bond proceeds, revenues and other amounts derived by the Issuer from the Trust Estate. No agreements or provisions contained in this Agreement or any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with the Project or the issuance, sale and delivery of the 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 with respect to this Agreement and the application of revenues therefrom that have been pledged to the payment of the Bonds and of the proceeds of the Bonds. No failure of the Issuer to comply with any term, condition, covenant or agreement herein 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 this Agreement or revenues therefrom that have been pledged to the payment of the Bonds or proceeds of the 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 this Agreement or revenues therefrom that have been pledged to the payment of the Bonds or the proceeds of the Bonds. Anything herein to the contrary notwithstanding, the Issuer shall not be obligated to take any action or execute any instruments pursuant to any provision of this Agreement until it shall have been requested to do so by the Borrower or the Trustee and shall have received from the Borrower, the Trustee, or the Holders assurance satisfactory to the Issuer that it will be reimbursed for its reasonable expenses incurred in taking such action or executing such instruments.

(b) No recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained in this Agreement or in any Bond for any claim based thereon or otherwise in respect thereof, against any director, officer, employee or agent, as such, in his individual capacity, past, present or future, of the Issuer or of any successor corporation, either directly or through the Issuer or any successor corporation, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assignment or penalty or otherwise; it being expressly agreed and understood that the Bonds and this Agreement are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any director, officer, employee or agent, as such, past, present or future, of the Issuer or of any successor corporation, either directly or through the Issuer or any successor corporation, under or by reason of any of the obligations, promises or agreements entered into between the Issuer, the Trustee or the Borrower whether contained in this Agreement or to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such director, officer, employee or agent is, by the execution of this Agreement, and as a condition of, and as part of the consideration for, the execution of this Agreement, expressly waived and released.

Section 8.6. Limited Liability of Borrower.

Anything in this Agreement to the contrary notwithstanding, the monetary obligations of the Borrower contained in this Agreement (except as to the Borrower only, for fees, payments and indemnification under Sections 4.4, 5.3 and 7.4 hereof) shall be limited obligations payable solely from the income and assets of the Project and neither the Borrower nor any partner, manager, member, director, official or officer of the Borrower shall have any personal liability for the satisfaction of any obligation of the Borrower or claim against the Borrower, arising out of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, neither the Lender, the Issuer nor the Trustee may assert any claim arising hereunder against the Borrower's interest in the Project, any reserve or deposit made with the Lender in connection with the Mortgage Loan, or in the rents or other income of the Project for the payment of any charge or obligation due hereunder.

Section 8.7. Binding Effect.

This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Issuer, the Borrower, the Trustee and their respective permitted successors and assigns provided that this Agreement may not be assigned by the Borrower (except in connection with a sale or transfer of assets pursuant to Section 5.2 hereof) and may not be assigned by the Issuer except to the Trustee pursuant to the Indenture or as otherwise may be necessary to enforce or secure payment of Bond Service Charges. This Agreement may be enforced only by the parties, their assignees and others who may, by law, stand in their respective places.

Section 8.8. Amendments and Supplements.

Except as otherwise expressly provided in this Agreement or the Indenture, subsequent to the issuance of the Bonds and prior to all conditions provided for in the Indenture for release of the Indenture having been met, this Agreement, the Land Use Restriction Agreement and the Note may not be effectively amended, changed, modified, altered or terminated except in accordance with the provisions of Article X of the Indenture, as applicable.

Section 8.9. Execution Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 8.10. Severability.

If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 8.11. Governing Law.

This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

Section 8.12. Mortgage Loan Documents and Regulations Control.

(a) In the event of any conflict and to the extent that there is any inconsistency or ambiguity between the provisions of this Agreement and the provisions of the Mortgage Loan Documents, the Mortgage Loan Documents will be deemed to be controlling, and any such ambiguity or inconsistency will be resolved in favor of, and pursuant to the terms of the Mortgage Loan Documents.

(b) Enforcement of the covenants in this Agreement will not result in, and neither the Issuer nor the Trustee has or shall be entitled to assert, any claim against the

Project, the Mortgage Loan proceeds, any reserves or deposits in connection with the Mortgage Loan transaction, or the rents or deposits or other income of the Project.

(c) Failure of the Issuer or the Borrower to comply with any of the covenants set forth in this Agreement will not serve as a basis for default on the Mortgage Loan, the underlying mortgage, or any of the other Mortgage Loan Documents.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Agreement to be duly executed in their respective names, all as of the date hereinbefore written.

**THE HEALTH, EDUCATIONAL AND
HOUSING FACILITY BOARD OF THE CITY
OF CHATTANOOGA, TENNESSEE**

By: _____
Chair

ATTEST:

By: _____
Secretary

[ISSUER SIGNATURE PAGE TO LOAN AGREEMENT]

ESPERO CHATTANOOGA, LP

By: Espero GP Corporation, a Tennessee
nonprofit corporation, its General Partner

By: _____
_____, President

[BORROWER SIGNATURE PAGE TO LOAN AGREEMENT]

EXHIBIT "A"

FORM OF NOTE

This Note has not been registered under the Securities Act of 1933. Its transferability is restricted by the Trust Indenture and the Loan Agreement referred to herein.

\$10,700,000 _____, 2023

ESPERO CHATTANOOGA, LP, a Tennessee limited partnership (the "Borrower"), for value received, promises to pay in installments to **[Trustee Name]**, as Trustee (the "Trustee") under the Indenture hereinafter referred to, the principal amount of

TEN MILLION SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS (\$10,700,000)

and to pay interest on the unpaid balance of such principal sum from and after the date hereof at the rate of ___% per annum to and not including the Initial Remarketing Date, and thereafter, to the applicable Remarketing Rate (as defined in the Trust Indenture described below), until the payment of such principal sum has been made or provided for. The principal amount stated above shall be paid on or before _____ 1, 202_. Interest shall be calculated on the basis of a 360 day year consisting of twelve 30 day months. Interest on this Note shall be paid in Federal Reserve funds each _____ 1 and _____ 1, commencing _____ 1, 2023 (the "Interest Payment Dates").

This Note has been executed and delivered by the Borrower to the Trustee pursuant to a certain Loan Agreement dated as of November 1, 2023 (the "Loan Agreement"), between The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee (the "Issuer") and the Borrower. Terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement and the Indenture, as defined below.

Under the Loan Agreement, the Issuer has loaned the Borrower the principal proceeds received from the sale of the Issuer's \$10,700,000 Collateralized Multifamily Housing Bonds (Espero Chattanooga Project), Series 2023 (the "Bonds") to assist in the financing of the Project, and the Borrower has agreed to repay such loan by making payments ("Loan Payments") at the times and in the amounts set forth in this Note for application to the payment of Bond Service Charges on the Bonds as and when due. The Bonds have been issued, concurrently with the execution and delivery of this Note, pursuant to, and are secured by, the Trust Indenture dated as of November 1, 2023 (the "Indenture"), between the Issuer and the Trustee.

To provide funds to pay the principal of and interest on the Bonds as and when due as specified herein, the Borrower hereby agrees to and shall make Loan Payments in Federal Reserve funds on each Interest Payment Date in an amount equal to the Bond Service Charges on the Bonds payable on such Interest Payment Date. In addition, to provide funds to pay the Bond Service Charges on the Bonds as and when due at any other time, the Borrower hereby agrees to and shall make Loan Payments in Federal Reserve funds on any other date on which any Bond Service Charges on the Bonds shall be due and payable, whether at maturity, upon acceleration or otherwise, in an amount equal to those Bond Service Charges.

If payment or provision for payment in accordance with the Indenture is made in respect of the Bond Service Charges on the Bonds from money other than Loan Payments, this Note shall be deemed paid to the extent such payments or provision for payment of Bonds has been made. Consistent with the provisions of the immediately preceding sentence, the Borrower shall have credited against its obligation to make Loan Payments any amounts transferred from the Project Fund or the Collateral Fund to the Bond Fund. Subject to the foregoing, all Loan Payments shall be in the full amount required hereunder.

All Loan Payments shall be made to the Trustee at its designated corporate trust office for the account of the Issuer and deposited in the Bond Fund created by the Indenture. Except as otherwise provided in the Indenture, the Loan Payments shall be used by the Trustee to pay the Bond Service Charges on the Bonds as and when due.

The obligation of the Borrower to make the payments required hereunder shall be absolute and unconditional and the Borrower shall make such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set off, recoupment or counterclaim which the Borrower may have or assert against the Issuer, the Trustee or any other person.

Whenever an event of default under Section 6.01 of the Indenture shall have occurred and, as a result thereof, the principal of and any premium on all Bonds then Outstanding, and interest accrued thereon, shall have been declared to be immediately due and payable pursuant to Section 6.03 of the Indenture, the unpaid principal amount of and any premium and accrued interest on this Note shall also be due and payable in Federal Reserve funds on the date on which the principal of and premium and interest on the Bonds shall have been declared due and payable; provided that the annulment of a declaration of acceleration with respect to the Bonds shall also constitute an annulment of any corresponding declaration with respect to this Note.

The payment obligations of this Note are non-recourse to the Borrower to the extent set forth in Section 8.6 of the Loan Agreement.

In the event of any conflict and to the extent that there is any inconsistency or ambiguity between the provisions of this Note and the provisions of the Mortgage Loan Documents, the Mortgage Loan Documents will be deemed to be controlling, and any such ambiguity or inconsistency will be resolved in favor of, and pursuant to the terms of the Mortgage Loan Documents.

Enforcement of the covenants in this Note will not result in, and neither the Issuer nor the Trustee has or shall be entitled to assert, any claim against the Project or the Mortgage Loan proceeds.

Failure of the Issuer or the Borrower to comply with any of the covenants set forth in this Note will not serve as a basis for default on the Mortgage Loan or any of the other Mortgage Loan Documents.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed in its name as of the date first above written.

ESPERO CHATTANOOGA, LP

By: Espero GP Corporation, a Tennessee
nonprofit corporation, its General Partner

By: _____
_____, President

EXHIBIT "B"

FORM OF DISBURSEMENT REQUEST

STATEMENT NO. _____ REQUESTING DISBURSEMENT OF FUNDS FROM
PROJECT FUND PURSUANT TO SECTION 3.6 OF THE LOAN AGREEMENT

Pursuant to Section 3.6 of the Loan Agreement dated as of November 1, 2023 (the "Loan Agreement"), between THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE (the "Issuer") and ESPERO CHATTANOOGA, LP, a Tennessee limited partnership (the "Borrower"), the undersigned Authorized Borrower Representative hereby requests and authorizes [**Trustee Name**], as trustee (the "Trustee"), as depository of the Project Fund created by the Trust Indenture dated as of November 1, 2023 (the "Indenture"), between the Issuer and the Trustee, to pay to the person(s) listed on the Disbursement Schedule attached hereto, out of the money deposited in the Project Fund the aggregate sum of \$_____ to pay the costs of the items listed in the Disbursement Schedule. Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Indenture.

In connection with the foregoing request and authorization, the undersigned hereby certifies that:

- (a) Each item shown on the Disbursement Schedule is properly payable as a cost of the Project in accordance with the terms and conditions of the Loan Agreement, and none of those items has formed the basis for any disbursement heretofore made from said Project Fund or under the Mortgage Loan.
- (b) Each such item being paid with an advance under the Mortgage Loan is or was necessary in connection with the acquisition, construction, installation, equipping or improvement of the Project.
- (c) The Borrower has received appropriate waivers of any mechanics' or other liens with respect to each item shown on the Disbursement Schedule.
- (d) Each item shown on the Disbursement Schedule, is as described in the information statement filed by the Issuer in connection with the issuance of the Bonds, as required by Section 149(e) of the Code; provided that if any such item is not as described in that information statement, attached hereto is an Opinion of Bond Counsel to the effect that such disbursement will not adversely affect the Federal Tax Status of the Bonds.
- (e) There is no current or existing event of default pursuant to the terms of the Loan Agreement or the Land Use Restriction Agreement, and no event exists which by notice or passage of time or both would constitute an event of default under any of the foregoing documents.

- (f) Each item shown on the Disbursement Schedule was or is necessary in connection with the Project and qualifies for disbursement pursuant to the provisions of the Loan Agreement.
- (g) No representation or warranty of the Borrower contained in the Loan Agreement or the Land Use Restriction Agreement is materially incorrect or inaccurate, and there has been no "Event of Default" or default under the terms of any of those documents which has occurred and is continuing after any applicable notice and cure period and no event shall exist which by notice, passage of time or both would constitute an "Event of Default" or default under any of those documents.
- (h) There are no liens on the Project except Permitted Liens and those permitted or provided for by the Loan Agreement or the Mortgage Loan Documents.
- (i) This statement and all exhibits hereto, including the Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the Trustee for its actions taken pursuant hereto.

This statement constitutes the approval of the Borrower of each disbursement hereby requested and authorized.

This _____ day of _____, 20__.

ESPERO CHATTANOOGA, LP

By: Espero GP Corporation, a Tennessee
nonprofit corporation, its General Partner

By: _____
_____, President

DISBURSEMENT SCHEDULE

TO STATEMENT NO. _____ REQUESTING AND AUTHORIZING
DISBURSEMENT OF FUNDS FROM PROJECT FUND PURSUANT TO SECTION 3.6 OF
THE LOAN AGREEMENT

PAYEE

AMOUNT

WIRE INSTRUCTIONS

EXHIBIT "C"

COMPLETION CERTIFICATE

\$10,700,000

The Health, Educational And Housing Facility Board
of the City of Chattanooga, Tennessee
Collateralized Multifamily Housing Bonds
(Espero Chattanooga Project)
Series 2023

Pursuant to Section 3.9 of the Loan Agreement dated as of November 1, 2023 (the "Loan Agreement"), between **THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE** (the "Issuer") and **ESPERO CHATTANOOGA, LP**, a Tennessee limited partnership (the "Borrower"), and relating to the above-captioned Bonds, the undersigned Authorized Borrower Representative hereby certifies that (with capitalized words and terms used and not defined in this Certificate having the meanings assigned or referenced in the Loan Agreement):

- (a) The Project was substantially completed and available and suitable for use as multifamily housing on _____.
- (b) The acquisition, construction, equipping and improvement of the Project and those other facilities have been accomplished in such a manner as to conform in all material respects with all applicable zoning, planning, building, environmental and other similar governmental regulations.
- (c) The costs of the Project financed with the Loan were \$_____.
- (d) Except [as provided in subsection (e) of this Certificate][for amounts retained by the Lender in the _____ for the payment of costs of the Project not yet due or for liabilities which the Borrower is contesting or which otherwise should be retained], all costs of that acquisition and installation due on or after the date of this Certificate and now payable have been paid.

[(e) The Trustee shall retain \$_____ in the Project Fund for the payment of costs of the Project not yet due or for liabilities which the Borrower is contesting or which otherwise should be retained, for the following reasons:]
- (e) At least 95% of the proceeds of the Bonds were expended to finance qualified Costs of the Project as described in the Tax Agreement.
- (f) This Certificate is given without prejudice to any rights against third parties that now exist or subsequently may come into being.

IN WITNESS WHEREOF, the Authorized Borrower Representative has set his or her hand as of the ____ day of _____, 20__.

ESPERO CHATTANOOGA, LP

By: Espero GP Corporation, a Tennessee
nonprofit corporation, its General Partner

By: _____
_____, President

36509356.1

TRUST INDENTURE

Dated as of

November 1, 2023

between

THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD
OF THE CITY OF CHATTANOOGA, TENNESSEE
as Issuer

and

[Trustee Name],
as Trustee

Relating to

\$10,700,000

The Health, Educational and Housing Facility Board of
the City of Chattanooga, Tennessee
Collateralized Multifamily Housing Bonds
(Espero Chattanooga Project)
Series 2023

INDEX

(This Index is not a part of the Trust Indenture
but rather is for convenience of reference only)

	<u>Page</u>
ARTICLE I DEFINITIONS	3
Section 1.01 Definitions	3
Section 1.02 Interpretation	18
Section 1.03 Captions and Headings	18
Section 1.04 Content of Certificates and Opinions	19
ARTICLE II AUTHORIZATION AND TERMS OF BONDS	19
Section 2.01 Authorization and General Terms of Bonds	19
Section 2.02 Maturity and Interest	20
Section 2.03 Execution and Authentication of Bonds	21
Section 2.04 Source of Payment of Bonds	21
Section 2.05 Payment and Ownership of Bonds	21
Section 2.06 Registration and Transfer of Bonds	22
Section 2.07 Mutilated, Lost, Wrongfully Taken or Destroyed Bonds	23
Section 2.08 Cancellation of Bonds	23
Section 2.09 Delivery of the Bonds	24
Section 2.10 Special Agreement with Holders	25
Section 2.11 Book-Entry Only System	25
Section 2.12 Terms of Draw-Down Bonds	26
ARTICLE III MANDATORY TENDER AND REMARKETING OF BONDS	27
Section 3.01 Mandatory Tender	27
Section 3.02 Mandatory Tender Notice	28
Section 3.03 Remarketing of Bonds	29
Section 3.04 Cancellation of Bonds	31
ARTICLE IV REVENUES AND FUNDS	32
Section 4.01 Creation of Funds	32
Section 4.02 Allocation of Bond Proceeds and Other Deposits	32
Section 4.03 Bond Fund	33
Section 4.04 Project Fund	33
Section 4.05 Costs of Issuance Fund	34
Section 4.06 Collateral Fund	35
Section 4.07 Completion of the Project	35
Section 4.08 Expense Fund	35
Section 4.09 Rebate Fund	36
Section 4.10 Tax Agreement	36
Section 4.11 Investment of Special Funds	37
Section 4.12 Money to be Held in Trust	37
Section 4.13 Valuation	37

Section 4.14	Nonpresentment of Bonds	38
Section 4.15	Repayment to the Borrower	38
ARTICLE V	THE TRUSTEE AND REMARKETING AGENT	39
Section 5.01	Trustee’s Acceptance and Responsibilities	39
Section 5.02	Certain Rights and Obligations of the Trustee	40
Section 5.03	Fees, Charges and Expenses of Trustee	43
Section 5.04	Intervention by Trustee	43
Section 5.05	Successor Trustee	44
Section 5.06	Appointment of Co-Trustee	44
Section 5.07	Resignation by the Trustee	45
Section 5.08	Removal of the Trustee	45
Section 5.09	Appointment of Successor Trustee	45
Section 5.10	Adoption of Authentication	46
Section 5.11	Dealing in Bonds	47
Section 5.12	Representations, Agreements and Covenants of Trustee	47
Section 5.13	Interpleader	47
Section 5.14	Survival of Certain Provisions	47
Section 5.15	Concerning the Remarketing Agent	47
Section 5.16	Qualification of Remarketing Agent	48
Section 5.17	Information for Rating Agency and Notice of Certain Events	49
ARTICLE VI	DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND HOLDERS	49
Section 6.01	Defaults; Events of Default	49
Section 6.02	Notice of Default	50
Section 6.03	Acceleration	50
Section 6.04	Other Remedies; Rights of Holders	51
Section 6.05	Right of Holders to Direct Proceedings	52
Section 6.06	Application of Money	52
Section 6.07	Remedies Vested in Trustee	53
Section 6.08	Rights and Remedies of Holders	54
Section 6.09	Termination of Proceedings	54
Section 6.10	Waivers of Events of Default	54
ARTICLE VII	SUPPLEMENTAL INDENTURES	55
Section 7.01	Supplemental Indentures Generally	55
Section 7.02	Supplemental Indentures Not Requiring Consent of Holders	55
Section 7.03	Supplemental Indentures Requiring Consent of Holders	56
Section 7.04	Consent of Borrower and Investor Limited Partner	58
Section 7.05	Responsibilities of Trustee	58
Section 7.06	Authorization to Trustee; Effect of Supplement	58
Section 7.07	Opinion of Counsel	59
Section 7.08	Modification by Unanimous Consent	59
ARTICLE VIII	DEFEASANCE	59
Section 8.01	Release of Indenture	59

Section 8.02	Payment and Discharge of Bonds	60
Section 8.03	Survival of Certain Provisions	60
ARTICLE IX	COVENANTS AND AGREEMENTS OF THE ISSUER	61
Section 9.01	Covenants and Agreements of the Issuer	61
Section 9.02	Observance and Performance of Covenants, Agreements, Authority and Actions	62
Section 9.03	Enforcement of Issuer’s Obligations	62
ARTICLE X	AMENDMENTS TO LOAN AGREEMENT, NOTE AND LAND USE RESTRICTION AGREEMENT	63
Section 10.01	Amendments Not Requiring Consent of Holders	63
Section 10.02	Amendments Requiring Consent of Holders	63
Section 10.03	Consent of Borrower and Investor Limited Partner	64
Section 10.04	Opinion of Bond Counsel	64
ARTICLE XI	MISCELLANEOUS	64
Section 11.01	Limitation of Rights	64
Section 11.02	Severability	65
Section 11.03	Notices	65
Section 11.04	Suspension of Mail and Courier Service	66
Section 11.05	Payments Due on Saturdays, Sundays and Holidays	66
Section 11.06	Instruments of Holders	67
Section 11.07	Priority of this Indenture	67
Section 11.08	Extent of Covenants; No Personal Liability	67
Section 11.09	Binding Effect	68
Section 11.10	Counterparts	68
Section 11.11	Governing Law	68

TRUST INDENTURE

THIS TRUST INDENTURE dated as of November 1, 2023 (this “**Indenture**”), is made by and between **THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE**, a public nonprofit corporation and instrumentality of the City of Chattanooga, Tennessee (the “**Issuer**”) and [TRUSTEE NAME], a _____, with its designated corporate trust office located in Nashville, Tennessee, as trustee (the “**Trustee**”), under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals and granting clauses being used therein as defined in Article I hereof):

WITNESSETH:

WHEREAS, the Issuer has been duly created and organized pursuant to and in accordance with the provisions of Part 3, Chapter 101, Title 48 of the Tennessee Code Annotated, as amended (the “**Act**”), and is now existing and operating as a public nonprofit corporation and an instrumentality of the City of Chattanooga; and

WHEREAS, pursuant to the laws of the State of Tennessee, particularly the Act, the Issuer is authorized to carry out the public purposes described in the Act by issuance of its revenue bonds to provide funds for the financing of the acquisition, construction, rehabilitation and equipping of multifamily housing facilities located in the City of Chattanooga (the “**City**”); and

WHEREAS, Espero Chattanooga, LP, a Tennessee limited partnership (the “**Borrower**”), has requested that the Issuer issue its revenue bonds, the proceeds of which will be used to finance the costs of the acquisition, construction and equipping by the Borrower of a multifamily housing rental development in the City consisting of approximately 60 apartment units known as Espero Chattanooga (the “**Project**”), whereby forty percent (40%) of such units in the Project will be occupied by “individuals whose income is sixty percent (60%) or less of area median gross income,” within the meaning of Section 142(d) of the Internal Revenue Code of 1986, as amended, and applicable regulations issued thereunder or applicable thereto (the “**Code**”); and

WHEREAS, pursuant to the Act, the Issuer has determined to issue, sell and deliver its Collateralized Multifamily Housing Bonds (Espero Chattanooga Project), Series 2023 in the aggregate principal amount of \$10,700,000 (the “**Bonds**”) and to loan the proceeds derived from the sale thereof to the Borrower (the “**Loan**”) to assist in the financing of the Project to be undertaken by the Borrower pursuant to the terms of a Loan Agreement between the Issuer and the Borrower (the “**Loan Agreement**”); and

WHEREAS, to evidence its obligation to repay the Loan, the Borrower will execute a Promissory Note made by the Borrower to the order of the Trustee in a principal amount equal to the aggregate principal amount of the Bonds (the “**Note**”); and

WHEREAS, the Bonds will be secured by this Indenture, and the Issuer is authorized to execute and deliver this Indenture and to do or cause to be done all acts provided or required herein to be performed on its part; and

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

WHEREAS, the Trustee has accepted the trusts created by this Indenture, and in evidence thereof has joined in the execution hereof;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that to secure the payment of Bond Service Charges on the Bonds according to their true intent and meaning, to secure the performance and observance of all of the covenants, agreements, obligations and conditions contained therein and herein, and to declare the terms and conditions upon and subject to which the Bonds are and are intended to be issued, held, secured and enforced, and in consideration of the premises and the acceptance by the Trustee of the trusts created herein and of the purchase and acceptance of the Bonds by the Holders, and for other good and valuable consideration, the receipt of which is acknowledged, the Issuer has executed and delivered this Indenture and absolutely assigns hereby to the Trustee (except Reserved Rights), and to its successors in trust, and their assigns, all rights, title and interest of the Issuer in and to (i) the Revenues, including, without limitation, all Loan Payments, deposits of Eligible Funds and other amounts receivable by or on behalf of the Issuer under the Loan Agreement in respect of repayment of the Loan, (ii) the Special Funds (except for money in the Rebate Fund required to be rebated to the United States of America under the Code), including all accounts in those Funds and all money deposited therein and the investment earnings on such money, (iii) subject to the provisions of the Bond Resolution, all right, title and interest of the Issuer in the proceeds derived from the sale of the Bonds, and any securities in which money in the Special Funds are invested, and (except for money in the Rebate Fund required to be rebated to the United States of America under the Code), the proceeds derived therefrom, and any and all other real or personal property of every name and nature from time to time hereafter by delivery or by writing of any kind pledged, assigned or transferred, as and for additional security hereunder by the Issuer or by anyone on its behalf, or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms of this Indenture, (iv) the Note, and (v) the Loan Agreement, except for the Reserved Rights (the foregoing collectively referred to as the **“Trust Estate”**),

TO HAVE AND TO HOLD unto the Trustee and its successors in that trust and its and their assigns forever;

BUT IN TRUST, NEVERTHELESS, and subject to the provisions hereof,

(a) except as provided otherwise herein, for the equal and proportionate benefit, security and protection of all present and future Holders of the Bonds issued or to be issued under and secured by this Indenture,

(b) for the enforcement of the payment of the principal of and interest on the Bonds, when payable, according to the true intent and meaning thereof and of this Indenture, and

(c) to secure the performance and observance of and compliance with the covenants, agreements, obligations, terms and conditions of this Indenture,

in each case, without preference, priority or distinction, as to lien or otherwise, of any one Bond over any other by reason of designation, number, date of the Bonds or of authorization, issuance, sale, execution, authentication, delivery or maturity thereof, or otherwise, so that each Bond and all Bonds shall have the same right, lien and privilege under this Indenture and shall be secured equally and ratably hereby, it being intended that the lien and security of this Indenture shall take effect from the date hereof, without regard to the date of the actual issue, sale or disposition of the Bonds, as though upon that date all of the Bonds were actually issued, sold and delivered to purchasers for value; provided, however, that:

(i) if the principal of the Bonds and the interest due or to become due thereon shall be well and truly paid, at the times and in the manner to which reference is made in the Bonds, according to the true intent and meaning thereof, or the Outstanding Bonds shall have been paid and discharged in accordance with Article VIII hereof, and

(ii) if all of the covenants, agreements, obligations, terms and conditions of the Issuer under this Indenture shall have been kept, performed and observed and there shall have been paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof;

this Indenture and the rights assigned hereby shall cease, determine and be void, except as provided in Section 8.03 hereof with respect to the survival of certain provisions hereof; otherwise, this Indenture shall be and remain in full force and effect.

It is declared that all Bonds issued hereunder and secured hereby are to be issued, authenticated and delivered, and that the Trust Estate assigned hereby is to be dealt with and disposed of under, upon and subject to, the terms, conditions, stipulations, covenants, agreements, obligations, trusts, uses and purposes provided in this Indenture. The Issuer has agreed and covenanted, and agrees and covenants with the Trustee and with each and all Holders, as follows:

ARTICLE I DEFINITIONS

Section 1.01 Definitions.

In addition to the words and terms defined elsewhere in this Indenture or by reference to the Loan Agreement, unless the context or use clearly indicates another meaning or intent:

“**Act**” means Part 3, Chapter 101, Title 48 of the Tennessee Code Annotated, as amended.

“**Act of Bankruptcy**” means notice to the Trustee that the Borrower has become insolvent or has failed to pay its debts generally as such debts become due or has admitted in writing its inability to pay any of its indebtedness or has consented to or has petitioned or applied to any court

or other legal authority for the appointment of a receiver, liquidator, trustee or similar official for itself or for all or any substantial part of its properties or assets or that any such trustee, receiver, liquidator or similar official has been appointed or that a petition in bankruptcy, insolvency, reorganization or liquidation proceedings (or similar proceedings) have been instituted by or against the Borrower; provided that, if in the case of an involuntary proceeding, such proceeding is not dismissed within 90 days after commencement thereof.

“**Additional Payments**” means the amounts required to be paid by the Borrower pursuant to the provisions of Section 4.4 of the Loan Agreement.

“**Administrative Expenses**” means the Ordinary Trustee Fees and Expenses and the Dissemination Agent Fee.

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

“**Authorized Borrower Representative**” means any person who, at any time and from time to time, is designated as the Borrower’s authorized representative by written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person and signed on behalf of the Borrower by or on behalf of any authorized general partner of the Borrower if the Borrower is a general or limited partnership, by any authorized managing member of the Borrower if the Borrower is a limited liability company, or by any authorized officer of the Borrower if the Borrower is a corporation, which certificate may designate an alternate or alternates. The Trustee may conclusively presume that a person designated in a written certificate filed with it as an Authorized Borrower Representative is an Authorized Borrower Representative until such time as the Borrower files with it (with a copy to the Issuer) a written certificate revoking such person’s authority to act in such capacity. The Authorized Borrower Representative, pending written directions from the Borrower and the Investor Limited Partner shall be: _____.

“**Authorized Denomination**” means (i) prior to the Initial Remarketing Date, \$100,000 or any integral multiple of \$5,000 in excess thereof, and (ii) on and after the Initial Remarketing Date, \$5,000, or any integral multiple of \$1,000 in excess thereof.

“**Authorized Official**” means the Chair or Vice Chair of the Issuer and any other officer or employee of the Issuer designated by certificate of any of the foregoing as authorized by the Issuer to perform a specified act, sign a specified document or otherwise take action with respect to the Bonds. The Trustee may conclusively presume that a person designated in a written certificate filed with it as an Authorized Official is an Authorized Official until such time as such provider files with it a written certificate identifying a different person or persons to act in such capacity.

“Bank” means any solvent commercial bank, trust company or financial institution in the business of issuing commercial letters of credit and domiciled or authorized to transact business in the United States of America.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy,” as in effect now and in the future, or any successor statute.

“Beneficial Owner” means with respect to the Bonds, the Person owning the Beneficial Ownership Interest therein, as evidenced to the satisfaction of the Trustee.

“Beneficial Ownership Interest” means the right to receive payments and notices with respect to the Bonds held in a Book-Entry System.

“Bond Counsel” means Bass, Berry & Sims PLC, or such other counsel acceptable to the Issuer and the Trustee and nationally recognized as having an expertise in connection with the exclusion of interest on obligations of states and local governmental units from the gross income of holders thereof for federal income tax purposes.

“Bond Fund” means the Bond Fund created in Section 4.01 hereof.

“Bond Payment Date” means each Interest Payment Date and any other date Bond Service Charges on the Bonds are due, whether at maturity or upon Mandatory Tender or acceleration or otherwise.

“Bond Purchase Agreement” means the Bond Purchase Agreement, dated November ____, 2023, among the Underwriter, the Placement Agent, the Issuer and the Borrower.

“Bond Resolution” means the certain resolution relating to the issuance and sale of the Bonds, adopted by the Governing Body on October 16, 2023.

“Bond Service Charges” means, for any period or payable at any time, the principal of and interest on the Bonds for that period or payable at that time whether due at maturity or upon Mandatory Tender or acceleration.

“Bond Year” means each annual period of twelve months ending on December 1; provided; however, that the first annual period commences on the date of the original issuance and delivery of the Bonds and ends on December 1 and the last of which ends on the maturity of the Bonds.

“Bonds” means The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee Collateralized Multifamily Housing Bonds (Espero Chattanooga Project), Series 2023 authorized in the Bond Resolution and Section 2.01 hereof in an amount not to exceed \$10,700,000.

“Book-Entry Form” or **“Book-Entry System”** means, with respect to the Bonds, a form or system, as applicable, under which (a) physical Bond certificates in fully registered form are issued only to a Depository or its nominee, with the physical Bond certificates “immobilized” in the custody of the Depository and (b) the ownership of book-entry interests in Bonds and Bond

Service Charges thereon may be transferred only through a book-entry made by others than the Issuer or the Trustee. The records maintained by others than the Issuer or the Trustee constitute the written record that identifies the owners, and records the transfer, of book-entry interests in those Bonds and Bond Service Charges thereon.

“**Borrower**” means Espero Chattanooga, LP, a Tennessee limited partnership.

“**Borrower Documents**” means the Financing Documents and the Mortgage Loan Documents to which the Borrower is a party.

“**Business Day**” means a day, other than a Saturday or a Sunday, or a day on which (a) banking institutions in the City of New York or in the city in which the Designated Office of either the Trustee or Remarketing Agent is located is authorized or obligated by law or executive order to be closed, or (b) The New York Stock Exchange is closed.

“**Cash Flow Projection**” means a cash flow projection prepared by an independent firm of certified public accountants, a financial advisory firm, a law firm or other independent third party qualified and experienced in the preparation of cash flow projections for structured finance transactions similar to the Bonds, designated by the Borrower and acceptable to the Rating Agency, establishing the sufficiency of (a) the amount on deposit in the Special Funds, (b) projected investment income to accrue on amounts on deposit in the Special Funds during the applicable period and (c) any additional Eligible Funds delivered to the Trustee by or on behalf of the Borrower to pay Bond Service Charges and the Administrative Expenses, in each instance, when due and payable, including, but not limited to, any cash flow projection prepared in connection with (i) the initial issuance and delivery of the Bonds and (ii) a proposed remarketing of the Bonds, as provided in Section 3.03 hereof; (iii) the release of Eligible Funds from the Negative Arbitrage Account of the Bond Fund as provided in Section 4.03 hereof, and (iv) the purchase, sale or exchange of Eligible Investments as provided in section 4.11 hereof.

“**Closing Date**” means November ____, 2023.

“**Closing Draw**” means the initial Draw made on the Closing Date.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Collateral Fund**” means the Collateral Fund created in Section 4.01 hereof.

“**Completion Certificate**” means the certificate attached as Exhibit C to the Loan Agreement.

“**Completion Date**” means the date of completion of the Project evidenced in accordance with the requirements of Section 3.9 of the Loan Agreement.

“**Confirmation of Rating**” means a written confirmation, obtained prior to the event or action under scrutiny, from the Rating Agency to the effect that, following the proposed action or event under scrutiny at the time such confirmation is sought, the rating of the Rating Agency with respect to all Bonds then Outstanding and then rated by the Rating Agency will not be downgraded, suspended, qualified or withdrawn as a result of such action or event.

“Continuing Disclosure Agreement” means the Continuing Disclosure Agreement to be dated on or about the Initial Remarketing Date between the Borrower and the Dissemination Agent, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

“Controlling Holders” means, in the case of consent or direction to be given hereunder, the Holders of the majority in aggregate principal amount of the Outstanding Bonds.

“Costs of Issuance” means the “issuance costs” with respect to the Bonds within the meaning of Section 147(g) of the Code.

“Costs of Issuance Fund” means the Costs of Issuance Fund created in Section 4.01 hereof.

“Cost,” “Costs,” “Costs of the Project” or “Project Costs” with respect to the Project shall be deemed to include the cost of all items permitted to be financed under the provisions of the Act the payment of which will not result in a breach, default or other violation of the Tax Agreement.

“Depository” means, with respect to the Bonds, DTC, until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter, **Depository** shall mean the successor Depository. Any Depository shall be a securities depository that is a clearing agency under a federal law operating and maintaining, with its participants or otherwise, a Book-Entry System to record ownership of book-entry interests in Bonds or Bond Service Charges thereon, and to effect transfers of book-entry interests in Bonds.

“Designated Office” of the Trustee or the Remarketing Agent means, respectively, the office of the Trustee or the Remarketing Agent at the respective Notice Address set forth in this Section 1.01 or at such other address as may be specified in writing by the Trustee or the Remarketing Agent, as applicable, as provided in Section 12.03 hereof.

“Dissemination Agent” means the Trustee, or any successor, as Dissemination Agent under the Continuing Disclosure Agreement.

“Dissemination Agent Fee” means the fee payable to the Dissemination Agent as compensation for its services and expenses in performing its obligations under the Continuing Disclosure Agreement; provided, however, the amount of the Dissemination Agent Fee payable under this Indenture is limited to money withdrawn from the Expense Fund and the Borrower will be responsible to pay the remaining amount of the Dissemination Agent Fee pursuant to Section 4.4 of the Loan Agreement.

“Draw” or “Drawing” means each installment of principal advanced under the Bonds by the Holder in accordance with the wire instructions pursuant to the terms of this Indenture as recorded by the Trustee in the records of the Trustee.

“DTC” means The Depository Trust Company (a limited purpose trust company), New York, New York, and its successors or assigns.

“DTC Participant” means any participant contracting with DTC under its book-entry system and includes securities brokers and dealers, banks and trust companies and clearing corporations.

“Electronic Means” means the following communications methods: S.W.I.F.T., e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder.

“Eligible Funds” means, as of any date of determination, any of:

(a) the proceeds of the Bonds, including any additional amount paid to the Trustee by the Placement Agent or the Underwriter;

(b) amounts paid by the Lender to the Trustee representing loan advances, including without limitation the Mortgage Loan, and amounts paid to the Trustee representing loan advances for any subordinate loan to the Borrower;

(c) amounts drawn by the Trustee on a Letter of Credit, if any, or other loan facility from a Bank;

(d) remarketing proceeds received from the Remarketing Agent or any purchaser of Bonds designated as such by the Remarketing Agent (other than funds provided by the Borrower, the Issuer, any Affiliate of either the Borrower or the Issuer), and any additional amount paid to the Trustee by the Remarketing Agent as a deposit to the Negative Arbitrage Account pursuant to the Remarketing Agreement;

(e) any other amounts, including the proceeds of refunding bonds, for which, in each case, (i) the Trustee has received an Opinion of Counsel (which opinion may assume that no Holder or Beneficial Owner of Bonds is an “insider” within the meaning of the Bankruptcy Code) to the effect that (A) the use of such amounts to make payments on the Bonds would not violate Section 362(a) of the Bankruptcy Code or that relief from the automatic stay provisions of such Section 362(a) would be available from the bankruptcy court and (B) payments of such amounts to Holders would not be avoidable as preferential payments under Section 547 or 550 of the Bankruptcy Code should the Issuer or the Borrower become a debtor in proceedings commenced under the Bankruptcy Code and (ii) the Trustee has received written confirmation from the Rating Agency that the use of such money would not result in a reduction or withdrawal of the then existing rating on the Bonds;

(f) any payments made by the Borrower and held by the Trustee for a continuous period of 123 days, provided that no Act of Bankruptcy has occurred during such period; and

(g) investment income derived from the investment of the money described in (a) through (f) above.

“Eligible Investments” means, subject to the provisions of Section 4.11, any of the following obligations, which mature (or are redeemable at the option of the Trustee without

penalty) at such time or times as to enable disbursements to be made from the fund in which such investment is held or allocated in accordance with the terms of this Indenture:

(a) Government Obligations; and

(b) Shares or units in any money market mutual fund rated “Aaa-mf” by Moody’s (or the equivalent Highest Rating Category given by the Rating Agency for that general category of security) including mutual funds of the Trustee or its affiliates or for which the Trustee or an affiliate thereof serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefor that are registered under the Investment Company Act of 1940, as amended, whose investment portfolio consist solely of direct obligations of the government of the United States of America.

“**Event of Default**” means (a) with respect to this Indenture, any of the events described as an Event of Default in Section 6.01 hereof and (b) with respect to the Loan Agreement, any of the events described as an Event of Default in Section 7.1 of the Loan Agreement.

“**Expense Fund**” means the Expense Fund created in Section 4.01 hereof.

“**Extension Payment**” means the amount due, if any, in connection with the change or extension of the Mandatory Tender Date pursuant to Section 3.03 hereof, which shall be determined by a Cash Flow Projection.

“**Extraordinary Issuer Fees and Expenses**” means the expenses and disbursements payable to the Issuer under this Indenture for Extraordinary Services and Extraordinary Expenses, including extraordinary fees, costs and expenses incurred by the Issuer, Bond Counsel and counsel to the Issuer which are to be paid by the Borrower pursuant to Section 4.4 of the Loan Agreement.

“**Extraordinary Services**” and “**Extraordinary Expenses**” mean all services rendered and all reasonable expenses properly incurred by the Trustee or the Issuer under this Indenture or the Loan Agreement, other than Ordinary Services and Ordinary Expenses. Extraordinary Services and Extraordinary Expenses shall specifically include but are not limited to services rendered or expenses incurred by the Trustee or the Issuer in connection with, or in contemplation of, an Event of Default.

“**Extraordinary Trustee Fees and Expenses**” means the expenses and disbursements payable to the Trustee under this Indenture for Extraordinary Services and Extraordinary Expenses, including extraordinary fees, costs and expenses incurred by the Trustee and the Trustee’s counsel which are to be paid by the Borrower pursuant to Section 4.4 of the Loan Agreement.

“**Federal Tax Status**” means, as to the Bonds, the status of the interest on the Bonds as excludible from gross income for federal income tax purposes of the Holders of the Bonds (except on Bonds while held by a substantial user or related person, each as defined in the Code).

“**Financing Documents**” means this Indenture, the Bonds, the Loan Agreement, the Note, the Loan Disbursement Agreement, the Tax Agreement, the Land Use Restriction Agreement, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Remarketing Agreement

and any other instrument or document executed in connection with the Bonds, together with all modifications, extensions, renewals and replacements thereof, but excluding the Mortgage Loan Documents.

“**Fiscal Year**” means, with respect to a Person, that period beginning on January 1 of each year and ending on December 31 of that year or such other fiscal year as shall be designated by such Person as its annual accounting period.

“**Force Majeure**” means any of the causes, circumstances or events described as constituting Force Majeure in Section 7.1 of the Loan Agreement.

“**GAAP**” means generally accepted accounting principles applied on a consistent basis.

“**Governing Body**” means the Board of Directors of the Issuer.

“**Government**” shall mean the government of the United States of America, the government of any other nation, any political subdivision of the United States of America or any other nation (including, without limitation, any state, territory, federal district, municipality or possession) and any department, agency or instrumentality thereof; and “**Governmental**” shall mean of, by, or pertaining to any Government.

“**Government Obligations**” means (i) noncallable, non-redeemable direct obligations of the United States of America for the full and timely payment of which the full faith and credit of the United States of America is pledged, and (ii) obligations issued by a Person controlled or supervised by and acting as an instrumentality of the United States of America, the full and timely payment of the principal of, premium, if any, and interest on which is fully guaranteed as a full faith and credit obligation of the United States of America (including any securities described in (i) or (ii) issued or held in book-entry form on the books of the Department of the Treasury of the United States of America), which obligations, in either case, are not subject to redemption prior to maturity at less than par at the option of anyone other than the holder thereof.

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

“**Holder**” or “**Holder of a Bond**” means the Person in whose name a Bond is registered on the Register.

“**Indenture**” means this Trust Indenture, dated as of November 1, 2023, between the Issuer and the Trustee, as amended or supplemented from time to time.

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

“**Initial Borrower Deposit**” means funds in the amount of \$____, which amount is to be deposited on behalf of the Borrower as provided in Section 4.02(b) hereof.

“**Initial Interest Rate**” means _____% per annum.

“**Initial Mandatory Tender Date**” means a date selected by Borrower with notice to the Holder and the Trustee, but not later than the earlier to occur of (i) the closing of the Mortgage Loan, or (ii) _____, 20__.

“**Initial Remarketing Date**” means the Initial Mandatory Tender Date, but only if the conditions for remarketing the Bonds on such date as provided in Section 3.03 hereof are satisfied.

“**Interest Payment Date**” means (a) [June 1 and December 1 of each year beginning June 1, 2024], (b) each Mandatory Tender Date, (c) the Maturity Date and (d) the date of acceleration of the Bonds. In the case of insufficient funds to pay the purchase price on the Bonds following Mandatory Tender on the Initial Mandatory Tender Date, “Interest Payment Date” also means the first Business Day of each month as provided in Section 2.02(b) hereof. In the case of a payment of defaulted interest, “Interest Payment Date” also means the date of such payment established pursuant to Section 2.05 hereof.

“**Interest Rate**” means the Initial Interest Rate to and not including the Initial Mandatory Tender Date, and thereafter the applicable Remarketing Rate.

“**Interest Rate for Advances**” means the rate per annum which is two percent plus that interest rate published in The Wall Street Journal as the “Prime Rate” or the highest lawful rate, whichever is less.

“**Investor Admission Date**” means the date that the applicable entities specified in clause (ii) of the definition of Investor Limited Partner are admitted as limited partners of the Borrower.

“**Investor Limited Partner**” means (i) prior to the Investor Admission Date, the Borrower and its respective successors and assigns, and (ii) on and after the Investor Admission date, _____ or affiliates thereof or other tax credit investors designated by an Authorized Borrower Representative in a written notice to the Issuer and Trustee, and their respective successors and assigns.

“**Issuer**” means The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee, a public nonprofit corporation and an instrumentality of the City of Chattanooga or its successor.

“**Issuer Documents**” means the Financing Documents to which the Issuer is a party.

“**Issuer Fees and Expenses**” means the Extraordinary Issuer Fees and Expenses as the Issuer has no annual or ongoing fees.

“**Land Use Restriction Agreement**” means the Land Use Restriction Agreement to be entered into on or about the date of the closing of the Mortgage Loan, by and among the Issuer, the Borrower and the Trustee, as amended or supplemented from time to time.

“**Lender**” means _____, a national banking association, having its principal office and place of business in _____, Tennessee, or an affiliate thereof or such other lender that provides the Mortgage Loan, and its respective successors and assigns.

“**Letter of Credit**” means an unconditional irrevocable letter of credit issued by a Bank and authorizing drawings thereunder by the Trustee.

“**Loan**” means the loan by the Issuer to the Borrower of the proceeds received from the sale of the Bonds.

“**Loan Agreement**” means the Loan Agreement, dated as of November 1, 2023, between the Issuer and the Borrower and assigned by the Issuer, except for Reserved Rights, to the Trustee, as amended or supplemented from time to time.

“**Loan Disbursement Agreement**” means the Loan Disbursement Agreement to be dated as of the closing of the Mortgage Loan, between the Borrower, the Lender and the Trustee, as amended or supplemented from time to time.

“**Loan Payments**” means the amounts required to be paid by the Borrower in repayment of the Loan pursuant to the provisions of the Note and Section 4.1 of the Loan Agreement. Any credits against Loan Payments provided hereunder or the Note are intended to be treated as a payment by the Borrower that is applied against, and reduces, the amount of Loan Payments otherwise required to be paid by the Borrower.

“**Local Time**” means Eastern time (daylight or standard, as applicable) in Chattanooga, Tennessee.

“**Mandatory Tender**” means a tender of Bonds required by Section 3.01 hereof.

“**Mandatory Tender Date**” means (a) the Initial Mandatory Tender Date and (b) the last day of each Remarketing Period.

“**Maturity Date**” means _____, 20__.

“**Maximum Interest Rate**” means the interest rate equal to the lesser of: (a) 12% per annum, or (b) the maximum interest rate per annum permitted by applicable State law.

“**Moody’s**” means Moody’s Investors Service, a Delaware corporation, and its successors and assigns, or if it shall for any reason no longer perform the functions of a securities rating agency, then any other nationally recognized rating agency designated by the Borrower and acceptable to the Trustee and the Remarketing Agent.

“**Mortgage**” means the mortgage or deed of trust securing the Mortgage Loan, as the same may be amended from time to time.

“**Mortgage Loan**” means the mortgage loan to be made from the Lender to the Borrower with respect to the Project.

“Mortgage Loan Documents” means the Loan Disbursement Agreement, the Mortgage and all other documents required by the Lender in connection with the Mortgage Loan.

“Negative Arbitrage Account” means the Negative Arbitrage Account of the Bond Fund created in Section 4.01 hereof.

“Note” means the promissory note of the Borrower, dated as of even date with the Bonds initially issued, in the form attached as Exhibit A to the Loan Agreement and in the principal amount of up to \$10,700,000, evidencing the obligation of the Borrower to make Loan Payments.

“Notice Address” means:

To the Issuer: The Health, Educational and Housing Facility
Board of the City of Chattanooga, Tennessee
c/o Office of the Chattanooga City Attorney
100 E. 11th Street, Suite 200
Chattanooga, Tennessee 37402
Attention: Phillip Noblett

To the Trustee: _____

Attention: _____

To the Borrower: Espero Chattanooga, LP

Attention: _____

with copies to: _____

Attention: _____

To the Investor Limited Partner: _____

Attention: _____

with copies to: _____

Attentions: _____

To the Lender: _____

Attention: _____

To the Rating Agency: Moody's Investors Service, Inc.
250 Greenwich Street, 16th Floor
New York, NY 10007
Attention: Public Finance Group – Housing Team
Electronic notices shall be delivered to:
Housing@moodys.com

To the Remarketing Agent: Raymond James & Associates, Inc.
One Burton Hills Blvd., Suite 225
Nashville, Tennessee 37215
Attention: Ted Fellman

or such additional or different address, notice of which is given under Section 12.03 hereof.

“Opinion of Bond Counsel” means an opinion of Bond Counsel.

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

“Ordinary Services” and **“Ordinary Expenses”** mean those services normally rendered, and those expenses, including expenses of counsel, normally incurred, by an issuer or a trustee under instruments similar to this Indenture.

“Ordinary Trustee Fees and Expenses” means amounts due to the Trustee for the Ordinary Services and the Ordinary Expenses of the Trustee incurred in connection with its duties under the Indenture, payable annually in advance on the Closing Date and thereafter on each November 1 beginning November 1, 2024 in the annual amount of \$_____ (together with an acceptance fee of \$_____ payable upon execution of this Indenture and \$_____ payable on the Initial Mandatory Tender Date); provided, however, the amount of Ordinary Trustee Fees and Expenses payable under this Indenture is limited to money withdrawn from the Costs of Issuance Fund and the Expense Fund and the Borrower will be responsible to pay the remaining amount of the Ordinary Trustee Fees and Expenses pursuant to Section 4.4 of the Loan Agreement. In addition, all amounts due to the Trustee for Extraordinary Services and all Extraordinary Expenses of the Trustee will be paid directly by the Borrower pursuant to Section 4.4 of the Loan Agreement.

“Organizational Documents” means the limited partnership agreement of the Borrower, as may be amended from time to time.

“Outstanding Bonds,” “Bonds Outstanding” or **“Outstanding”** as applied to Bonds mean, as of the applicable date, all Bonds which have been authenticated and delivered, or which are being delivered by the Trustee under this Indenture, except:

(a) Bonds cancelled upon surrender, exchange or transfer, or cancelled because of payment on or prior to that date;

(b) Bonds, or the portion thereof, for the payment or purchase for cancellation of which sufficient money has been deposited and credited with the Trustee on or prior to that date for that purpose (whether upon or prior to the maturity of those Bonds);

(c) Bonds, or the portion thereof, which are deemed to have been paid and discharged or caused to have been paid and discharged pursuant to the provisions of this Indenture; and

(d) Bonds in lieu of which others have been authenticated under Section 2.07 of this Indenture.

“Permitted Liens” means liens permitted by the Lender, including but not limited to, those liens and encumbrances in effect at the closing of the Mortgage Loan and the liens securing the Mortgage Loan, from time to time.

“Person” or words importing persons mean firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, limited liability companies, public or governmental bodies, other legal entities and natural persons.

“PILOT Lease” means the lease agreement to be dated as of the closing of the Mortgage Loan, by and between the Borrower and [the Issuer], as PILOT Lessor, in connection with the Project.

“Placement Agent” means Raymond James & Associates, Inc.

“Plans and Specifications” means the plans and specifications describing the Project as now prepared and as they may be changed, revised and updated from time to time.

“Predecessor Bond” of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by the particular Bond. For the purposes of this definition, any Bond authenticated and delivered under Section 2.07 hereof in lieu of a lost, stolen or destroyed Bond shall, except as otherwise provided in Section 2.07, be deemed to evidence the same debt as the lost, stolen or destroyed Bond.

“Project” means the 60-unit residential rental housing project located in the City of Chattanooga, known as Espero Chattanooga.

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

“Project Purposes” means the making of a loan to finance the Project.

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

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

“Rebate Analyst” means a certified public accountant, financial analyst or attorney, or any firm of the foregoing, or a financial institution (which may include the Trustee) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code and retained by the Borrower to make the computations and give the directions required pursuant to the Tax Agreement. Initially, the Rebate Analyst will be Tiber Hudson LLC.

“Rebate Fund” means the fund created in Section 4.01 hereof.

“Register” means the books kept and maintained by the Trustee for registration and transfer of Bonds pursuant to Section 2.06 hereof.

“Regular Record Date” means, with respect to any Bond, the fifteenth day of the calendar month next preceding an Interest Payment Date.

“Remarketing Agent” means Raymond James & Associates, Inc. or any successor as Remarketing Agent designated in accordance with Section 5.17 hereof.

“Remarketing Agent’s Fee” means the fee of the Remarketing Agent for its remarketing services.

“Remarketing Agreement” means the Remarketing Agreement, dated as of November 1, 2023, by and between the Borrower and the Remarketing Agent, as amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

“Remarketing Date” means any Mandatory Tender Date, but only if the conditions for remarketing the Bonds on such date as provided in Section 3.03 hereof are satisfied.

“Remarketing Expenses” means the costs and expenses, other than Administrative Expenses, incurred by the Trustee and its counsel, the Remarketing Agent and its counsel, the Issuer and its counsel, and Bond Counsel in connection with the remarketing of the Bonds, including bond printing and registration costs, costs of funds advanced by the Remarketing Agent, registration and filing fees, rating agency fees, the costs of any cash flow verification reports, and other costs and expenses incurred in connection with or properly attributable to the remarketing of Bonds as certified to the Trustee by the Remarketing Agent in writing.

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

“Remarketing Period” means the period beginning on a Remarketing Date and ending on the last day of the term for which Bonds are remarketed pursuant to Section 3.03 hereof or the final Maturity Date of the Bonds, as applicable.

“Remarketing Proceeds Account” means the Remarketing Proceeds Account of the Bond Fund created in Section 4.01 hereof.

“Remarketing Rate” means the interest rate or rates established pursuant to Section 2.02(c) and borne by the Bonds then Outstanding from and including each Remarketing

Date to, but not including, the next succeeding Remarketing Date or the final Maturity Date of the Bonds, as applicable.

“Reserved Rights” of the Issuer means (a) the right of the Issuer to amounts payable to it pursuant to Section 4.4 of the Loan Agreement, (b) all rights which the Issuer or its members, directors, officers, officials, agents or employees may have under this Indenture and the Financing Documents to indemnification by the Borrower and by any other persons and to payments for expenses incurred by the Issuer itself, or its members, directors, officers, officials, agents or employees; (c) the right of the Issuer to receive notices, reports or other information, make determinations and grant approvals hereunder and under the other Financing Documents, (d) all rights of the Issuer to enforce the representations, warranties, covenants and agreements of the Borrower pertaining in any manner or way, directly or indirectly, to the requirements of the Act or of the Issuer, and set forth in any of the Financing Documents or in any other certificate or agreement executed by the Borrower; (e) all inspection rights of the Issuer, (f) all rights of the Issuer in connection with any amendment to or modification of the Financing Documents, and (g) all enforcement remedies with respect to the foregoing.

“Revenues” means (a) the Loan Payments, (b) all other money received or to be received by the Trustee in respect of repayment of the Loan, including without limitation, all money and investments in the Bond Fund, (c) any money and investments in the Special Funds, and (d) all income and profit from the investment of the foregoing money. The term “Revenues” does not include any money or investments in the Rebate Fund.

“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and its successors and assigns, or if it shall for any reason no longer perform the functions of a securities rating agency, then any other nationally recognized rating agency designated by the Borrower and acceptable to the Trustee and the Remarketing Agent.

“Second Draw” means the second Draw made on the Second Draw Date.

“Second Draw Date” means a date on or before the Initial Remarketing Date, mutually agreed upon by the Issuer, the Borrower, the Placement Agent and the Underwriter.

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

“Special Record Date” means, with respect to any Bond, the date established by the Trustee in connection with the payment of overdue interest or principal on that Bond.

“State” means the State of Tennessee.

“Supplemental Indenture” means any indenture supplemental to this Indenture entered into between the Issuer and the Trustee in accordance with Article VII hereof.

“Tax Agreement” means the Tax Compliance Certificate and Agreement, dated the Closing Date, by and among the Issuer, the Trustee and the Borrower.

“**Tendered Bond**” means any Bond which has been tendered for purchase pursuant to a Mandatory Tender.

“**Trust Estate**” means the property rights, money, securities and other amounts pledged and assigned to the Trustee hereunder pursuant to the Granting Clauses hereof.

“**Trustee**” means [**Trustee Name**], until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter, “**Trustee**” shall mean the successor Trustee.

“**Undelivered Bond**” means any Bond that is required under this Indenture to be delivered to the Remarketing Agent or the Trustee for purchase on a Mandatory Tender Date but that has not been received on the date such Bond is required to be so delivered.

“**Underwriter**” means, with respect to the Bonds excluding the Closing Draw of the Bonds, Raymond James & Associates, Inc.

Section 1.02 Interpretation.

Any reference herein to the Issuer, to the Governing Body or to any member or officer of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions. Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Tennessee Code Annotated, or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this paragraph, if it constitutes in any way an impairment of the rights or obligations of the Issuer, the Holders, the Trustee or the Borrower under the Bond Resolution, the Bonds, the Financing Documents or any other instrument or document entered into in connection with any of the foregoing, including without limitation, any alteration of the obligation to pay Bond Service Charges in the amount and manner, at the times, and from the sources provided in the Bond Resolution and this Indenture, except as permitted herein.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. The terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder,” “hereinafter” and similar terms refer to this Indenture; and the term “hereafter” means after, and the term “heretofore” means before, the date of this Indenture. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 1.03 Captions and Headings.

The captions and headings in this Indenture are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

Section 1.04 Content of Certificates and Opinions.

Every certificate or opinion provided for in this Indenture with respect to compliance with any provision hereof made or given by an Authorized Official of the Issuer or an Authorized Borrower Representative may be based, insofar as it relates to legal or accounting matters, upon a certificate or opinion or representation given by counsel or an accountant, unless such Authorized Official or an Authorized Borrower Representative, as applicable, knows, or in the exercise of reasonable care should have known, that the certificate, opinion or representation with respect to the matters upon which such certificate or statement is based is erroneous. Any such certificate or opinion made or given by counsel or an accountant may be based, insofar as it relates to factual matters with respect to which information is in the possession of the Issuer or the Borrower, as applicable, upon a certificate or opinion of or representation by an Authorized Official of the Issuer or an Authorized Borrower Representative, unless such counsel or accountant knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representation with respect to the matters upon which such certificate, opinion or representation is based is erroneous. The same Authorized Official of the Issuer or an Authorized Borrower Representative, or the same counsel or accountant, as the case may be, need not certify to all of the matters required to be certified under any provision of this Indenture, but different officers, counsel or accountants may certify to different matters.

ARTICLE II AUTHORIZATION AND TERMS OF BONDS

Section 2.01 Authorization and General Terms of Bonds.

(a) Issuance of Bonds. It is determined to be necessary to, and the Issuer shall, issue, sell and deliver up to \$10,700,000 principal amount of Bonds for the Project Purposes, no Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total authorized principal amount of Bonds which may be issued under the provisions of this Indenture is \$10,700,000.

(b) General Terms. The Bonds shall be designated “The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee Collateralized Multifamily Housing Bonds (Espero Chattanooga Project), Series 2023;” shall be in substantially the form as set forth in Exhibit A to this Indenture; shall be lettered “R-” and shall be numbered consecutively from 1 upward; shall be in Authorized Denominations; and shall be dated the Closing Date.

(c) Registered Form. All Bonds shall be in fully registered form, and, except as provided in Section 2.06 hereof, the Holder of a Bond shall be regarded as the absolute owner thereof for all purposes of this Indenture.

(d) Further Details. The Bonds shall be negotiable instruments in accordance with the Act, and shall express the purpose for which they are issued and any other statements or legends which may be required by law. Each Bond shall be of a single maturity, unless the Trustee shall be directed to authenticate and deliver a Bond of more than one maturity.

Section 2.02 Maturity and Interest.

(a) General. The Bonds shall bear interest on the principal amount Outstanding from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or provided for, from their date of initial delivery, payable on each Interest Payment Date. The Bonds shall bear interest at the Interest Rate all as more specifically set forth hereinafter. Interest on the Bonds shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. The Bonds shall mature on the Maturity Date, subject to Mandatory Tender for purchase as set forth in Section 3.01.

(b) Initial Interest Rate. From the date of their initial delivery to and not including the Initial Mandatory Tender Date, the interest rate on the Bonds shall be the Initial Interest Rate. On the Initial Mandatory Tender Date, the Bonds shall be subject to Mandatory Tender pursuant to Section 3.01 hereof. If insufficient funds are available to pay the purchase price on the Bonds following such Mandatory Tender on the Initial Mandatory Tender Date, the Bonds shall accrue interest at the Maximum Interest Rate until funds are available for payment of the purchase price, with interest being paid monthly on the first Business Day of each month.

(c) Establishment of Remarketing Rate. The Remarketing Agent shall establish the interest rate on the Bonds Outstanding for each Remarketing Period at the Remarketing Rate in accordance with this Section 2.02. Not less than 10 Business Days preceding each Remarketing Date, the Remarketing Agent, taking into consideration prevailing market conditions, shall, using its best professional judgment, determine the minimum rate(s) of interest which, if borne by the Bonds then Outstanding for the Remarketing Period specified by the Remarketing Agent at the direction of the Borrower as provided in Section 3.01 hereof, would enable such Bonds to be remarketed at a price equal to 100% of the principal amount of such Bonds that would not exceed the Maximum Interest Rate. The rate of interest determined in accordance with the previous sentence shall be the Remarketing Rate for the specified Remarketing Period; provided that if the rate of interest so determined for such period would exceed the Maximum Interest Rate, the Bonds Outstanding shall be remarketed for the longest Remarketing Period for which the minimum rate of interest that would enable such Bonds to be remarketed at a price equal to 100% of the principal amount of such Bonds would not exceed the Maximum Interest Rate. Notwithstanding the foregoing, if the rate of interest so determined for any Remarketing Period would exceed the Maximum Interest Rate, the Bonds Outstanding shall not be remarketed and shall be redeemed from funds available to pay the tender price thereof in accordance with Section 3.01(e) hereof.

(d) Notice of Remarketing Rate. The Remarketing Agent shall, upon determination of the Remarketing Rate and Remarketing Period, immediately (and in no event later than the Business Day following the day on which the Remarketing Agent makes its determination of the Remarketing Rate and the Remarketing Period) give notice of its determination by telephone or electronic mail, promptly confirmed in writing, to the Trustee, the Issuer and the Borrower. The Remarketing Rate and the Remarketing Period shall be conclusive and binding upon the Trustee, the Issuer, the Borrower and the Holders for the purposes of this Indenture.

Section 2.03 Execution and Authentication of Bonds.

Unless otherwise provided in the applicable Bond Resolution or Supplemental Indenture, each Bond shall be signed by the Chair and attested by the Secretary of the Issuer in their official capacities (provided that any or all of those signatures may be facsimiles). In case any officer whose signature or a facsimile of whose signature shall appear on any Bond shall cease to be that officer before the issuance of the Bond, such signature or the facsimile thereof nevertheless shall be valid and sufficient for all purposes, the same as if he or she had remained in office until that time. Any Bond may be executed on behalf of the Issuer by an officer who, on the date of execution is the proper officer, although on the date of the Bond that person was not the proper officer.

No Bond shall be valid or become obligatory for any purpose or shall be entitled to any security or benefit under this Indenture unless and until a certificate of authentication, substantially in the form set forth in Exhibit A to this Indenture, has been signed by the Trustee. The authentication by the Trustee upon any Bond shall be conclusive evidence that the Bond so authenticated has been duly authenticated and delivered hereunder and is entitled to the security and benefit of this Indenture. The Trustee's Certificate of Authentication may be executed by any person authorized by the Trustee, but it shall not be necessary that the same authorized person sign the certificates on all of the Bonds.

Section 2.04 Source of Payment of Bonds.

To the extent provided in and except as otherwise permitted by this Indenture, the Bonds shall be special limited obligations of the Issuer and the Bond Service Charges thereon shall be payable equally and ratably solely from and secured solely by the Trust Estate. **Notwithstanding anything to the contrary in the Bond Resolution, the Bonds or this Indenture, the Bonds shall not be a debt of the City, the State, or any political subdivision of the State; and such Bonds shall so state on their face. Neither the City, the State, nor any political subdivision of the State shall be liable on such Bonds; nor in any event shall such Bonds be payable out of any funds or properties other than those of the Issuer. The Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.**

Section 2.05 Payment and Ownership of Bonds.

Bond Service Charges shall be payable in lawful money of the United States of America without deduction for the services of the Trustee. Subject to the provisions of Sections 2.09 and 2.10 hereof, (a) the principal of any Bond shall be payable when due to a Holder upon presentation and surrender of such Bond at the Designated Office of the Trustee, and (b) interest on any Bond shall be paid on each Interest Payment Date by check or draft which the Trustee shall cause to be mailed on that date to the Person in whose name the Bond (or one or more Predecessor Bonds) is registered at the close of business on the Regular Record Date applicable to that Interest Payment Date on the Register at the address appearing therein.

If and to the extent, however, that the Issuer shall fail to make payment or provision for payment of interest on any Bond on any Interest Payment Date, that interest shall cease to be

payable to the Person who was the Holder of that Bond (or of one or more Predecessor Bonds) as of the applicable Regular Record Date. In that event, except as provided below in this Section, when money becomes available for payment of the interest, (a) the Trustee shall, pursuant to Section 6.06(d) hereof, establish a Special Record Date for the payment of that interest which shall be not more than 15 nor fewer than 10 days prior to the date of the proposed payment, and (b) the Trustee shall cause notice of the proposed payment and of the Special Record Date to be mailed by first-class mail, postage prepaid, to each Holder at its address as it appears on the Register not fewer than 10 days prior to the Special Record Date and, thereafter, the interest shall be payable to the Persons who are the Holders of the Bonds (or their respective Predecessor Bonds) at the close of business on the Special Record Date.

Subject to the foregoing, each Bond delivered under this Indenture upon transfer thereof, or in exchange for or in replacement of any other Bond, shall carry the rights to interest accrued and unpaid, and to accrue on that Bond, or which were carried by that Bond.

Except as provided in this Section and the first paragraph of Section 2.07 hereof, (a) the Holder of any Bond shall be deemed and regarded as the absolute owner thereof for all purposes of this Indenture, (b) payment of or on account of the Bond Service Charges on any Bond shall be made only to or upon the order of that Holder or its duly authorized attorney in the manner permitted by this Indenture, and (c) neither the Issuer nor the Trustee shall, to the extent permitted by law, be affected by notice to the contrary. All of those payments shall be valid and effective to satisfy and discharge the liability upon that Bond, including without limitation, the interest thereon, to the extent of the amount or amounts so paid.

Section 2.06 Registration and Transfer of Bonds.

So long as any of the Bonds remain Outstanding, the registration and transfer of Bonds, as provided in this Indenture, will be maintained and kept at the Designated Office of the Trustee.

Subject to the provisions set forth above and in Section 2.09 hereof, any Bond may be transferred upon the Register, upon presentation and surrender thereof at the Designated Office of the Trustee, together with an assignment duly executed by the Holder or its duly authorized attorney in any form which shall be satisfactory to the Trustee. Upon transfer of any Bond and on request of the Trustee, the Issuer shall execute in the name of the transferee, and the Trustee shall authenticate and deliver, a new Bond or Bonds, of any Authorized Denomination or Denominations in an aggregate principal amount equal to the unmatured principal amount of, and bearing interest at the same rate and maturing on the same date or dates as, the Bonds presented and surrendered for transfer.

In all cases in which Bonds shall be transferred hereunder, the Issuer shall execute, and the Trustee shall authenticate and deliver, Bonds in accordance with the provisions of this Indenture. The transfer shall be made without charge; provided, that the Issuer and the Trustee may make a charge for every exchange or transfer of Bonds sufficient to reimburse them for any tax or excise required to be paid with respect to the transfer. The charge shall be paid before a new Bond is delivered.

All Bonds issued upon any transfer of Bonds shall be the valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Bonds surrendered upon transfer.

Section 2.07 Mutilated, Lost, Wrongfully Taken or Destroyed Bonds.

If any Bond is mutilated, lost, wrongfully taken or destroyed, in the absence of written notice to the Issuer or the Trustee that a lost, wrongfully taken or destroyed Bond has been acquired by a bona fide purchaser, the Issuer shall execute, and the Trustee shall authenticate and deliver, a new Bond of like date, maturity and denomination as the Bond mutilated, lost, wrongfully taken or destroyed; provided, that (a) in the case of any mutilated Bond, the mutilated Bond first shall be surrendered to the Trustee, and (b) in the case of any lost, wrongfully taken or destroyed Bond, there first shall be furnished to the Trustee evidence of the loss, wrongful taking or destruction satisfactory to the Trustee, together with indemnity satisfactory to the Authorized Borrower Representative, the Trustee and the Authorized Official.

If any lost, wrongfully taken or destroyed Bond shall have matured, instead of issuing a new Bond, the Issuer may direct the Trustee to pay that Bond without surrender thereof upon the furnishing of satisfactory evidence and indemnity as in the case of issuance of a new Bond. The Issuer and the Trustee may charge the Holder of a mutilated, lost, wrongfully taken or destroyed Bond their reasonable fees and expenses in connection with their actions pursuant to this Section.

Every new Bond issued pursuant to this Section by reason of any Bond being mutilated, lost, wrongfully taken or destroyed (a) shall constitute, to the extent of the Outstanding principal amount of the Bond lost, mutilated, taken or destroyed, an additional contractual obligation of the Issuer, regardless of whether the mutilated, lost, wrongfully taken or destroyed Bond shall be enforceable at any time by anyone and (b) shall be entitled to all of the benefits of this Indenture equally and proportionately with any and all other Bonds issued and Outstanding hereunder.

All Bonds shall be held and owned on the express condition that the foregoing provisions of this Section are exclusive with respect to the replacement or payment of mutilated, lost, wrongfully taken or destroyed Bonds and, to the extent permitted by law, shall preclude any and all other rights and remedies with respect to the replacement or payment of negotiable instruments or other investment securities without their surrender, notwithstanding any law or statute to the contrary now existing or enacted hereafter.

Section 2.08 Cancellation of Bonds.

Any Bond surrendered pursuant to this Article for the purpose of payment or retirement or for exchange, replacement or transfer shall be cancelled upon presentation and surrender thereof to the Trustee.

Notwithstanding any provision of this Indenture to the contrary, the Issuer, or the Borrower on behalf of the Issuer, may deliver at any time to the Trustee with written instructions for cancellation any Bonds previously authenticated and delivered hereunder, which the Issuer or the Borrower may have acquired in any manner whatsoever. All Bonds so delivered shall be cancelled promptly by the Trustee. Certification of the surrender and cancellation shall be made to the Issuer by the Trustee upon the request of the Issuer. Unless otherwise directed by the Issuer, cancelled

Bonds shall be retained and stored by the Trustee in accordance with its record retention policies. Those cancelled Bonds shall be destroyed by the Trustee by shredding or incineration at that time or at any earlier time directed by the Issuer.

Section 2.09 Delivery of the Bonds.

Upon the execution and delivery of this Indenture, and satisfaction of the conditions established by the Issuer in the Bond Resolution and in the Bond Purchase Agreement for delivery of the Bonds, the Issuer shall execute the Bonds and deliver them to the Trustee with written directions to authenticate them. Thereupon, the Trustee shall authenticate the Bonds and deliver them to the Depository, as further directed by the Placement Agent or the Underwriter.

Prior to the delivery of any Bonds against payment therefor, the Trustee shall have received the following (or electronic copies thereof):

- (a) a certified copy of the Bond Resolution;
- (b) executed counterparts of this Indenture and the other Financing Documents specifically listed in the definition of Financing Documents;
- (c) An opinion of Counsel to the Issuer to the effect that the Bonds have been duly authorized, executed and delivered and that the Bond Documents have been duly executed and delivered by the Issuer and constitute valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, subject to bankruptcy, insolvency or other laws affecting creditors' rights generally and, with respect to certain remedies which require, or may require, enforcement by a court of equity, such principles of equity as the court having jurisdiction may impose;
- (d) An opinion of Bond Counsel, substantially to the effect that this Indenture and the Bonds constitute legal, valid and binding obligations of the Issuer, subject to customary exceptions relating to bankruptcy and insolvency, and to the further effect that the interest on the Bonds is excludable from the gross income of the holders thereof for federal income tax purposes under existing law, subject to customary exceptions and the Indenture creates a lien on the Trust Estate;
- (e) an Opinion of Counsel for the Borrower to the effect that the Borrower Documents have been duly authorized, executed and delivered by the Borrower and are legal, valid and binding agreements of the Borrower in accordance with their respective terms subject to customary qualifications and exceptions;
- (f) funds the Trustee is required to receive for deposit pursuant to Section 4.02 hereof;
- (g) A request and authorization signed by the Chair of the Issuer authorizing the Trustee to authenticate and to deliver the Bonds to the Placement Agent or the Underwriter upon payment to the Trustee for the account of the Issuer of the amount specified in such request and authorization plus accrued interest, if any, thereon to the date of delivery; and

(h) any other documents or opinions which the Trustee, the Issuer or Bond Counsel may reasonably require, which requirement shall be deemed to be satisfied upon the delivery of the Opinion of Bond Counsel.

Section 2.10 Special Agreement with Holders.

Notwithstanding any provision of this Indenture or of any Bond to the contrary, at the direction of the Borrower, the Trustee may enter into an agreement with any Holder providing for making all payments to that Holder of principal of and interest on that Bond or any part thereof (other than any payment of the entire unpaid principal amount thereof) at a place and in a manner other than as provided in this Indenture and in the Bond, without presentation or surrender of the Bond, upon any conditions which shall be satisfactory to the Trustee and the Borrower; provided, that payment in any event shall be made to the Person in whose name a Bond shall be registered on the Register, with respect to payment of principal, on the date such principal is due, and, with respect to the payment of interest, as of the applicable Regular Record Date or Special Record Date, as the case may be.

Any payment of principal or interest pursuant to such an agreement shall constitute payment thereof pursuant to, and for all purposes of, this Indenture.

Section 2.11 Book-Entry Only System.

Notwithstanding any provision of this Indenture to the contrary, the Issuer may direct that all Bonds issued hereunder shall be initially issued in a Book-Entry System, registered in the name of a Depository or its nominee as registered owner of the Bonds, and held in the custody of that Depository. Unless otherwise requested by a Depository, a single certificate will be issued and delivered to the Depository for each maturity of Bonds. Beneficial Owners of Bonds in a Book-Entry System will not receive physical delivery of Bond certificates except as provided hereinafter. For so long as a Depository shall continue to serve as securities depository for the Bonds as provided herein, all transfers of Beneficial Ownership Interests will be made by book-entry only, and no investor or other party purchasing, selling or otherwise transferring Beneficial Ownership Interests of Bonds is to receive, hold or deliver any Bond certificate; provided, that, if a Depository fails or refuses to act as securities depository for the Bonds, the Issuer shall take the actions necessary to provide for the issuance of Bond certificates to the Holders of such Bonds.

With respect to Bonds registered in the name of a Depository, the Issuer, the Borrower and the Trustee shall have no responsibility or obligation to any participant therein or to any Person on whose behalf any participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, neither the Issuer, the Borrower nor the Trustee shall have any responsibility or obligation with respect to (a) the accuracy of the records of the Depository or any participant therein or any other Person, other than a registered owner of the Bonds, as shown in the Register, or any notice with respect to the Bonds or (b) the payment to any participant in the Depository or any other Person, other than a registered owner of the Bonds, as shown in the Register, of any amount with respect to principal of or interest on or purchase price of the Bonds.

Replacement Bonds may be issued directly to Beneficial Owners of Bonds other than a Depository, or its nominee, but only in the event that (a) the Depository determines not to continue

to act as securities depository for the Bonds (which determination shall become effective no less than 90 days after written notice to such effect to the Issuer and the Trustee); or (b) the Issuer has advised a Depository of its determination (which determination is conclusive as to the Depository and Beneficial Owners of the Bonds) that the Depository is incapable of discharging its duties as securities depository for the Bonds; or (c) the Issuer has determined (which determination is conclusive as to the Depository and the Beneficial Owners of the Bonds) that the interests of the Beneficial Owners of the Bonds might be adversely affected if such book-entry only system of transfer is continued. Upon occurrence of any of the foregoing events, the Issuer and the Borrower shall use commercially reasonable efforts to attempt to locate another qualified securities depository. If the Issuer and the Borrower fail to locate another qualified securities depository to replace the Depository, the Issuer and the Borrower, at the Borrower's expense, shall cause to be authenticated and delivered replacement Bonds, in certificate form, to the Beneficial Owners of the Bonds. In the event that the Issuer makes the determination noted in (b) or (c) above (provided that the Issuer undertakes no obligation to make any investigation to determine the occurrence of any events that would permit the Issuer to make any such determination), and has made provisions to notify the Beneficial Owners of Bonds of such determination by mailing an appropriate notice to the Depository, the Issuer and the Borrower shall cause to be issued replacement Bonds in certificate form to Beneficial Owners of the Bonds as shown on the records of the Depository provided to the Issuer.

Upon the written consent of 100% of the Beneficial Owners of the Bonds, the Trustee shall withdraw the Bonds from any Depository and authenticate and deliver Bonds fully registered to the assignees of that Depository or its nominee. If the request for such withdrawal is not the result of any Issuer action or inaction, such withdrawal, authentication and delivery shall be at the cost and expense (including costs of printing, preparing and delivering such Bonds) of the persons requesting such withdrawal, authentication and delivery; otherwise such withdrawal, authentication and delivery shall be at the cost and expense of the Borrower.

Whenever, during the term of the Bonds, the beneficial ownership thereof is determined by a book-entry at a Depository, (a) the requirements in this Indenture of holding, delivering or transferring Bonds shall be deemed modified to require the appropriate Person or entity to meet the requirements of the Depository as to registering or transferring the book-entry to produce the same effect and (b) delivery of the Bonds will be in accordance with arrangements among the Issuer, the Trustee and the Depository notwithstanding any provision of this Indenture to the contrary.

The Trustee and the Issuer shall enter into any letter of representation with a Depository to implement the Book-Entry System of Bond registration described above.

Section 2.12 Terms of Draw-Down Bonds.

The Bonds shall be issued as draw-down bonds in Authorized Denominations. The Bonds shall be deemed issued for federal income tax purposes only upon receipt by the Trustee of not less than \$100,000 from the Holder of the Bonds in immediately available U.S. funds. Upon the advancement of a portion of the purchase price of the Bonds, the Bonds in a principal amount equal to the amount so advanced shall be deemed to be issued to the Holder automatically and without further acts on the part of the Issuer or the Trustee. The balance of the purchase price of

the Bonds shall be advanced by the Holder on the Initial Remarketing Date. The Trustee shall maintain in its books a log which shall reflect the portion of the purchase price of the Bonds advanced by the Holder from time to time (the "Schedule of Advances"). The principal amount due on the Bonds shall only be such amount as has been advanced by the Holder as reflected in the Schedule of Advances and not otherwise redeemed pursuant to terms of the Indenture. The records maintained by the Trustee in such regard shall be conclusive evidence of the principal amount of the Bonds Outstanding absent manifest error.

ARTICLE III MANDATORY TENDER AND REMARKETING OF BONDS

Section 3.01 Mandatory Tender.

(a) Mandatory Tender for Purchase. All Outstanding Bonds shall be subject to Mandatory Tender by the Holders for purchase in whole and not in part on each Mandatory Tender Date. The purchase price for each such Bond shall be payable in lawful money of the United States of America by check or draft, shall equal 100% of the principal amount to be purchased and accrued interest, if any, to the Mandatory Tender Date, and shall be paid in full on the applicable Mandatory Tender Date.

(b) Holding of Tendered Bonds. While tendered Bonds are in the custody of the Trustee pending purchase pursuant hereto, the tendering Holders thereof shall be deemed the owners thereof for all purposes, and interest accruing on tendered Bonds through the day preceding the applicable Mandatory Tender Date is to be paid as if such Bonds had not been tendered for purchase.

(c) Effect of Prior Redemption. Notwithstanding anything herein to the contrary, any Bond tendered under this Section 3.01 will not be purchased if such Bond matures or is redeemed on or prior to the applicable Mandatory Tender Date.

(d) Purchase of Tendered Bonds. The Trustee shall utilize the following sources of payments to pay the tender price of the Bonds not later than 2:30 p.m. Local Time on the Mandatory Tender Date in the following priority: (i) amounts representing proceeds of remarketed Bonds deposited in the Remarketing Proceeds Account, to pay the principal amount, plus accrued interest, of Bonds tendered for purchase; (ii) amounts on deposit in the Collateral Fund, to pay the principal amount of Bonds tendered for purchase; (iii) amounts on deposit in the Negative Arbitrage Account of the Bond Fund to pay the accrued interest; if any, on Bonds tendered for purchase; (iv) amounts on deposit in the Project Fund; and (v) any other Eligible Funds available or made available for such purpose at the direction of the Borrower.

(e) Purchase in Lieu of Redemption. At the election of the Borrower upon a redemption in whole of the Bonds, by written notice to the Trustee and the Remarketing Agent given not less than five (5) Business Days in advance of such redemption date, the Bonds will be deemed tendered for purchase in lieu of the redemption on such date and the call for redemption shall be cancelled. The purchase price of Bonds so purchased in lieu of redemption shall be the principal amount thereof together with all accrued and unpaid interest to the date of redemption and any prepayment fee, if due, and shall be payable on the date of redemption thereof. Bonds so

purchased in lieu of redemption shall remain Outstanding and shall be registered to or upon the direction of the Borrower.

(f) Undelivered Bonds. Bonds shall be deemed to have been tendered for purposes of this Section 3.01 whether or not the Holders shall have delivered such Undelivered Bonds to the Trustee, and subject to the right of the Holders of such Undelivered Bonds to receive the purchase price of such Bonds on the Mandatory Tender Date, such Undelivered Bonds shall be null and void. If such Undelivered Bonds are to be remarketed, the Trustee shall authenticate and deliver new Bonds in replacement thereof pursuant to the remarketing of such Undelivered Bonds.

Section 3.02 Mandatory Tender Notice

(a) Notice to Holders. Not less than (i) 5 days preceding the Initial Mandatory Tender Date, and (ii) 30 days preceding any other Mandatory Tender Date, the Trustee shall give written notice of mandatory tender to the Holders of the Bonds then Outstanding (with a copy to the Borrower, the Investor Limited Partner and the Remarketing Agent) by first-class mail, postage prepaid, at their respective addresses appearing on the Register stating:

(i) the Mandatory Tender Date and that (A) all Outstanding Bonds are subject to Mandatory Tender for purchase on the Mandatory Tender Date, (B) all Outstanding Bonds must be tendered for purchase no later than 12:00 Noon, Local Time, on the Mandatory Tender Date and (C) Holders will not have the right to elect to retain their Bonds;

(ii) the address of the Designated Office of the Trustee at which Holders should deliver their Bonds for purchase;

(iii) that all Outstanding Bonds will be purchased on the Mandatory Tender Date at a price equal to the principal amount of the Outstanding Bonds plus interest accrued to, but not including, the Mandatory Tender Date; and

(iv) that any Bonds not tendered will nevertheless be deemed to have been tendered and will cease to bear interest from and after the Mandatory Tender Date.

(b) Second Notice. In the event that any Bond required to be delivered to the Trustee for payment of the purchase price of such Bond shall not have been delivered to the Trustee on or before the 30th day following a Mandatory Tender Date, the Trustee shall mail a second notice to the Holder of the Bond at its address as shown on the Register setting forth the requirements set forth in this Indenture for delivery of the Bond to the Trustee and stating that delivery of the Bond to the Trustee (or compliance with the provisions of this Indenture concerning payment of lost, stolen or destroyed Bonds) must be accomplished as a condition to payment of the purchase price or redemption price applicable to the Bond.

(c) Failure to Give Notice. Neither failure to give or receive any notice described in this Section 3.02, nor the lack of timeliness of such notice or any defect in any notice (or in its content) shall affect the validity or sufficiency of any action required or provided for in this Section 3.02.

(d) Waiver of Notice. The Holder of the Bonds may waive all notice requirements in connection with the Initial Mandatory Tender Date.

Section 3.03 Remarketing of Bonds.

(a) Notice of Mandatory Tender. No later than 11:00 a.m., Local Time, on the 30th day prior to each Mandatory Tender Date, the Trustee shall give notice to the Borrower, the Investor Limited Partner and the Remarketing Agent by telephone or electronic mail, confirmed on the same day in writing, which states the aggregate principal amount of Bonds which are to be tendered or deemed to be tendered pursuant to Section 3.01 hereof, which shall be all Outstanding Bonds.

(b) Preliminary Conditions to Remarketing. No later than 11:00 a.m., Local Time, on the 15th day prior to the Mandatory Tender Date then in effect, the Borrower may give notice to the Remarketing Notice Parties by telephone or electronic mail, confirmed on the same day in writing, that it elects to cause the Bonds to be remarketed. A remarketing of the Bonds shall be permitted only if the following conditions are satisfied no later than the time the foregoing election notice is given:

(i) Notice by the Borrower to the Remarketing Agent of the Remarketing Period pursuant to Section 3.10 of the Loan Agreement, which period shall be approved in writing by the Remarketing Agent;

(ii) Delivery to the Trustee and the Remarketing Agent of a preliminary Cash Flow Projection with respect to the proposed Remarketing Period; and

(iii) The Borrower and, if requested by the Remarketing Agent, the Issuer shall each have notified the Trustee in writing that it has approved as to form and substance any disclosure document or offering materials which, in the Opinion of Counsel to the Remarketing Agent, is necessary to be used in connection with the remarketing of the Outstanding Bonds.

(c) Remarketing. Not less than 10 days before each Remarketing Date, the Remarketing Agent shall offer for sale and use its best efforts to sell the Bonds Outstanding on the Remarketing Date at a price equal to 100% of the principal amount of such Bonds plus, if such Remarketing Date is a date other than an Interest Payment Date, accrued interest on such Bonds from the preceding Interest Payment Date to which interest has been paid. No later than the Business Day following the day on which the Remarketing Agent makes its determination of the Remarketing Rate, the Remarketing Agent shall give notice, by telephone or electronic mail, promptly confirmed in writing, to the Remarketing Notice Parties specifying the principal amount of Bonds, if any, it has remarketed (including Bonds to be purchased by the Remarketing Agent on the Remarketing Date for its own account), the Remarketing Rate(s) and the Remarketing Period applicable to the Bonds.

The Remarketing Agent shall have the right to remarket the Bonds tendered pursuant to Section 3.01 hereof; provided, however, that no such Bond shall be remarketed unless all of the Bonds are remarketed and all such Bonds shall be remarketed at a price of not less than an amount equal to 100% of the principal amount thereof plus accrued interest (if any). The Remarketing

Agent shall have the right to purchase any Bond tendered or deemed tendered pursuant to Section 3.01 hereof at 100% of the principal amount thereof, and to thereafter sell such Bond. Any such purchase shall constitute a remarketing hereunder.

The Remarketing Agent shall not remarket any Bond to the Issuer, the Borrower, any guarantor of the Bonds or any person which is an “insider” of the Issuer, the Borrower, or any such guarantor within the meaning of the Bankruptcy Code.

(d) Final Conditions to Remarketing. If, not less than four (4) Business Days preceding the Remarketing Date:

(i) the Remarketing Agent shall have notified the Trustee in writing of the remarketing of the Outstanding Bonds and that the proceeds from the remarketing (including proceeds of remarketing of Outstanding Bonds to be purchased by the Remarketing Agent on the Remarketing Date for its own account) or other funds equal to the amount needed to purchase the remarketed Bonds on the Remarketing Date are expected to be available to the Trustee on the Remarketing Date for deposit into the Remarketing Proceeds Account;

(ii) the Trustee shall have received written confirmation that the Rating Agency shall have received and approved a Cash Flow Projection based on the interest rate(s) to be in effect with respect to the Outstanding Bonds on and after the Remarketing Date;

(iii) there shall be on deposit with the Trustee, from Eligible Funds provided by the Borrower an amount sufficient to pay the Extension Payment set forth in the Cash Flow Projection for deposit (A) to the Negative Arbitrage Account of the Bond Fund with respect to the payment of Bond Service charges during the new Remarketing Period and (B) to the Expense Fund with respect to the payment of Administrative Expenses during the new Remarketing Period;

(iv) there shall be on deposit with the Trustee, from Eligible Funds provided by the Borrower an amount sufficient to pay the estimated Remarketing Expenses for deposit in the Expense Fund, or provision for the payment of the estimated Remarketing Expenses shall have been made to the satisfaction of the Trustee and the Remarketing Agent; and

(v) the Trustee shall have received written notice from the Remarketing Agent that the Remarketing Agent has received written confirmation from the Rating Agency that the then current rating assigned to the Outstanding Bonds will continue to be effective on the Remarketing Date; and

(vi) the Trustee shall have received an Opinion of Bond Counsel to the effect that the remarketing of the Bonds will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes;

then the Trustee shall immediately give notice, by telephone or electronic mail, which notice shall be immediately confirmed in writing, to the Remarketing Agent, the Borrower and the Investor

Limited Partner that (a) the conditions precedent to the remarketing of the Outstanding Bonds set forth in this paragraph (d) have been satisfied and (b) the sale and settlement of the Outstanding Bonds is expected to occur on the Remarketing Date. Following the Trustee's notice, the Outstanding Bonds shall be sold to the purchasers identified by the Remarketing Agent for delivery and settlement on the Remarketing Date, and the Trustee shall apply (i) the funds in the Remarketing Proceeds Account of the Bond Fund on the Remarketing Date to payment of the purchase price of the Outstanding Bonds and (ii) the funds in the Expense Fund to payment of the Remarketing Expenses.

(e) Failure to Satisfy Final Conditions. If, (1) not less than four (4) days preceding a Remarketing Date, any condition set forth in paragraph (d) of this Section 3.03 has not been satisfied, or (2) by 11:00 a.m. Local Time on the fifteenth (15th) day prior to the Mandatory Tender Date then in effect, any condition set forth in paragraph (b) of this Section 3.03 has not been satisfied, or (3) by 11:00 a.m. Local Time on the Remarketing Date, there is a failure to remarket the Bonds or proceeds from the remarketing of the Bonds are insufficient to pay the purchase price of all of the Bonds then Outstanding, then the Remarketing Agent shall not sell any of the Outstanding Bonds on the Remarketing Date and all of the Bonds shall be purchased on the Mandatory Tender Date then in effect as provided in Section 3.01(e) hereof. In such event and in accordance with Section 3.04, the Trustee shall immediately cancel all such Bonds.

(f) Remarketing Proceeds. No later than 11:00 a.m., Local Time, on each Remarketing Date, the Remarketing Agent shall pay to the Trustee, in immediately available funds, the proceeds theretofore received by the Remarketing Agent from the remarketing of Bonds tendered for purchase on such Remarketing Date; provided, that the Remarketing Agent may use its best efforts to cause the purchasers of the remarketed Bonds to pay the purchase price plus accrued interest (if any) to the Trustee in immediately available funds. The proceeds from the remarketing of the Bonds shall be deposited in the Remarketing Proceeds Account, segregated from any funds of the Borrower and the Issuer and shall in no case be considered to be or be assets of the Borrower or the Issuer. Funds representing remarketing proceeds received by the Remarketing Agent after 11:00 a.m., Local Time, on each Remarketing Date shall be paid to the Trustee as soon as practicable upon such receipt.

(g) Bonds purchased by the Trustee on a Mandatory Tender Date that have been remarketed shall be delivered to the purchasers thereof as directed by the Remarketing Agent. Bonds delivered as provided in this Section shall be registered in the manner directed by the recipient thereof.

Section 3.04 Cancellation of Bonds.

The Trustee shall immediately cancel Bonds if the tender price of the Bonds is paid from amounts other than proceeds derived from the remarketing of the Bonds.

**ARTICLE IV
REVENUES AND FUNDS**

Section 4.01 Creation of Funds.

There are hereby established with the Trustee the following funds and accounts to be held in trust and maintained by the Trustee under this Indenture:

- (a) the Bond Fund, and therein the Negative Arbitrage Account and the Remarketing Proceeds Account (but only at such times as money is to be deposited or held in such Accounts as provided in this Indenture);
- (b) the Project Fund;
- (c) the Costs of Issuance Fund (if funds are deposited therein);
- (d) the Collateral Fund;
- (e) the Rebate Fund; and
- (f) the Expense Fund (if funds are deposited therein).

Each fund and account therein shall be maintained by the Trustee as a separate and distinct trust fund or account to be held, managed, invested, disbursed and administered as provided in this Indenture. All money deposited in the funds and accounts created hereunder shall be used solely for the purposes set forth in this Indenture. The Trustee shall keep and maintain adequate records pertaining to each fund and account, and all disbursements therefrom, in accordance with its general practices and procedures in effect from time to time. The Trustee may also terminate funds and accounts that are no longer needed.

The Trustee shall, at the written direction of an Authorized Borrower Representative, and may, in its discretion, establish such additional accounts within any fund, and subaccounts within any of the accounts, as the Issuer or the Trustee may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that fund and its accounts, or for the purpose of complying with the requirements of the Code, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Indenture with respect to a deposit or use of money in the Special Funds or result in commingling of funds not permitted hereunder.

Section 4.02 Allocation of Bond Proceeds and Other Deposits.

(a) Allocation of Bond Proceeds. The Closing Draw of proceeds of the Bonds in the amount of \$100,000 shall be deposited to the Project Fund on the Closing Date. The Second Draw of proceeds of the Bonds in the amount of \$10,600,000 shall be deposited to the Project Fund on the Initial Remarketing Date.

(b) Allocation of Initial Borrower Deposit. The Initial Borrower Deposit (if any) shall be deposited into the Costs of Issuance Fund.

(c) Allocation of Other Funds. On the Closing Date, the Trustee shall receive \$_____ from or on behalf of the Borrower as a deposit to the Negative Arbitrage Account, which the Trustee shall deposit to the Negative Arbitrage Account of the Bond Fund.

Section 4.03 Bond Fund.

On the Closing Date, there shall be deposited in the Bond Fund, from the proceeds of the sale of the Bonds, any accrued interest paid with respect to the Bonds, and in the Negative Arbitrage Account of the Bond Fund the amount set forth in Section 4.02(c) hereof. The portion of any Extension Payment received by the Trustee in connection with a remarketing in accordance with Section 3.03 hereof designated for the payment of Bond Service Charges shall also be deposited in the Negative Arbitrage Account.

So long as there are any Outstanding Bonds, to the extent the Borrower has not received a credit against Loan Payments, all Loan Payments under the Loan Agreement shall be paid on or before each Interest Payment Date directly to the Trustee, and deposited in the Bond Fund, in at least the amount necessary to pay the Bond Service Charges due on the Bonds on such Interest Payment Date (taking into account any credit due to the Borrower in connection with such Loan Payment).

The Bond Fund (and accounts therein for which provision is made in this Indenture) and the money and Eligible Investments therein shall be used solely and exclusively for the payment of Bond Service Charges as they become due.

Bond Service Charges shall be payable, as they become due, in the following order: (a) from money on deposit in the Negative Arbitrage Account of the Bond Fund (but only to pay the interest portion of Bond Service Charges), (b) from the money on deposit in the Bond Fund, other than the Negative Arbitrage Account thereof, (c) from money on deposit in the Collateral Fund and transferred as necessary to the Bond Fund, (d) from money on deposit in the Project Fund and transferred as necessary to the Bond Fund, and (e) from money on deposit in the Negative Arbitrage Account of the Bond Fund (to pay all Bond Service Charges). Such amounts shall be credited to the Borrower in connection with Bond Service Charges otherwise due.

Upon receipt by the Trustee of a Cash Flow Projection provided on behalf of the Borrower, the Trustee is hereby authorized to release from the Negative Arbitrage Account the amount set forth in the Cash Flow Projection to be released to or at the written direction of the Borrower from such account.

Section 4.04 Project Fund.

Money in the Project Fund shall be disbursed in accordance with the provisions of Section 3.6 of the Loan Agreement (which Section 3.6 shall be considered incorporated herein by this reference) and this Section 4.04. The Trustee may conclusively rely on any disbursement request received pursuant to Section 3.6 of the Loan Agreement as to the appropriateness of the expenses specified therein and the sufficiency of such request with respect to the requirements of the Loan Agreement. To the extent money is not otherwise available to the Trustee, including money on deposit in the Bond Fund or the Collateral Fund, the Trustee shall transfer from the Project Fund

to the Bond Fund sufficient money to make the necessary interest and principal payments on each Interest Payment Date without further written direction.

The Trustee shall cause to be kept and maintained adequate records pertaining to the Project Fund and all disbursements therefrom. If requested by the Issuer, the Investor Limited Partner or the Borrower, after the Project has been completed and a Completion Certificate is filed as provided in Section 4.07 hereof, the Trustee shall file copies of the records pertaining to the Project Fund and disbursements therefrom with the Borrower and the Investor Limited Partner. The Trustee shall satisfy this obligation by providing trust statements for all periods in which there are funds in the Project Fund.

Notwithstanding any provision of the Loan Agreement or any other provision of this Indenture to the contrary and except to make necessary interest payments and except for the transfer of excess proceeds in accordance with Section 3.6 of the Loan Agreement, the Trustee shall not disburse money from the Project Fund, other than to pay Bond Service Charges on the Bonds, unless and until Eligible Funds in an amount equal to or greater than the requested disbursement amount have been deposited in the Collateral Fund. Prior to making any disbursement (except to the extent necessary to pay Bond Service Charges), the Trustee shall determine that the aggregate amount that will be held in (a) the Collateral Fund and (b) the Project Fund, after the anticipated disbursement, is at least equal to the then-Outstanding principal amount of the Bonds; provided, however, notwithstanding any provision to the contrary contained herein or in the other Financing Documents, upon receipt of a deposit of Eligible Funds from the Lender, Trustee shall be unconditionally and irrevocably obligated to promptly disburse funds from the Project Fund in accordance with the applicable requisition, but the Trustee shall only be obligated to make such a disbursement to the extent of the amount of proceeds of the Bonds remaining in the Project Fund, and if the Trustee receives a deposit of Eligible Funds from the Lender in excess of the available amount, the Trustee shall promptly return the excess to the Lender.

On the earlier of a Mandatory Tender Date on which the Bonds are not being remarketed or the Maturity Date, any money remaining in the Project Fund shall be transferred to the Bond Fund.

Upon the occurrence and continuance of an Event of Default hereunder because of which the principal amount of the Bonds has been declared to be due and immediately payable pursuant to Section 6.03 hereof, any money remaining in the Project Fund shall be promptly transferred by the Trustee to the Bond Fund.

After this Indenture is discharged, any amounts remaining in the Project Fund shall be applied as provided in Section 4.14 of this Indenture.

Section 4.05 Costs of Issuance Fund.

The Borrower may, but shall not be required to, deposit funds in the Costs of Issuance Fund. Any amounts on deposit in the Costs of Issuance Fund shall be used by the Trustee to pay costs of issuance as directed in writing by the Borrower. Any amounts remaining on deposit in the Costs of Issuance Fund 30 days after the Closing Date shall be promptly returned to the Borrower or disbursed at the direction of the Borrower.

Section 4.06 Collateral Fund.

The Trustee shall deposit into the Collateral Fund all Eligible Funds received pursuant to Section 4.2 of the Loan Agreement and any other Eligible Funds received by the Trustee for deposit into the Collateral Fund. Section 4.2 of the Loan Agreement requires the Borrower to cause the Lender to make deposit of Eligible Funds to the Trustee for deposit into the Collateral Fund in a principal amount equal to, and as a prerequisite to the disbursement of, the amount of Bond proceeds on deposit in the Project Fund to be disbursed by the Trustee to finance Costs of the Project.

The Trustee shall transfer money in the Collateral Fund as follows: (a) on each Bond Payment Date, to the Bond Fund the amount necessary to pay Bond Service Charges on the Bonds on such Bond Payment Date (to the extent money is not otherwise available to the Trustee, including money on deposit in the Bond Fund); (b) on the Mandatory Tender Date, to the Bond Fund, the amount necessary to pay the purchase price of the Bonds, to the extent the Bonds are not remarketed on any Mandatory Tender Date or amounts on deposit in the Remarketing Proceeds Account of the Bond Fund are insufficient therefor; and (c) on the Maturity Date of the Bonds, to the Bond Fund the amount necessary to pay all amounts due on the Bonds on such date.

On the earlier of the Maturity Date or any Mandatory Tender Date with respect to which the Bonds are not remarketed, the Trustee shall transfer all amounts then on deposit in the Collateral Fund into the Bond Fund to pay Bond Service Charges on the Bonds.

Amounts on deposit in the Collateral Fund in excess of the amount required to pay Bond Service Charges after payment in full of the Bonds may be transferred to the Project Fund and used to pay costs of the Project as provided in Section 3.6 of the Loan Agreement.

The Bonds shall not be, and shall not be deemed to be, paid or prepaid by reason of any deposit into the Collateral Fund unless and until the amount on deposit in the Collateral Fund is transferred to the Bond Fund and applied to the payment of the principal of any of the Bonds or the principal component of the tender price of any of the Bonds, all as provided in this Indenture.

Section 4.07 Completion of the Project.

The completion of the Project and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the Completion Certificate required by Section 3.9 of the Loan Agreement. As soon as practicable after the filing with the Trustee of the Completion Certificate, any balance remaining in the Project Fund (other than the amounts retained by the Trustee as described in the Completion Certificate) shall be deposited or applied in accordance with the direction of the Authorized Borrower Representative pursuant to Section 3.6 of the Loan Agreement.

Section 4.08 Expense Fund.

On the Closing Date, no amounts are expected to be deposited in the Expense Fund. The portion of any Extension Payment received by the Trustee in connection with an extension of the Mandatory Tender Date pursuant to Section 3.03 hereof designated for the payment of Administrative Expenses shall be deposited in the Expense Fund. From time to time, the Borrower

may deposit funds in the Expense Fund to pay the costs described below. The Trustee shall apply money on deposit in the Expense Fund solely for the following purposes, on the dates specified below, in the following order of priority:

- (a) to pay the Ordinary Trustee's Fees and Expenses when due;
- (b) to pay the Dissemination Agent Fee when due; and
- (c) to pay any Issuer Fees and Expenses not previously paid.

To the extent money in the Expense Fund is not sufficient to pay the foregoing fees and expenses, such deficiency shall be paid by the Borrower pursuant to Section 4.4 of the Loan Agreement immediately upon written demand.

Section 4.09 Rebate Fund.

(a) The Trustee shall make information regarding the Bonds and the investments hereunder available to the Borrower upon request, shall make deposits to and disbursements from the Rebate Fund in accordance with the written directions received from the Authorized Borrower Representative, shall invest moneys in the Rebate Fund pursuant to said directions and shall deposit income from such investments pursuant to said directions, and shall make payments to the United States of America in accordance with directions received from the Borrower.

(b) Notwithstanding any provision of this Indenture to the contrary, the Trustee shall not be liable or responsible for any calculation or determination which may be required in connection with or for the purpose of complying with Section 148 of the Code or any applicable Treasury regulation (the "Arbitrage Rules"), including, without limitation, the calculation of amounts required to be paid to the United States under the provisions of the Arbitrage Rules, the maximum amount which may be invested in "nonpurpose obligations" as defined in the Code and the fair market value of any investment made hereunder, it being understood and agreed that the sole obligation of the Trustee with respect to investments of funds hereunder shall be to invest the moneys received by the Trustee pursuant to the instructions of the Authorized Borrower Representative given in accordance with Section 4.11 hereof. The Trustee shall have no responsibility for determining whether or not the investments made pursuant to the direction of the Authorized Borrower Representative or any of the instructions received by the Trustee under this Section 4.09 comply with the requirements of the Arbitrage Rules and shall have no responsibility for monitoring the obligations of the Borrower or the Issuer for compliance with the provisions of the Indenture with respect to the Arbitrage Rules.

Section 4.10 Tax Agreement.

The Trustee shall comply with the requirements of the Tax Agreement. Without limiting the generality of the foregoing, the Trustee shall furnish to the Borrower, the Issuer and the Investor Limited Partner all information reasonably requested by the Borrower, the Issuer or the Investor Limited Partner with respect to the Bonds and investments of the Funds and accounts maintained by the Trustee hereunder.

Section 4.11 Investment of Special Funds and Rebate Fund.

Except as otherwise set forth in this Section, moneys in the Special Funds and the Rebate Fund shall be invested and reinvested by the Trustee in Eligible Investments at the written direction of the Authorized Borrower Representative. At no time shall the Authorized Borrower Representative direct that any funds constituting gross proceeds of the Bonds be used in any manner as would constitute failure of compliance with Section 148 of the Code. Investments of moneys in the Special Funds shall mature or be redeemable without penalty at the times and in the amounts necessary to provide moneys to pay Bond Service Charges on the Bonds. Any of those investments may be purchased from or sold to the Trustee, the Registrar, an authenticating agent or a paying agent, or any bank, trust company or savings and loan association affiliated with any of the foregoing. The Trustee shall sell or redeem investments credited to the Special Funds to produce sufficient moneys applicable hereunder to and at the times required for the purposes of paying Bond Service Charges when due as aforesaid, and shall do so without necessity for any order on behalf of the Issuer and without restriction by reason of any order. If the Trustee is required to sell or otherwise dispose of any Eligible Investments prior to maturity at a price below par, the Borrower shall, at the Borrower's expense, deliver to the Trustee (i) a Cash Flow Projection and (ii) Eligible Funds in the amount set forth in such Cash Flow Projection, if any. An investment made from moneys credited to the Special Funds shall constitute part of that respective Fund. All gains resulting from the sale of, or income from, any investment made from moneys credited to the Special Funds shall be credited to and become part of the Bond Fund. In the absence of written directions of the Authorized Borrower Representative as provided above, the Trustee shall be required to invest such funds in the following investments, if and as available: Fidelity Investments Money Market Treasury Portfolio—Class III (FCSXX). Following the Closing Date, at the direction of the Borrower, the Trustee is permitted to purchase, sell or exchange Eligible Investments with a Cash Flow Projection. Notwithstanding anything herein to the contrary, (i) earnings received by the Trustee with respect to Eligible Investments purchased for the purpose of paying Bond Service Charges shall be held uninvested and (ii) Bond proceeds and the Negative Arbitrage Deposit shall be held uninvested until the Trustee has purchased, sold or exchanged Eligible Investments.

Section 4.12 Money to be Held in Trust.

Except where money has been deposited with or paid to the Trustee pursuant to an instrument restricting its application to particular Bonds, all money required or permitted to be deposited with or paid to the Trustee under any provision of this Indenture or the Note, and any investments thereof, shall be held by the Trustee in trust. Except for money held by the Trustee pursuant to Section 4.09 hereof, all money described in the preceding sentence held by the Trustee shall be subject to the lien of this Indenture hereof while so held.

The money in any fund or account established under this Indenture shall be subject to the unclaimed property laws of the State.

Section 4.13 Valuation.

For the purpose of determining the amount on deposit to the credit of any Special Fund or Account, the value of obligations in which money in such Fund or Account shall have been

invested shall be computed at the then market value thereof based on such public pricing sources as shall generally be available. The Trustee shall have no liability for the accuracy of any such valuation.

The Eligible Investments shall be valued by the Trustee at any time requested by the Authorized Borrower Representative on reasonable written notice to the Trustee (which period of notice may be waived or reduced by the Trustee); provided, however, that the Trustee shall not be required to value the Eligible Investments more than once in any calendar month.

Section 4.14 Nonpresentment of Bonds.

In the event that any Bond shall not be presented for payment when the principal thereof becomes due, or a check or draft for interest is uncashed, if money sufficient to pay the principal then due of that Bond or of such check or draft shall have been made available to the Trustee for the benefit of its Holder, all liability of the Issuer to that Holder for such payment of the principal then due of the Bond or of such check or draft thereupon shall cease and be discharged completely. Thereupon, it shall be the duty of the Trustee to hold such money, without liability for interest thereon, in a separate account in the Bond Fund for the exclusive benefit of the Holder, who shall be restricted thereafter exclusively to such money for any claim of whatever nature on its part under this Indenture or on, or with respect to, the principal then due of that Bond or of such check or draft.

If any of such money remains unclaimed by the Holder of a Bond not presented for payment or check or draft not cashed for a period ending the earlier of (a) two (2) years after it becomes payable or distributable or (b) one day less than the applicable escheat laws of the State, the Trustee shall comply with the unclaimed property laws of the State, and all liability of the Issuer, the Borrower and the Trustee to the Holder for the payment of such Bond shall forthwith cease, determine and be completely discharged.

Section 4.15 Repayment to the Borrower.

Except as provided in Section 4.10 and Section 4.14 hereof, any amounts remaining in the Special Funds (except the Project Fund and the Rebate Fund) and any other fund or account established or maintained by the Trustee pursuant to or in connection with this Indenture (except the Project Fund and the Rebate Fund) (a) after all of the Outstanding Bonds shall be deemed paid and discharged under the provisions of this Indenture, and (b) after payment of all fees, charges and expenses of the Trustee and the Issuer and of all other amounts due and required to be paid under this Indenture, the Loan Agreement, the Tax Agreement, the Land Use Restriction Agreement and the Note, shall be paid to the Borrower. Furthermore, except as provided in Section 4.10 and Section 4.14 hereof, any amounts remaining in the Project Fund (a) after all of the Outstanding Bonds shall be deemed paid and discharged under the provisions of this Indenture, and (b) after payment of all fees, charges and expenses of the Trustee and the Issuer and of all other amounts due and required to be paid under this Indenture, the Loan Agreement, the Tax Agreement, the Land Use Restriction Agreement and the Note, shall be paid to the Borrower and shall be applied to reimburse the Borrower for Project Costs incurred by the Borrower that have not previously been paid with the proceeds of the Bonds.

ARTICLE V
THE TRUSTEE AND REMARKETING AGENT

Section 5.01 Trustee's Acceptance and Responsibilities.

The Trustee accepts the trusts imposed upon it by this Indenture, and agrees to observe and perform those trusts, but only upon and subject to the terms and conditions set forth in this Article, to all of which the parties hereto and the Holders agree.

(a) Prior to the occurrence of a default or an Event of Default (as defined in Section 6.01 hereof) of which the Trustee has been notified, as provided in paragraph (f) of Section 5.02 hereof, or of which by that paragraph the Trustee is deemed to have notice, and after the cure or waiver of all defaults or Events of Default which may have occurred,

(i) the Trustee undertakes to perform only those duties and obligations which are set forth specifically in this Indenture, and no duties or obligations shall be implied to the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may rely conclusively, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are required specifically to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the any requirements specifically set forth of in this Indenture.

(b) In case a default or an Event of Default has occurred and is continuing hereunder (of which the Trustee has been notified, or is deemed to have notice), the Trustee shall exercise those rights and powers vested in it by this Indenture and shall use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.

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

(i) this subparagraph shall not be construed to affect the limitation of the Trustee's duties and obligations provided in subparagraph (a)(i) of this Section or the Trustee's right to rely on the truth of statements and the correctness of opinions as provided in subparagraph (a)(ii) of this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by any one of its officers, unless it shall be established that the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority in principal amount of the Bonds then Outstanding relating to the

time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 5.01.

Section 5.02 Certain Rights and Obligations of the Trustee.

Except as otherwise provided in Section 5.01 hereof:

(a) The Trustee (i) may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees (but shall be answerable therefor only in accordance with the standard specified above), (ii) shall be entitled to the advice of counsel concerning all matters of trusts hereof and duties hereunder, and (iii) may pay reasonable compensation in all cases to all of those attorneys, agents, receivers and employees reasonably employed by it in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Issuer or the Borrower) approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action taken or omitted to be taken in good faith in reliance upon that opinion or advice.

(b) Except for its certificate of authentication on the Bonds, the Trustee shall not be responsible for:

- (i) any recital in this Indenture or in the Bonds,
- (ii) the validity, priority, recording, re-recording, filing or re-filing of this Indenture or any Supplemental Indenture or the Land Use Restriction Agreement,
- (iii) any instrument or document of further assurance or collateral assignment,
- (iv) any financing statements, amendments thereto or continuation statements,
- (v) insurance of the Project or collection of insurance moneys,
- (vi) the validity of the execution by the Issuer of this Indenture, any Supplemental Indenture or instruments or documents of further assurance,

(vii) the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby,

(viii) the value of or title to the Project, or

(ix) the maintenance of the security hereof.

The Trustee shall not be bound to ascertain or inquire as to the observance or performance of any covenants, agreements or obligations on the part of the Issuer or the Borrower under the Loan Agreement except as set forth hereinafter; but the Trustee may require of the Issuer or the Borrower full information and advice as to the observance or performance of those covenants, agreements and obligations. Except as otherwise provided in Section 6.04 hereof, the Trustee shall have no obligation to observe or perform any of the duties of the Issuer under the Loan Agreement.

(c) The Trustee shall not be accountable for the application by the Borrower or any other Person of the proceeds of any Bonds authenticated or delivered hereunder.

(d) The Trustee shall be protected, in the absence of bad faith on its part, in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to this Indenture upon the request, authority or consent of any Person who is the Holder of any Bonds at the time of making the request or giving the authority or consent, shall be conclusive and binding upon all future Holders of the same Bond and of Bonds issued in exchange therefor or in place thereof.

(e) As to the existence or nonexistence of any fact for which the Issuer or the Borrower may be responsible or as to the sufficiency or validity of any instrument, document, report, paper or proceeding, the Trustee, in the absence of bad faith on its part, shall be entitled to rely upon a certificate signed on behalf of the Issuer or the Borrower, as appropriate, by an Authorized Official or an Authorized Borrower Representative as sufficient evidence of the facts recited therein. Prior to the occurrence of a default or Event of Default hereunder of which the Trustee has been notified, as provided in paragraph (f) of this Section, or of which by that paragraph the Trustee is deemed to have notice, the Trustee may accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient; provided, that the Trustee in its discretion may require and obtain any further evidence which it deems to be necessary or advisable; and, provided further, that the Trustee shall not be bound to secure any further evidence.

(f) The Trustee shall not be required to take notice, and shall not be deemed to have notice, of any default or Event of Default hereunder, except Events of Default described in paragraphs (a) and (b) of Section 6.01 hereof, unless the Trustee shall be notified specifically of the default or Event of Default in a written instrument or document delivered to it by the Issuer or by the Holders of a majority of the aggregate principal amount of Bonds then Outstanding. In the absence of delivery of a notice satisfying those requirements, the Trustee may assume conclusively that there is no default or Event of Default, except as noted above.

(g) At any reasonable time, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives (i) may inspect and copy fully all

books, papers and records of the Issuer pertaining to the Project and the Bonds, and (ii) may make any memoranda from and in regard thereto as the Trustee may desire.

(h) The Trustee shall not be required to give any bond or surety with respect to the execution of these trusts and powers or otherwise in respect of the premises.

(i) Notwithstanding anything contained elsewhere in this Indenture, the Trustee may demand any showings, certificates, reports, opinions, appraisals and other information, and any corporate action and evidence thereof, in addition to that required by the terms hereof, as a condition to the authentication of any Bonds or the taking of any action whatsoever within the purview of this Indenture, if the Trustee deems it to be desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds or the right of any Person to the taking of any other action by the Trustee; provided, that the Trustee shall not be required to make that demand.

(j) Before taking action hereunder (with the exception of any action required to be taken under Section 6.02 hereof or the acceleration of the Bonds under Section 6.03 hereof), the Trustee may require that a satisfactory indemnity bond be furnished to it for the reimbursement of all expenses which it may incur and to protect it against all liability by reason of any action so taken, except liability resulting from its gross negligence, misconduct or willful default. The Trustee may take action without that indemnity, but, in any event, the Borrower shall be responsible to the Trustee for all of the Trustee's expenses pursuant to Section 5.03 hereof.

(k) Unless otherwise provided herein, all moneys received by the Trustee under this Indenture shall be held in trust for the purposes for which those moneys were received, until those moneys are used, applied or invested as provided herein; provided, that those moneys need not be segregated from other moneys, except to the extent required by this Indenture or by law. The Trustee shall not have any liability for interest on any moneys received hereunder, except to the extent expressly provided herein.

(l) Any resolution by the Governing Body, and any opinions, certificates and other instruments and documents for which provision is made in this Indenture, may be accepted by the Trustee, in the absence of bad faith on its part, as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for its actions taken hereunder.

(m) The Trustee shall be entitled to file proofs of claim in bankruptcy. Ordinary Fees and Expenses and Extraordinary Fees and Expenses of the Trustee are intended to constitute Administrative Expenses in bankruptcy.

(n) The Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties under this Indenture shall extend to the Trustee's officers, commissioners, agents, attorneys and employees. Such immunities and protections and rights to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the discharge of this Indenture, and final payment of the Bonds.

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

(p) The Trustee shall notify the Issuer that the Issuer's obligations under the Bonds and this Indenture have been satisfied in full within twenty (20) days after the effective date of such satisfaction and the fulfillment of the Issuer's obligations hereunder and under the Bonds.

(q) The Trustee shall have no obligation to file financing statements or continuation statements.

(r) Upon written request by the Rating Agency, the Trustee shall furnish to the Rating Agency the balance of funds on hand with the Trustee and other information as may be reasonably required to maintain the rating on the Bonds.

Section 5.03 Fees, Charges and Expenses of Trustee.

The Trustee shall be entitled to payment or reimbursement by the Borrower, as provided in the Loan Agreement, for customary fees for Ordinary Services rendered hereunder and for all advances, counsel fees and other Ordinary Expenses reasonably and necessarily paid or incurred by it in connection with the provision of Ordinary Services. For purposes hereof, fees for Ordinary Services provided for by its standard fee schedule shall be considered customary. In the event that it should become necessary for the Trustee to perform Extraordinary Services, it shall be entitled to customary extra compensation therefor and to reimbursement for reasonable and necessary Extraordinary Expenses incurred in connection therewith. Unless and until such time as the Trustee resigns or is replaced, and a successor Trustee is appointed pursuant to Section 5.09 hereunder, the Trustee shall continue to perform its duties hereunder notwithstanding the Borrower's failure to timely pay such fees.

Without creating a default or an Event of Default hereunder, however, the Borrower or the Investor Limited Partner may contest in good faith the necessity for any Extraordinary Service and Extraordinary Expense and the amount of any fee, charge or expense.

The Trustee shall not be entitled to compensation or reimbursement for Extraordinary Services or Extraordinary Expenses occasioned by its gross neglect, misconduct or breach of contract. The customary fees for its Ordinary Services and charges of the foregoing shall be entitled to payment and reimbursement only from (i) the Additional Payments made by the Borrower pursuant to the Loan Agreement, or (ii) from moneys available therefor in the Expense Fund. Any amounts payable to the Trustee pursuant to this Section 5.03 shall be payable upon demand and shall bear interest from the date of demand therefor at the Interest Rate for Advances.

Section 5.04 Intervention by Trustee.

The Trustee may intervene on behalf of the Holders, and shall intervene if requested to do so in writing by the Holders of at least 50% of the aggregate principal amount of Bonds then Outstanding, in any judicial proceeding to which the Issuer or the Borrower is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of Holders

of the Bonds. The rights and obligations of the Trustee under this Section are subject to the approval of that intervention by a court of competent jurisdiction. The Trustee may require that a satisfactory indemnity bond be provided to it in accordance with Sections 5.01 and 5.02 hereof before it takes action hereunder.

Section 5.05 Successor Trustee.

Anything herein to the contrary notwithstanding,

(a) any corporation or association (i) into which the Trustee may be converted or merged, (ii) with which the Trustee or any successor to it may be consolidated, or (iii) to which it may sell or transfer its corporate trust assets and corporate trust business as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, merger, consolidation, sale or transfer, ipso facto, shall be and become successor Trustee hereunder and shall be vested with all of the title to the whole property or Trust Estate hereunder; and

(b) that corporation or association shall be vested further, as was its predecessor, with each and every trust, property, remedy, power, right, duty, obligation, discretion, privilege, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by, vested in or conveyed to the Trustee, without the execution or filing of any instrument or document or any further act on the part of any of the parties hereto.

Any successor Trustee, however, (i) shall be a trust company or a bank having the powers of a trust company, (ii) shall be in good standing within the State, (iii) shall be duly authorized to exercise trust powers within the State, and (iv) shall have a reported capital, surplus and retained earnings of not less than \$100,000,000.

Section 5.06 Appointment of Co-Trustee.

It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including without limitation, the laws of the State) denying or restricting the right of banks or trust companies to transact business as trustees in that jurisdiction. It is recognized that, (a) if there is litigation under this Indenture or other instruments or documents relating to the Bonds and the Project, and in particular, in case of the enforcement hereof or thereof upon a default or an Event of Default hereunder, or (b) if the Trustee should deem that, by reason of any present or future law of any jurisdiction, it may not (i) exercise any of the powers, rights or remedies granted herein to the Trustee, (ii) hold title to the properties, in trust, as granted herein, or (iii) take any action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an individual or additional institution as a co-Trustee. The following provisions of this Section are adapted to these ends.

In the event that the Trustee appoints an individual or additional institution as a co-Trustee, each and every trust, property, remedy, power, right, duty, obligation, discretion, privilege, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by, vested in or conveyed to the Trustee shall be exercisable by, vest in and be conveyed to that co-Trustee, but only to the extent necessary for it to be so vested and

conveyed and to enable that co-Trustee to exercise it. Every covenant, agreement and obligation necessary to the exercise thereof by that co-Trustee shall run to and be enforceable by it.

Should any instrument or document in writing from the Issuer reasonably be required by the co-Trustee so appointed by the Trustee for vesting and conveying more fully and certainly in and to that co-Trustee those trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens, that instrument or document shall be executed, acknowledged and delivered, but not prepared, by the Issuer. In case any co-Trustee or a successor to it shall die, become incapable of acting, resign or be removed, all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of the co-Trustee shall be exercised by, vest in and be conveyed to the Trustee, to the extent permitted by law, until the appointment of a successor to the co-Trustee.

Section 5.07 Resignation by the Trustee.

The Trustee may resign at any time from the trusts created hereby by giving written notice of the resignation to the Issuer, the Borrower and the Remarketing Agent and by mailing written notice of the resignation to the Holders as their names and addresses appear on the Register at the close of business 15 days prior to the mailing. The resignation shall take effect upon the appointment of a successor Trustee as provided for in Section 5.09 hereof or an order of a court of competent jurisdiction allowing the Trustee to resign.

Section 5.08 Removal of the Trustee.

The Trustee may be removed at any time by an instrument or document or concurrent instruments or documents in writing delivered to the Trustee, with copies thereof mailed to the Issuer, the Remarketing Agent, the Borrower and Investor Limited Partner, and signed by or on behalf of the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding.

The Trustee also may be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provision of this Indenture with respect to the duties and obligations of the Trustee by any court of competent jurisdiction upon the application of the Issuer or the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding under this Indenture.

The removal of the Trustee under this Section 5.08 shall take effect upon the appointment of a successor Trustee as provided for in Section 5.09 of this Indenture.

Section 5.09 Appointment of Successor Trustee.

If (a) the Trustee shall resign, shall be removed, shall be dissolved, or shall become otherwise incapable of acting hereunder, (b) the Trustee shall be taken under the control of any public officer or officers, or (c) a receiver shall be appointed for the Trustee by a court, then a successor Trustee shall be appointed by the Borrower or the Issuer, with the written consent of the Borrower and the Investor Limited Partner; provided, that if a successor Trustee is not so appointed within 10 days after (i) a notice of resignation or an instrument or document of removal is received

by the Issuer, as provided in Sections 5.07 and 5.08 hereof, respectively, or (ii) the Trustee is dissolved, taken under control, becomes otherwise incapable of acting or a receiver is appointed, in each case, as provided above, then, so long as the Issuer shall not have appointed a successor Trustee, the Holders of a majority in aggregate principal amount of Bonds then Outstanding may designate a successor Trustee by an instrument or document or concurrent instruments or documents in writing signed by or on behalf of those Holders. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section, the Holder of any Bond Outstanding hereunder or any retiring Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

Every successor Trustee appointed pursuant to this Section (a) shall be a trust company or a bank having the powers of a trust company, (b) shall be in good standing within the State, (c) shall be duly authorized to exercise trust powers within the State, (d) shall have a reported capital, surplus and retained earnings of not less than \$100,000,000, and (e) shall be willing to accept the trusteeship under the terms and conditions of this Indenture.

Every successor Trustee appointed hereunder shall execute and acknowledge, and shall deliver to its predecessor, the Issuer, the Borrower and the Investor Limited Partner an instrument or document in writing accepting the appointment. Thereupon, without any further act, the successor shall become vested with all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of its predecessor. Upon the written request of its successor, the Issuer or the Borrower or Investor Limited Partner, and payment of all fees and expenses owed to it, the predecessor Trustee (a) shall execute and deliver an instrument or document transferring to its successor all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of the predecessor Trustee hereunder, and (b) shall take any other action necessary to duly assign, transfer and deliver to its successor all property (including without limitation, all securities and moneys) held by it as Trustee. Should any instrument or document in writing from the Issuer be requested by any successor Trustee for vesting and conveying more fully and certainly in and to that successor the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens vested or conveyed or intended to be vested or conveyed hereby in or to the predecessor Trustee, the Issuer shall execute, acknowledge and deliver that instrument or document.

In the event of a change in the Trustee, the predecessor Trustee shall cease to be custodian of any moneys which it may hold pursuant to this Indenture and shall cease to be registrar, authenticating agent and paying agent for any of the Bonds, to the extent it served in any of those capacities.

Section 5.10 Adoption of Authentication.

In case any of the Bonds shall have been authenticated, but shall not have been delivered, any successor Trustee may adopt the certificate of authentication of any predecessor Trustee and may deliver those Bonds so authenticated as provided herein. In case any Bonds shall not have been authenticated, any successor Trustee may authenticate those Bonds either in the name of any

predecessor or in its own name. In all cases, the certificate of authentication shall have the same force and effect as provided in the Bonds or in this Indenture with respect to the certificate of authentication of the predecessor Trustee.

Section 5.11 Dealing in Bonds.

The Trustee, its Affiliates, and any directors, officers, employees or agents thereof, in good faith, may become the owners of Bonds secured hereby with the same rights which it or they would have hereunder if the Trustee did not serve in that capacity.

Section 5.12 Representations, Agreements and Covenants of Trustee.

The Trustee hereby represents that it is a bank duly organized and validly existing as an _____ in good standing and duly authorized to exercise corporate trust powers in the State of Tennessee, and that it has an unimpaired reported capital, surplus and retained earnings of not less than \$100,000,000. The Trustee covenants that it will take such action, if any, as is necessary to remain in good standing and duly authorized to exercise corporate trust powers in the State of Tennessee, and that it will maintain an unimpaired reported capital, surplus and retained earnings of not less than \$100,000,000. The Trustee accepts and agrees to observe and perform the duties and obligations of the Trustee to which reference is made in any other instrument or document to which it is a party providing security for any of the Bonds.

Section 5.13 Interpleader.

In the event of a dispute between any of the parties hereto with respect to the disposition of any funds held by the Trustee hereunder, or the Trustee receives conflicting demands made upon the Trustee with respect to the Trustee's duties hereunder or any other document related to the Bonds, the Trustee shall be entitled to file a suit in interpleader in a court of competent jurisdiction seeking to require the parties to interplead and litigate in such court their several claims and rights among themselves. Upon the filing of such a suit and the deposit of the applicable funds to such court, the Trustee will ipso facto be fully released and discharged from all obligations to further perform any and all duties imposed hereunder or any other document related to the Bonds regarding such matter and/or such funds that are the subject of such interpleader suit. In the event that the Trustee remains as Trustee under this Indenture and receives a court order, directive or other request regarding the interpleader suit, the Trustee shall be entitled to rely upon such instruction without incurring any obligation or liability and the parties hereto release, hold harmless and indemnify the Trustee for any obligation or liability for so relying on such court instruction.

Section 5.14 Survival of Certain Provisions.

The provisions of Sections 5.01 through 5.13 of this Indenture shall survive the release, discharge and satisfaction of this Indenture.

Section 5.15 Concerning the Remarketing Agent.

The Remarketing Agent identified in Section 1.01 hereof shall serve as the Remarketing Agent for the Bonds. The Remarketing Agent shall designate to the Trustee its Designated Office

and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Borrower, the Investor Limited Partner and the Trustee. In addition, the Remarketing Agent will agree particularly to:

(a) Keep such records relating to its computations of interest rates for the Bonds as shall be consistent with prudent industry practice and to make such records available for inspection by the Issuer, the Trustee, the Borrower and the Investor Limited Partner at all reasonable times; and

(b) perform all of its functions and duties under this Indenture.

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

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

Section 5.16 Qualification of Remarketing Agent.

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

Upon any resignation or removal of the Remarketing Agent, the departing Remarketing Agent shall pay over, assign and deliver any money and Bonds held by it in such capacity to its successor.

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

Section 5.17 Information for Rating Agency and Notice of Certain Events.

The Trustee shall provide the Rating Agency upon its written request such information within the Trustee's possession as the Rating Agency shall reasonably require from time to time in order to maintain the rating on the Bonds;

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

ARTICLE VI

DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND HOLDERS

Section 6.01 Defaults; Events of Default.

Subject to all applicable notice and cure periods, the occurrence of any of the following events is defined as and declared to be and to constitute an **Event of Default** hereunder:

(a) Payment of any interest on any Bond shall not be made when and as that interest shall become due and payable;

(b) Payment of the principal of any Bond shall not be made when and as that principal shall become due and payable, whether at stated maturity, upon acceleration or otherwise;

(c) Failure by the Issuer to observe or perform any other covenant, agreement or obligation on its part to be observed or performed contained in this Indenture or in the Bonds, which failure shall have continued for a period of 30 days after written notice, by registered or certified mail, to the Issuer and the Borrower specifying the failure and requiring that it be remedied, which notice may be given by the Trustee in its discretion and shall be given by the Trustee at the written request of the Holders of a majority in aggregate principal amount of Bonds then Outstanding; and

(d) The occurrence and continuance of an Event of Default as defined in Section 7.1 of the Loan Agreement.

The term “default” or “failure” as used in this Article means (i) a default or failure by the Issuer in the observance or performance of any of the covenants, agreements or obligations on its part to be observed or performed contained in this Indenture or in the Bonds, or (ii) a default or failure by the Borrower under the Loan Agreement, exclusive of any period of grace or notice required to constitute an Event of Default, as provided above or in the Loan Agreement.

Section 6.02 Notice of Default.

If an Event of Default shall occur, the Trustee shall give written notice of the Event of Default, by registered or certified mail, to the Issuer, the Borrower, the Remarketing Agent and the Investor Limited Partner, within five days after the Trustee has notice of the Event of Default pursuant to Section 5.02(f) hereof. If an Event of Default occurs of which the Trustee has notice pursuant to this Indenture, the Trustee shall give written notice thereof, within 30 days after the Trustee’s receipt of notice of its occurrence, to the Holders of all Bonds then Outstanding as shown by the Register at the close of business 15 days prior to the mailing of that notice; provided, that except in the case of a default in the payment of the principal of or interest on any Bond, the Trustee shall be protected in withholding such notice if the Trustee in good faith determines that the withholding of notice to the Holders is in the interests of the Holders.

Section 6.03 Acceleration.

Upon the occurrence of an Event of Default described in Sections 6.01(a) and 6.01(b), the Trustee may declare, and upon the written request of the Holders of not less than a majority in aggregate principal amount of Bonds then outstanding the Trustee shall declare, by a notice in writing delivered to the Issuer and the Authorized Borrowers Representative, the principal of all Bonds then outstanding (if not then due and payable), and the interest accrued thereon, to be due and payable immediately. Upon the occurrence of any Event of Default other than those described in Sections 6.01(a) and 6.01(b) hereof, the Trustee may, with the written consent of all Holders of Bonds then outstanding, declare by a notice in writing delivered to the Issuer and the Authorized Borrowers Representative, the principal of all Bonds then outstanding (if not then due and payable), and the interest accrued thereon, to be due and payable immediately. Following such declaration interest on any unpaid principal of Bonds outstanding shall continue to accrue from such date through but not including the tender of payment to the Holders of those Bonds.

The provisions of the preceding paragraph are subject, however, to the condition that if, at any time after declaration of acceleration and prior to the entry of a judgment in a court for enforcement hereunder (after an opportunity for hearing by the Issuer and the Borrowers),

(a) all sums payable hereunder, including the Trustee’s fees and expenses (except the principal of and interest on Bonds which have not reached their stated maturity dates but which are due and payable solely by reason of that declaration of acceleration), plus interest to the extent permitted by law on any overdue installments of interest at the rate borne by the Bonds in respect of which the default shall have occurred, shall have been duly paid or provision shall have been duly made therefor by deposit with the Trustee, and

(b) all existing Events of Default shall have been cured,

then and in every case, the Trustee shall waive the Event of Default and its consequences and shall rescind and annul that declaration. No waiver or rescission and annulment shall extend to or affect any subsequent Event of Default or shall impair any rights consequent thereon.

The Investor Limited Partner shall be entitled (but not obligated) to cure any Event of Default hereunder within the time frame provided to the Borrower hereunder. The Issuer and the Trustee agree that cure of any default or Event of Default made or tendered by the Investor Limited Partner shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

Section 6.04 Other Remedies; Rights of Holders.

With or without taking action under Section 6.03 hereof, upon the occurrence and continuance of an Event of Default, the Trustee may pursue any available remedy, including without limitation actions at law or equity to enforce the payment of Bond Service Charges or the observance and performance of any other covenant, agreement or obligation under this Indenture, the Loan Agreement, the Land Use Restriction Agreement or the Note or any other instrument providing security, directly or indirectly, for the Bonds.

If, upon the occurrence and continuance of an Event of Default, the Trustee is requested so to do by the Holders of a majority in aggregate principal amount of Bonds Outstanding, the Trustee (subject to the provisions of Sections 5.01 and 5.02 hereof and particularly subparagraph 5.01(c)(iv) and Subsection 5.02(j) of those Sections), shall exercise any rights and powers conferred by this Section and by Section 6.03 hereof.

No remedy conferred upon or reserved to the Trustee (or to the Holders) by this Indenture is intended to be exclusive of any other remedy. Each remedy shall be cumulative and shall be in addition to every other remedy given hereunder or otherwise to the Trustee or to the Holders now or hereafter existing.

No delay in exercising or omission to exercise any remedy, right or power accruing upon any default or Event of Default shall impair that remedy, right or power or shall be construed to be a waiver of any default or Event of Default or acquiescence therein. Every remedy, right and power may be exercised from time to time and as often as may be deemed to be expedient.

No waiver of any default or Event of Default hereunder, whether by the Trustee or by the Holders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any remedy, right or power consequent thereon.

As the assignee of all right, title and interest of the Issuer in and to the Loan Agreement (except for the Reserved Rights), the Trustee is empowered to enforce each remedy, right and power granted to the Issuer under the Loan Agreement. In exercising any remedy, right or power thereunder or hereunder, the Trustee shall take any action which would best serve the interests of the Holders in the judgment of the Trustee, applying the standards described in Sections 5.01 and 5.02 hereof.

Notwithstanding anything contained in this Indenture to the contrary, the Issuer may independently enforce any of its Reserved Rights, in its sole discretion without the consent or further action of the Trustee or the Holders.

Section 6.05 Right of Holders to Direct Proceedings.

Anything to the contrary in this Indenture notwithstanding, the Holders of a majority in aggregate principal amount of Bonds then Outstanding shall have the right at any time to direct, by an instrument or document in writing executed and delivered to the Trustee, the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture or any other proceedings hereunder; provided, that (a) any direction shall not be other than in accordance with the provisions of law and of this Indenture, (b) the Trustee shall be indemnified as provided in Sections 5.01 and 5.02 hereof, and (c) the Trustee may take any other action which it deems to be proper and which is not inconsistent with the direction.

Section 6.06 Application of Money.

If at any time after the occurrence of an Event of Default the money held by the Trustee under this Indenture (other than amounts in the Rebate Fund) shall not be sufficient to pay the principal of and interest on the Bonds as the same become due and payable, such money, together with any moneys then available or thereafter becoming available for such purpose, whether through the exercise of remedies in this Article or otherwise, shall, be applied by the Trustee as set forth in this Section 6.06.

After payment of any costs, expenses, liabilities and advances paid, incurred or made by the Trustee in the collection of money and to all fees of the Trustee for Ordinary and Extraordinary Expenses pursuant to any right given or action taken under the provisions of this Article or the provisions of the Loan Agreement, the Land Use Restriction Agreement or the Note (including without limitation, reasonable attorneys' fees and expenses, except as limited by law or judicial order or decision entered in any action taken under this Article VI), all money received by the Trustee, shall be applied as follows, subject to Section 2.05 hereof and any provision made pursuant to Section 4.10 or 4.11 hereof:

(a) Unless the principal of all of the Bonds shall have become, or shall have been declared to be, due and payable, all of such money shall be deposited in the Bond Fund and shall be applied:

First -- To the payment to the Holders entitled thereto of all installments of interest then due on the Bonds, in the order of the dates of maturity of the installments of that interest, beginning with the earliest date of maturity and, if the amount available is not sufficient to pay in full any particular installment, then to the payment thereof ratably, according to the amounts due on that installment, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds; and

Second -- To the payment to the Holders entitled thereto of the unpaid principal of any of the Bonds which shall have become due, in the order of their due dates, beginning

with the earliest due date, with interest on those Bonds from the respective dates upon which they became due at the rates specified in those Bonds, and if the amount available is not sufficient to pay in full all Bonds due on any particular date, together with that interest, then to the payment thereof ratably, according to the amounts of principal due on that date, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds.

(b) If the principal of all of the Bonds shall have become due or shall have been declared to be due and payable pursuant to this Article, all of such money shall be deposited into the Bond Fund and shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest, of interest over principal, of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds.

(c) If the principal of all of the Bonds shall have been declared to be due and payable pursuant to this Article, and if that declaration thereafter shall have been rescinded and annulled under the provisions of Section 6.03 or 6.10 hereof, subject to the provisions of paragraph (b) of this Section in the event that the principal of all of the Bonds shall become due and payable later, the money shall be deposited in the Bond Fund and shall be applied in accordance with the provisions of Article II.

(d) Whenever money is to be applied pursuant to the provisions of this Section, such money shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of money available for application and the likelihood of additional money becoming available for application in the future. Whenever the Trustee shall direct the application of such money, it shall fix the date upon which the application is to be made, and upon that date, interest shall cease to accrue on the amounts of principal, if any, to be paid on that date, provided the money is available therefor. The Trustee shall give notice of the deposit with it of any money and of the fixing of that date, all consistent with the requirements of Section 2.05 hereof for the establishment of, and for giving notice with respect to, a Special Record Date for the payment of overdue interest. The Trustee shall not be required to make payment of principal of a Bond to the Holder thereof, until the Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if it is paid fully.

Section 6.07 Remedies Vested in Trustee.

All rights of action (including without limitation, the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto. Any suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining any Holders as plaintiffs or defendants. Any recovery of judgment shall be for the benefit of the Holders of the Outstanding Bonds, subject to the provisions of this Indenture.

Section 6.08 Rights and Remedies of Holders.

A Holder shall not have any right to institute any suit, action or proceeding for the enforcement of this Indenture, for the execution of any trust hereof, or for the exercise of any other remedy hereunder, unless:

(a) there has occurred and is continuing an Event of Default of which the Trustee has been notified, as provided in paragraph (f) of Section 5.02 hereof, or of which it is deemed to have notice under that paragraph,

(b) the Holders of a majority in aggregate principal amount of Bonds then Outstanding shall have made written request to the Trustee and shall have afforded the Trustee reasonable opportunity to proceed to exercise the remedies, rights and powers granted herein or to institute the suit, action or proceeding in its own name, and shall have offered indemnity to the Trustee as provided in Sections 5.01 and 5.02 hereof, and

(c) the Trustee thereafter shall have failed or refused to exercise the remedies, rights and powers granted herein or to institute the suit, action or proceeding in its own name.

At the option of the Trustee, that notification (or notice), request, opportunity and offer of indemnity are conditions precedent in every case, to the institution of any suit, action or proceeding described above.

No one or more Holders of the Bonds shall have any right to affect, disturb or prejudice in any manner whatsoever the security or benefit of this Indenture by its or their action, or to enforce, except in the manner provided herein, any remedy, right or power hereunder. Any suit, action or proceedings shall be instituted, had and maintained in the manner provided herein for the benefit of the Holders of all Bonds then Outstanding. Nothing in this Indenture shall affect or impair, however, the right of any Holder to enforce the payment of the Bond Service Charges on any Bond owned by that Holder at and after the maturity thereof, at the place, from the sources and in the manner expressed in that Bond.

Section 6.09 Termination of Proceedings.

In case the Trustee shall have proceeded to enforce any remedy, right or power under this Indenture in any suit, action or proceedings, and the suit, action or proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, the Issuer, the Trustee and the Holders shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as if no suit, action or proceedings had been taken.

Section 6.10 Waivers of Events of Default.

Except as hereinafter provided, at any time, in its discretion, the Trustee may waive any Event of Default hereunder and its consequences and may rescind and annul any declaration of maturity of principal of or interest on, the Bonds. The Trustee shall do so upon the written request of the Holders of:

(a) at least a majority in aggregate principal amount of all Bonds then Outstanding in respect of which an Event of Default in the payment of Bond Service Charges exists, or

(b) at least a majority in aggregate principal amount of all Bonds then Outstanding, in the case of any other Event of Default.

There shall not be so waived, however, any Event of Default described in paragraph (a) or (b) of Section 6.01 hereof or any declaration of acceleration in connection therewith rescinded or annulled, unless at the time of that waiver or rescission and annulment payments of the amounts provided in Section 6.03 hereof for waiver and rescission and annulment in connection with acceleration of maturity have been made or provision has been made therefor. In the case of the waiver or rescission and annulment, or in case any suit, action or proceedings taken by the Trustee on account of any Event of Default shall have been discontinued, abandoned or determined adversely to it, the Issuer, the Trustee and the Holders shall be restored to their former positions and rights hereunder, respectively. No waiver or rescission shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

Notwithstanding anything in this Indenture to the contrary, in no event shall the Trustee waive any Event of Default based upon any Reserved Rights without the prior written consent of the Issuer.

ARTICLE VII SUPPLEMENTAL INDENTURES

Section 7.01 Supplemental Indentures Generally.

The Issuer and the Trustee may enter into indentures supplemental to this Indenture, as provided in this Article.

Section 7.02 Supplemental Indentures Not Requiring Consent of Holders.

Without the consent of, or notice to, any of the Holders, the Issuer and the Trustee may enter into indentures supplemental to this Indenture which shall not, in the opinion of the Issuer and the Trustee, be inconsistent with the terms and provisions hereof for any one or more of the following purposes:

(a) To cure any ambiguity, inconsistency or formal defect or omission in this Indenture;

(b) To grant to or confer upon the Trustee for the benefit of the Holders any additional rights, remedies, powers or authority that lawfully may be granted to or conferred upon the Holders or the Trustee;

(c) To assign additional revenues under this Indenture;

(d) To accept additional security and instruments and documents of further assurance with respect to the Project;

(e) To add to the covenants, agreements and obligations of the Issuer under this Indenture, other covenants, agreements and obligations to be observed for the protection of the Holders, or to surrender or limit any right, power or authority reserved to or conferred upon the Issuer in this Indenture;

(f) To evidence any succession to the Issuer and the assumption by its successor of the covenants, agreements and obligations of the Issuer under this Indenture, the Loan Agreement and the Bonds;

(g) To facilitate (i) the transfer of Bonds issued by the Issuer under this Indenture and held in book-entry form from one Depository to another and the succession of Depositories, or (ii) the withdrawal of Bonds issued by the Issuer under this Indenture and delivered to a Depository for use in a Book-Entry System and the issuance of replacement Bonds in fully registered form and in the form of physical certificates to others than a Depository;

(h) To permit the Trustee to comply with any obligations imposed upon it by law;

(i) To specify further the duties and responsibilities of the Trustee;

(j) To achieve compliance of this Indenture with any applicable federal securities or tax law;

(k) To obtain and/or maintain a rating on the Bonds from Moody's or another Rating Agency;

(l) To make amendments to the provisions hereof relating to arbitrage matters under Section 148 of the Code, if, in the Opinion of Bond Counsel, those amendments would not adversely affect the Federal Tax Status of the Bonds which amendments may, among other things, change the responsibility for making the relevant calculations, provided that in no event shall such amendment delegate to the Trustee, without its consent, in its sole discretion the obligation to make or perform the calculations required under Section 148 of the Code; or

(m) To permit any other amendment which, in the judgment of the Trustee (based on advice of counsel), is not to the prejudice of the Trustee or the Holder of the Bonds.

The provisions of Subsections 7.02(h) and (j) shall not be deemed to constitute a waiver by the Trustee, the Issuer or any Holder of any right which it may have in the absence of those provisions to contest the application of any change in law to this Indenture or the Bonds.

Section 7.03 Supplemental Indentures Requiring Consent of Holders.

Exclusive of Supplemental Indentures to which reference is made in Section 7.02 hereof and subject to the terms, provisions and limitations contained in this Section, and not otherwise, with the consent of the Holders of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding, evidenced as provided in this Indenture, and with the consent of the Borrower if required by Section 7.04 hereof, the Issuer and the Trustee may execute and deliver Supplemental Indentures adding any provisions to, changing in any manner or eliminating any of

the provisions of this Indenture or any Supplemental Indenture or restricting in any manner the rights of the Holders. Nothing in this Section or Section 7.02 hereof shall permit, however, or be construed as permitting:

(a) without the consent of the Holder of each Bond so affected, (i) an extension of the maturity of the principal of or the interest on any Bond or (ii) a reduction in the principal amount of any Bond or the rate of interest thereon, or

(b) without the consent of the Holders of all Bonds then Outstanding, (i) the creation of a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (ii) a reduction in the aggregate principal amount of the Bonds required for consent to a Supplemental Indenture.

If the Issuer shall request that the Trustee execute and deliver any Supplemental Indenture for any of the purposes of this Section, upon (i) being satisfactorily indemnified with respect to its expenses in connection therewith, and (ii) if required by Section 7.04 hereof, receipt of the Borrower's consent to the proposed execution and delivery of the Supplemental Indenture, the Trustee shall cause notice of the proposed execution and delivery of the Supplemental Indenture to be mailed by first-class mail, postage prepaid, to all Holders of Bonds then Outstanding at their addresses as they appear on the Register at the close of business on the fifteenth day preceding that mailing.

The Trustee shall not be subject to any liability to any Holder by reason of the Trustee's failure to mail, or the failure of any Holder to receive, the notice required by this Section. Any failure of that nature shall not affect the validity of the Supplemental Indenture when there has been consent thereto as provided in this Section. The notice shall set forth briefly the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the Designated Office of the Trustee for inspection by all Holders.

If the Trustee shall receive, within a period prescribed by the Borrower, of not less than 60 days, but not exceeding one year, following the mailing of the notice, an instrument or document or instruments or documents, in form to which the Trustee does not reasonably object, purporting to be executed by the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding (which instrument or document or instruments or documents shall refer to the proposed Supplemental Indenture in the form described in the notice and specifically shall consent to the Supplemental Indenture in substantially that form), the Trustee shall, but shall not otherwise, execute and deliver the Supplemental Indenture in substantially the form to which reference is made in the notice as being on file with the Trustee, without liability or responsibility to any Holder, regardless of whether that Holder shall have consented thereto.

Any consent shall be binding upon the Holder of the Bond giving the consent and, anything herein to the contrary notwithstanding, upon any subsequent Holder of that Bond and of any Bond issued in exchange therefor (regardless of whether the subsequent Holder has notice of the consent to the Supplemental Indenture). A consent may be revoked in writing, however, by the Holder who gave the consent or by a subsequent Holder of the Bond by a revocation of such consent received by the Trustee prior to the execution and delivery by the Trustee of the Supplemental Indenture. At any time after the Holders of the required percentage of Bonds shall have filed their

consents to the Supplemental Indenture, the Trustee shall make and file with the Issuer a written statement that the Holders of the required percentage of Bonds have filed those consents. That written statement shall be conclusive evidence that the consents have been so filed.

If the Holders of the required percentage in aggregate principal amount of Bonds Outstanding shall have consented to the Supplemental Indenture, as provided in this Section, no Holder shall have any right (a) to object to (i) the execution or delivery of the Supplemental Indenture, (ii) any of the terms and provisions contained therein, or (iii) the operation thereof, (b) to question the propriety of the execution and delivery thereof, or (c) to enjoin or restrain the Trustee or the Issuer from that execution or delivery or from taking any action pursuant to the provisions thereof.

Section 7.04 Consent of Borrower and Investor Limited Partner.

Anything contained herein to the contrary notwithstanding, any Supplemental Indenture executed and delivered in accordance with this Article VII which affects in any material respect any rights or obligations of the Borrower shall not become effective unless and until the Borrower and the Investor Limited Partner shall have consented in writing to the execution and delivery of that Supplemental Indenture.

Section 7.05 Responsibilities of Trustee.

Notwithstanding anything else contained herein, the Trustee shall not be required to enter into any Supplemental Indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 7.06 Authorization to Trustee; Effect of Supplement.

The Trustee is authorized to join with the Issuer in the execution and delivery of any Supplemental Indenture in accordance with this Article and to make the further agreements and stipulations which may be contained therein. Thereafter,

- (a) That Supplemental Indenture shall form a part of this Indenture;
- (b) All terms and conditions contained in that Supplemental Indenture as to any provision authorized to be contained therein shall be deemed to be a part of the terms and conditions of this Indenture for any and all purposes;
- (c) This Indenture shall be deemed to be modified and amended in accordance with the Supplemental Indenture; and
- (d) The respective rights, duties and obligations under this Indenture of the Issuer, the Borrower, the Trustee, the Remarketing Agent and all Holders of Bonds then Outstanding shall be determined, exercised and enforced hereunder in a manner which is subject in all respects to those modifications and amendments made by the Supplemental Indenture.

Express reference to any executed and delivered Supplemental Indenture may be made in the text of any Bonds issued thereafter, if that reference is deemed necessary or desirable by the

Trustee or the Issuer. A copy of any Supplemental Indenture for which provision is made in this Article, except a Supplemental Indenture described in Section 7.02(g) hereof, shall be mailed to the Holders by the Trustee. The Trustee shall not be required to execute any supplemental indenture containing provisions adverse to the Trustee.

Section 7.07 Opinion of Counsel.

The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of any counsel approved by it as conclusive evidence that (a) any proposed Supplemental Indenture complies with the provisions of this Indenture, and (b) it is proper for the Trustee to join in the execution of that Supplemental Indenture under the provisions of this Article. That counsel may be counsel for the Issuer or the Borrower.

Before the Issuer and the Trustee shall enter into any Supplemental Indenture, there shall have been delivered to Trustee an Opinion of Bond Counsel to the effect that such Supplemental Indenture will not adversely affect the Federal Tax Status of the Bonds.

Section 7.08 Modification by Unanimous Consent.

Notwithstanding anything contained elsewhere in this Indenture, the rights and obligations of the Issuer and of the Holders, and the terms and provisions of the Bonds and this Indenture or any Supplemental Indenture, may be modified or altered in any respect with the consent of (a) the Issuer, (b) the Holders of all of the Bonds then Outstanding, (c) the Borrower and the Investor Limited Partner, and (d) if such modification or alteration contains provisions adverse to the Trustee, the Trustee.

**ARTICLE VIII
DEFEASANCE**

Section 8.01 Release of Indenture.

If (a) the Issuer shall pay all of the Outstanding Bonds, or shall cause them to be paid and discharged, or if there otherwise shall be paid to the Holders of the Outstanding Bonds, all Bond Service Charges due or to become due thereon, and (b) provision also shall be made for the payment of all other sums payable hereunder or under the Loan Agreement, the Land Use Restriction Agreement and the Note, then this Indenture shall cease, determine and become null and void (except for those provisions surviving by reason of Section 8.03 hereof in the event the Bonds are deemed paid and discharged pursuant to Section 8.02 hereof), and the covenants, agreements and obligations of the Issuer hereunder shall be released, discharged and satisfied.

Thereupon, and subject to the provisions of Section 8.03 hereof if applicable,

(a) the Trustee shall release this Indenture (except for those provisions surviving by reason of Section 8.03 hereof in the event the Bonds are deemed paid and discharged pursuant to Section 8.02 hereof), and shall execute and deliver to the Issuer any instruments or documents in writing, provided by the Issuer or the Borrower, as shall be requisite to evidence that release and discharge or as reasonably may be requested by the Issuer, and

(b) The Trustee shall assign and deliver to the Borrower any property subject at the time to the lien of this Indenture which then may be in its possession, except (i) amounts to be held by the Trustee under Section 4.14 hereof or otherwise for the payment of Bond Service Charges and (ii) amounts in the Rebate Fund required to be paid to the United States.

Section 8.02 Payment and Discharge of Bonds.

All or any part of the Bonds shall be deemed to have been paid and discharged within the meaning of this Indenture, including without limitation, Section 8.01 hereof, if:

(a) the Trustee as paying agent shall have received, in trust for and irrevocably committed thereto, sufficient money, or

(b) the Trustee shall have received, in trust for and irrevocably committed thereto, noncallable Government Obligations which are certified by an Independent public accounting firm of national reputation to be of such maturities or redemption dates and interest payment dates, and to bear such interest, as will be sufficient together with any money to which reference is made in subparagraph (a) above, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom (which earnings are to be held likewise in trust and so committed, except as provided herein), for the payment of all Bond Service Charges on those Bonds at their maturity.

Any money held by the Trustee in accordance with the provisions of this Section may be invested by the Trustee only in noncallable Government Obligations having maturity dates, or having redemption dates which, at the option of the owner of those obligations, shall be not later than the date or dates at which money will be required for the purposes described above. To the extent that any income or interest earned by, or increment to, the investments held under this Section is certified from time to time to the Trustee by an independent public accounting firm as described in (b) above to be in excess of the amount required to be held by the Trustee for the purposes of this Section, that income, interest or increment shall be transferred at the time of that determination in the manner as provided in Section 4.14 hereof for transfers of amounts remaining in the Bond Fund.

If any Bonds shall be deemed paid and discharged pursuant to this Section 8.02, then within 15 days after such Bonds are so deemed paid and discharged the Trustee shall cause a written notice to be given to each Holder as shown on the Register on the date on which such Bonds are deemed paid and discharged. Such notice shall state the numbers of the Bonds deemed paid and discharged or state that all Bonds are deemed paid and discharged, and shall set forth a description of the obligations held pursuant to subparagraph (b) of the first paragraph of this Section 8.02.

Section 8.03 Survival of Certain Provisions.

Notwithstanding the foregoing, any provisions of the Bond Resolution and this Indenture which relate to the maturity of Bonds, interest payments and dates thereof, exchange, transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, non-presentment of Bonds, the holding of money in trust, and repayments to the Borrower from the Bond Fund and the rights and duties of the Trustee in connection with all of the foregoing, shall remain in effect and be binding upon the Trustee and

the Holders notwithstanding the release and discharge of this Indenture. The provisions of this Article shall survive the release, discharge and satisfaction of this Indenture. The obligations of the Borrower to pay the Trustee its fees and expenses hereunder shall survive the release, discharge and satisfaction of this Indenture, but shall terminate effective automatically upon payment in full by the Borrower of all fees and expenses owed by the Borrower to the Trustee as of the date of termination of the Indenture.

ARTICLE IX COVENANTS AND AGREEMENTS OF THE ISSUER

Section 9.01 Covenants and Agreements of the Issuer.

In addition to any other covenants and agreements of the Issuer contained in this Indenture or the Bond Resolution, the Issuer further covenants and agrees with the Holders and the Trustee as follows:

(a) Payment of Bond Service Charges. The Issuer will cause all Bond Service Charges to be paid solely from the sources provided herein, on the dates, at the places and in the manner provided in this Indenture.

(b) Revenues and Assignment of Revenues. The Issuer will not assign the Revenues or create or authorize to be created any debt, lien or charge thereon, other than the assignment thereof under this Indenture.

(c) Recordings and Filings. At the expense of the Borrower, the Issuer will cause this Indenture, and any related instruments or documents relating to the assignment made by it under this Indenture to secure the Bonds, to be recorded and filed in the manner and in the places which may be required by law in order to preserve and protect fully the security of the Holders and the rights of the Trustee hereunder.

(d) Inspection of Project Books. All books, instruments and documents in the Issuer's possession relating to the Project and the Revenues shall be open to inspection and copying during reasonable times and upon reasonable notice by any accountants or other agents of the Trustee which the Trustee may designate from time to time.

(e) Register. At reasonable times and under reasonable regulations established by the Trustee, the Register may be inspected and copied (at the expense of the person making such copies) by the Borrower, Investor Limited Partner, the Issuer, by Holders of at least 50% in aggregate principal amount of the Bonds then Outstanding, or a designated representative thereof.

(f) Rights and Enforcement of the Loan Agreement. The Trustee may enforce, in its name or in the name of the Issuer, all rights of the Issuer for and on behalf of the Holders, except for Reserved Rights, and may enforce all covenants, agreements and obligations of the Borrower under and pursuant to the Loan Agreement, regardless of whether the Issuer is in default in the pursuit or enforcement of those rights, covenants, agreements or obligations. The Issuer, however, will do all things and take all actions on its part necessary to comply with covenants, agreements, obligations, duties and responsibilities on its part to be observed or performed under

the Loan Agreement, and will take all actions within its authority to keep the Loan Agreement in effect in accordance with the terms thereof.

(g) Issuer Not to Adversely Affect Federal Tax Status of Bonds. The Issuer covenants that it (i) will take, or require to be taken, all actions that may be required of the Issuer to maintain the Federal Tax Status of the Bonds, and (ii) will not take or authorize to be taken any actions that would adversely affect the Federal Tax Status of the Bonds under the provisions of the Code.

Section 9.02 Observance and Performance of Covenants, Agreements, Authority and Actions.

The Issuer will observe and perform faithfully at all times all covenants, agreements, authority, actions, undertakings, stipulations and provisions to be observed or performed on its part under the Bond Resolution, the Issuer Documents and the Bonds which are executed, authenticated and delivered under this Indenture, and under all proceedings of its Governing Body pertaining thereto.

The Issuer represents:

(a) It is duly authorized by the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Bonds, to execute and deliver the Issuer Documents and to provide the security for payment of the Bond Service Charges in the manner and to the extent set forth in this Indenture.

(b) All actions required on its part to be performed for the issuance, sale and delivery of the Bonds and for the execution and delivery of the Issuer Documents have been duly authorized.

(c) The Bonds will be valid and enforceable special obligations of the Issuer according to their terms.

Section 9.03 Enforcement of Issuer's Obligations.

Each obligation of the Issuer required to be undertaken pursuant to the Bond Resolution, the Issuer Documents and the Bonds is binding upon the Issuer. THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OR PLEDGE OF THE GENERAL CREDIT OF THE ISSUER WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION OF INDEBTEDNESS. THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER AND DO NOT CONSTITUTE OR CREATE A DEBT OR OBLIGATION, EITHER GENERAL OR SPECIAL, OR LIABILITY OR MORAL OBLIGATION OF THE CITY, THE STATE OF TENNESSEE (THE "STATE") OR ANY COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THE STATE WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISIONS WHATSOEVER. NEITHER THE FAITH OR CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OR OF ANY COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THE STATE IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OR PREMIUM, IF ANY, OR THE INTEREST ON THE BONDS. THE BONDS ARE NOT A GENERAL OBLIGATION OF THE ISSUER

(WHICH HAS NO TAXING POWER) BUT ARE LIMITED REVENUE OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE PLEDGED THEREFOR UNDER THIS INDENTURE. PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS SHALL BE A VALID CLAIM ONLY AS AGAINST THE PLEDGED REVENUES, IS NOT A GENERAL OBLIGATION OF THE CITY, THE STATE, OR ANY COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THE STATE, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE, OR ANY COUNTY, MUNICIPALITY, POLITICAL SUBDIVISION OF THE STATE OR THE ISSUER IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS.

No recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained in this Indenture or in any Bond for any claim based thereon or otherwise in respect thereof, against any director, officer, employee or agent, as such, in his individual capacity, past, present or future, of the Issuer or of any successor corporation, either directly or through the Issuer or any successor corporation, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assignment or penalty or otherwise; it being expressly agreed and understood that the Bonds and this Indenture are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any director, officer, employee or agent, as such, past, present or future, of the Issuer or of any successor corporation, either directly or through the Issuer or any successor corporation, under or by reason of any of the obligations, promises or agreements entered into between the Issuer, the Trustee or the Borrower whether contained in this Indenture or to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such director, officer, employee or agent is, by the execution of this Indenture, and as a condition of, and as part of the consideration for, the execution of this Indenture, expressly waived and released.

ARTICLE X
AMENDMENTS TO LOAN AGREEMENT, NOTE AND LAND USE RESTRICTION
AGREEMENT

Section 10.01 Amendments Not Requiring Consent of Holders.

Without the consent of or notice to the Holders, the Issuer, the Borrower, the Investor Limited Partner and the Trustee may enter into or consent to, as applicable, any amendment, change or modification of the Loan Agreement, the Note or the Land Use Restriction Agreement, as may be required (a) by the provisions of the Note, the Loan Agreement, the Land Use Restriction Agreement or this Indenture, (b) for the purpose of curing any ambiguity, inconsistency or formal defect or omission in the Loan Agreement, the Note or the Land Use Restriction Agreement, or (c) in connection with an amendment or to effect any purpose for which there could be an amendment of this Indenture pursuant to Section 7.02 hereof.

Section 10.02 Amendments Requiring Consent of Holders.

Except for the amendments, changes or modifications contemplated in Section 10.01 hereof, neither the Issuer nor the Trustee shall consent to:

(a) any amendment, change or modification of the Loan Agreement or the Note which would change the amount or time as of which Loan Payments and deposits of Eligible Funds are required to be paid, without the giving of notice as provided in this Section of the proposed amendment, change or modification and receipt of the written consent thereto of the Holders of all of the then Outstanding Bonds affected by such amendment, change or modification, or

(b) any other amendment, change or modification of the Loan Agreement, the Note or the Land Use Restriction Agreement without the giving of notice as provided in this Section of the proposed amendment, change or modification and receipt of the written consent thereto of the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding affected by such amendment, change or modification.

The consent of the Holders shall be obtained as provided in Section 7.03 hereof with respect to Supplemental Indentures.

If the Issuer or the Borrower shall request at any time the consent of the Trustee to any proposed amendment, change or modification of the Loan Agreement, the Note or the Land Use Restriction Agreement contemplated in subparagraphs (a) or (b) of this Section, upon being indemnified satisfactorily with respect to expenses, the Trustee shall cause notice of the proposed amendment, change or modification to be provided in the manner which is required by Section 7.03 hereof with respect to notice of Supplemental Indentures. The notice shall set forth briefly the nature of the proposed amendment, change or modification and shall state that copies of the instrument or document embodying it are on file at the Designated Office of the Trustee for inspection by all Holders.

Section 10.03 Consent of Borrower and Investor Limited Partner.

Anything contained herein to the contrary notwithstanding, any of the documents described in Sections 10.01 and 10.02 hereof executed and delivered in accordance with this Article X shall not become effective unless and until the Borrower and the Investor Limited Partner shall have consented in writing to the execution and delivery thereof.

Section 10.04 Opinion of Bond Counsel.

Before the Issuer and the Trustee shall consent to any amendment, change or modification of any of the documents described in Sections 10.01 and 10.02, there shall be delivered to the Trustee an Opinion of Bond Counsel to the effect that such amendment, change or modification will not adversely affect the Federal Tax Status of the Bonds.

ARTICLE XI MISCELLANEOUS

Section 11.01 Limitation of Rights.

With the exception of rights conferred expressly in this Indenture, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the parties hereto, the Remarketing Agent, the Borrower, the Investor Limited Partner and the Holders of the Bonds any legal or equitable right, remedy, power

or claim under or with respect to this Indenture or any covenants, agreements, conditions and provisions contained herein. This Indenture and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the parties hereto, the Remarketing Agent, the Borrower, the Investor Limited Partner and the Holders of the Bonds, as provided herein.

Section 11.02 Severability.

In case any section or provision of this Indenture, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Indenture, or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Indenture or any other covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Indenture, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein.

Any illegality, invalidity or inoperability shall not affect any legal, valid and operable section, provision, covenant, agreement, stipulation, obligation, act, action, part or application, all of which shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law from time to time.

Section 11.03 Notices.

Except as provided in Section 6.02 hereof, it shall be sufficient service or giving of any notice, request, complaint, demand or other instrument or document, if it is in writing and duly mailed by first-class mail, postage pre-paid, or is forwarded by overnight courier service, delivery charges pre-paid. Notices to the Issuer, the Borrower, the Investor Limited Partner, the Remarketing Agent and the Trustee shall be delivered to their respective Notice Address.

Duplicate copies of each notice, request, complaint, demand or other instrument or document given hereunder by the Issuer, the Trustee, the Borrower or the Investor Limited Partner to one or either of the others also shall be given to the others.

The Issuer, the Trustee, the Borrower, the Investor Limited Partner, the Lender, the Remarketing Agent and the Rating Agency may, by notice given hereunder, designate any further or different addresses to which subsequent demands, notices, approvals, consents, requests, opinions or other communications shall be sent or Persons to whose attention the same shall be directed.

In connection with any notice mailed pursuant to the provisions of this Indenture, a certificate of the Trustee, the Issuer, the Borrower, the Investor Limited Partner or the Holders of the Bonds, whichever or whoever mailed that notice, that the notice was so mailed shall be conclusive evidence of the proper mailing of the notice.

The Trustee shall have the right to accept and act upon instructions, including funds transfer instructions (“Instructions”) given pursuant to this Indenture and delivered using Electronic Means; provided, however, that Borrower, the Issuer or and such other party giving such

instruction (the “Sender”) shall provide to the Trustee an incumbency certificate listing officers with the authority to provide such Instructions (“Authorized Officers”) and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Sender whenever a person is to be added or deleted from the listing. If the Sender elects to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee’s understanding of such Instructions shall be deemed controlling. The Borrower, the Issuer and any other Sender understand and agree that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. Each Sender shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Trustee and that the Sender and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Sender. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee’s reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Borrower agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Borrower for use by the Borrower, the Issuer and the other parties who may give instructions to the Trustee under this Indenture; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

Section 11.04 Suspension of Mail and Courier Service.

If because of the suspension of delivery of first-class mail or of delivery by overnight courier services, or for any other reason, the Trustee shall be unable to mail by the required class of mail or forward by overnight courier service any notice required to be given by the provisions of this Indenture, the Trustee shall give such notice in such other manner as in the judgment of the Trustee shall most effectively approximate the required mailing or forwarding thereof, and the giving of that notice in that manner for all purposes of this Indenture shall be deemed to be in compliance with the requirement of this Section. Except as otherwise provided herein, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

Section 11.05 Payments Due on Saturdays, Sundays and Holidays.

If any Bond Payment Date is a Saturday, Sunday or a day on which the Trustee is required, or authorized or not prohibited, by law (including without limitation, executive orders) to close and is closed, then payment of interest and principal need not be made by the Trustee on that date, but that payment may be made on the next succeeding Business Day on which the Trustee is open

for business with the same force and effect as if that payment were made on the Bond Payment Date.

Section 11.06 Instruments of Holders.

Any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, required under this Indenture to be executed by any Holder may be in any number of concurrent writings of similar tenor and may be executed by that Holder in person or by an agent or attorney appointed in writing. Proof of (a) the execution of any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, (b) the execution of any writing appointing any agent or attorney, and (c) the ownership of Bonds, shall be sufficient for any of the purposes of this Indenture, if made in the following manner, and if so made, shall be conclusive in favor of the Trustee with regard to any action taken thereunder, namely:

(i) The fact and date of the execution by any person of any writing may be proved by the certificate of any officer in any jurisdiction, who has power by law to take acknowledgments within that jurisdiction, that the person signing the writing acknowledged that execution before that officer, or by affidavit of any witness to that execution; and

(ii) The fact of ownership of Bonds shall be proved by the Register maintained by the Trustee.

Nothing contained herein shall be construed to limit the Trustee to the foregoing proof, and the Trustee may accept any other evidence of the matters stated therein which it deems to be sufficient. Any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, of the Holder of any Bond shall bind every future Holder of the same Bond, with respect to anything done or suffered to be done by the Issuer, the Borrower or the Trustee pursuant to that writing.

Section 11.07 Priority of this Indenture.

This Indenture shall be superior to any liens which may be placed upon the Revenues or any other funds or accounts created pursuant to this Indenture.

Section 11.08 Extent of Covenants; No Personal Liability.

All covenants, stipulations, obligations and agreements of the Issuer contained in this Indenture are and shall be deemed to be covenants, stipulations, obligations and agreements of the Issuer to the full extent authorized by the Act and permitted by the Constitution and laws of the State. No covenant, stipulation, obligation or agreement of the Issuer contained in this Indenture shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, director, officer, agent or employee of the Issuer or the Governing Body in other than that person's official capacity. Neither the members of the Governing Body nor any official executing the Bonds, this Indenture, the Loan Agreement or any amendment or supplement hereto or thereto shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance or execution hereof or thereof.

Section 11.09 Binding Effect.

This Indenture shall inure to the benefit of and shall be binding upon the Issuer and the Trustee and their respective successors and assigns, subject, however, to the limitations contained herein.

Section 11.10 Counterparts.

This Indenture may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 11.11 Governing Law.

This Indenture and the Bonds shall be deemed to be contracts made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Issuer and the Trustee have caused this Trust Indenture to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

**THE HEALTH, EDUCATIONAL AND
HOUSING FACILITY BOARD OF THE CITY
OF CHATTANOOGA, TENNESSEE**

By: _____
Chair

ATTEST:

By: _____
Secretary

[ISSUER SIGNATURE PAGE TO TRUST INDENTURE]

[Trustee Name],
as Trustee

By: _____

Name: _____

Title: _____

[TRUSTEE SIGNATURE PAGE TO TRUST INDENTURE]

EXHIBIT A
[BOND FORM]

NOTICE: Unless this certificate is presented by an authorized representative of The Depository Trust Company to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

REGISTERED
NO. R-1

\$10,700,000

UNITED STATES OF AMERICA
STATE OF TENNESSEE

THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD
OF THE CITY OF CHATTANOOGA, TENNESSEE
COLLATERALIZED MULTIFAMILY HOUSING BONDS
(ESPERO CHATTANOOGA PROJECT)
SERIES 2023

INTEREST RATE:	MATURITY DATE:	DATED:	CUSIP
As described below	_____ 1, 20__	_____ __, 2023	_____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: TEN MILLION SEVEN HUNDRED THOUSAND AND 00/100
DOLLARS (\$10,700,000)

INITIAL MANDATORY TENDER DATE: A date selected by Borrower with notice to the Holder and the Trustee, but not later than the earlier to occur of (i) the closing of the Mortgage Loan, or (ii) _____, 202_.

The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee (the “**Issuer**”), a public nonprofit corporation and an instrumentality of the City of Chattanooga, Tennessee for value received, promises to pay to the Registered Owner specified above or registered assigns, but solely from the sources and in the manner referred to herein, the Principal Amount specified above on the Maturity Date specified above (subject to tender as set forth herein), and to pay from those sources interest on the unpaid principal balance of said Principal Amount calculated at the aforesaid Interest Rate on (a) _____ 1 and _____ 1 of each year beginning _____ 1, 202_, (b) each Mandatory Tender Date, (c) the Maturity Date, and (d) the date of acceleration of the Bonds (the “**Interest Payment Dates**”) until the principal amount is paid or duly provided for. This Bond will bear interest from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from its

date, or, if no interest has been paid or provided for, from the date of initial delivery (the “Closing Date”).

This Bond shall bear interest at a rate per annum equal to the Interest Rate. Interest on the Bonds shall be calculated on the basis of a 360–day year consisting of twelve 30–day months.

For purposes of calculating such interest:

“**Interest Rate**” means ___% per annum to and not including the Initial Mandatory Tender Date and thereafter, the applicable Remarketing Rate.

The principal of this Bond is payable upon presentation and surrender hereof at the designated corporate trust office of the trustee, presently [**Trustee Name**] (the “**Trustee**”). Interest is payable on each Interest Payment Date by check or draft mailed to the person in whose name this Bond (or one or more predecessor bonds) is registered (the “**Holder**”) at the close of business on the 15th day of the calendar month next preceding that Interest Payment Date (the “**Regular Record Date**”) on the registration books for this issue maintained by the Trustee, as registrar, at the address appearing therein. Any interest which is not timely paid or duly provided for shall cease to be payable to the Holder hereof (or of one or more predecessor bonds) as of the Regular Record Date, and shall be payable to the Holder hereof (or of one or more predecessor bonds) at the close of business on a Special Record Date to be fixed by the Trustee for the payment of that overdue interest. Notice of the Special Record Date shall be mailed to Holders not less than 10 days prior thereto. The principal of and interest on this Bond are payable in lawful money of the United States of America, without deduction for the services of the paying agent. While the Bonds are held in a book-entry system and in certain other circumstances, all as provided in the Indenture, principal of and interest on this Bond is required to be paid by wire transfer or other arrangement, other than any payment of the entire unpaid principal amount hereof.

THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OR PLEDGE OF THE GENERAL CREDIT OF THE ISSUER WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION OF INDEBTEDNESS. THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER AND DO NOT CONSTITUTE OR CREATE A DEBT OR OBLIGATION, EITHER GENERAL OR SPECIAL, OR LIABILITY OR MORAL OBLIGATION OF THE CITY OF CHATTANOOGA (THE “**CITY**”), THE STATE OF TENNESSEE (THE “**STATE**”) OR ANY COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THE STATE WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISIONS WHATSOEVER. NEITHER THE FAITH OR CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OR OF ANY COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THE STATE IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OR PREMIUM, IF ANY, OR THE INTEREST ON THE BONDS. THE BONDS ARE NOT A GENERAL OBLIGATION OF THE ISSUER (WHICH HAS NO TAXING POWER) BUT ARE LIMITED REVENUE OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE PLEDGED THEREFOR UNDER THE INDENTURE. PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS SHALL BE A VALID CLAIM ONLY AS AGAINST THE PLEDGED REVENUES, IS NOT A GENERAL OBLIGATION OF THE CITY, THE STATE, OR ANY COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THE STATE, AND NEITHER THE

FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE, OR ANY COUNTY, MUNICIPALITY, POLITICAL SUBDIVISION OF THE STATE OR THE ISSUER IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS.

NO MEMBER, DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF THE ISSUER, INCLUDING ANY PERSON EXECUTING THE INDENTURE OR THE BONDS, SHALL BE LIABLE PERSONALLY ON THE BONDS OR FOR ANY REASON RELATING TO THE ISSUANCE OF THE BONDS. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE BONDS, OR FOR ANY CLAIM BASED ON THE BONDS, OR OTHERWISE IN RESPECT OF THE BONDS, OR BASED ON OR IN RESPECT OF THE INDENTURE OR ANY SUPPLEMENTAL INDENTURE, AGAINST ANY MEMBER, DIRECTOR, OFFICER, EMPLOYEE OR AGENT, AS SUCH, OF THE ISSUER OR ANY SUCCESSOR, WHETHER BY VIRTUE OF ANY CONSTITUTION, STATUTE OR RULE OF LAW, OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, ALL SUCH LIABILITY BEING, BY THE ACCEPTANCE OF THIS BOND AND AS PART OF THE CONSIDERATION FOR THE ISSUE OF THE BONDS, EXPRESSLY WAIVED AND RELEASED.

This Bond is one of a duly authorized issue of The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee Collateralized Multifamily Housing Bonds (Espero Chattanooga Project), Series 2023 (the “**Bonds**”), issuable under the Trust Indenture dated as of November 1, 2023 (the “**Indenture**”), between the Issuer and the Trustee, aggregating in principal amount \$10,700,000 and used for the purpose of financing a loan (the “**Loan**”) to be made to Espero Chattanooga, LP, a Tennessee limited partnership (the “**Borrower**”). The Loan will be used by the Borrower to pay a portion of the costs of acquiring, constructing, equipping and improving the Project, as defined in the Indenture, as further provided in the Loan Agreement dated as of November 1, 2023 (the “**Loan Agreement**”), between the Issuer and the Borrower. The Bonds are special limited obligations of the Issuer, issued or to be issued under and are to be secured and entitled equally and ratably to the protection given by the Indenture. The Bonds are issued pursuant to, under authority of and in compliance with the laws of the State of Tennessee, and particularly Part 3, Chapter 101, Title 48 of the Tennessee Code Annotated, as amended (the “**Act**”), and a resolution duly enacted by the Board of Directors (the “**Governing Body**”) of the Issuer.

The Bonds are, prior to their stated maturity, subject to mandatory tender in whole on each Mandatory Tender Date. Holders will not have the right to elect to retain their Bonds. Upon presentation and surrender of the Bonds by the Holder on the date fixed for tender, the Holder shall be paid the principal amount of the Bonds to be tendered, plus accrued interest on such Bonds to the tender date

[This Bond is a draw-down bond. The Holder is obligated to make advances for the purchase of this Bond in the form of a Drawing in accordance with the terms of the Bond Purchase Agreement. The actual outstanding principal amount of this Bond cannot be determined by reference to the face of this Bond. Advances by the Holder in the form of a Drawing shall be noted

by the Trustee on a schedule attached to this Bond, but failure to note such advances shall not nullify the effectiveness of any advances by the Holder in the form of a Drawing.]¹

Reference is made to the Indenture for a more complete description of the Project, the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the Issuer, the Trustee and the Holders of the Bonds, and the terms and conditions upon which the Bonds are issued and secured. Each Holder assents, by its acceptance hereof, to all of the provisions of the Indenture.

The Borrower is required by the Loan Agreement to cause the Lender (as defined in the Indenture) to make on its behalf deposits of Eligible Funds (as defined in the Indenture) to the Trustee in the amounts and at the times necessary to pay the principal of and interest (the “**Bond Service Charges**”) on the Bonds. In the Indenture, the Issuer has assigned to the Trustee, to provide for the payment of the Bond Service Charges on the Bonds, the Issuer’s right, title and interest in and to the Loan Agreement, except for Reserved Rights as defined in the Indenture. To secure its compliance with certain covenants in the Loan Agreement, the Borrower will execute a Land Use Restriction Agreement on or about the date of the closing of the Mortgage Loan (the “**Land Use Restriction Agreement**”) among the Issuer, the Borrower and the Trustee.

Copies of the Indenture, the Loan Agreement and the Land Use Restriction Agreement are on file in the designated corporate trust office of the Trustee.

The Bond Service Charges on the Bonds are payable solely from the Revenues, as defined and as provided in the Indenture (being, generally, the amounts payable under the Loan Agreement and any unexpended proceeds of the Bonds), and are an obligation of the Issuer only to the extent of the Revenues. The Bonds are not secured by an obligation or pledge of any money raised by taxation and do not represent or constitute a debt or pledge of the faith and credit of the Issuer.

The Bonds are issuable only as fully registered bonds and, except as hereinafter provided, in printed or typewritten form, registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York (“**DTC**”), which shall be considered to be the Holder for all purposes of the Indenture, including, without limitation, payment by the Issuer of Bond Service Charges, and receipt of notices to, giving of consents by and exercise of rights of, Holders. There shall be a single Bond representing each maturity, and all Bonds shall be immobilized in the custody of DTC with the owners of beneficial interests in those Bonds (the “**book-entry interests**”) having no right to receive from the Issuer Bonds in the form of physical securities or certificates. Ownership of book-entry interests in the Bonds shall be shown by book-entry on the system maintained and operated by DTC, its participants (the “**Participants**”) and certain persons acting through the Participants, and transfers of ownership of book-entry interests shall be made only by that book-entry system, the Issuer and the Trustee having no responsibility therefor. DTC is to maintain records of the positions of Participants in the Bonds, and the Participants and persons acting through Participants are to maintain records of the purchasers and owners of book-entry interests in the Bonds. The Bonds as such shall not be transferable or exchangeable, except for

¹ This paragraph will be included for Bonds delivered on the Closing Date, but not for Bonds delivered on Remarketing Dates.

transfer to another Depository (as defined in the Indenture) or to another nominee of a Depository, without further action by the Issuer and otherwise at the expense of the Borrower.

If any Depository determines not to continue to act as a Depository for the Bonds for use in a book-entry system, the Issuer may attempt to have established a securities depository/book-entry system relationship with another qualified Depository under the Indenture. If the Issuer does not or is unable to do so, the Issuer and the Trustee, after the Trustee has made provision for notification of the owners of book-entry interests by the then Depository, shall permit withdrawal of the Bonds from the Depository, and authenticate and deliver Bond certificates in fully registered form (in Authorized Denominations as defined in the Indenture) to the assignees of the Depository or its nominee, all at the cost and expense (including costs of printing or otherwise preparing and delivering replacement Bond certificates) of those Persons requesting such authentication and delivery, if the event is not the result of Issuer action or inaction (including action at the request of the Borrower).

The Indenture permits certain amendments or supplements to the Indenture, the Loan Agreement, the Land Use Restriction Agreement and the Note not prejudicial to the Holders to be made without the consent of or notice to the Holders, and certain other amendments or supplements thereto to be made with the consent of the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding.

The Holder of each Bond has only those remedies provided in the Indenture.

The Bonds shall not constitute the personal obligation, either jointly or severally, of the members of the Governing Body or of any other officer or official of the Issuer.

This Bond shall not be entitled to any security or benefit under the Indenture or be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed.

It is certified and recited that there have been performed and have happened in regular and due form, as required by law, all acts and conditions necessary to be done or performed by the Issuer or to have happened (a) precedent to and in the issuing of the Bonds in order to make them legal, valid and binding special limited obligations of the Issuer, and (b) precedent to and in the execution and delivery of the Indenture and the Loan Agreement; that payment in full for the Bonds has been received; and that the Bonds do not exceed or violate any constitutional or statutory limitation.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS OF THE ABOVE, the Issuer has caused this Bond to be to be executed and delivered by the manual or facsimile signature of its Chair and attested by the manual or facsimile signature of its Secretary as of the day and year first written above.

**THE HEALTH, EDUCATIONAL AND
HOUSING FACILITY BOARD OF THE
CITY OF CHATTANOOGA,
TENNESSEE**

By: _____
Chair

ATTEST:

By: _____
Secretary

CERTIFICATE OF AUTHENTICATION

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

Date of Registration and Authentication: _____, 2023.

[Trustee Name]

By: _____
Authorized Officer

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto _____ the within Bond and irrevocably constitutes and appoints _____ attorney to transfer that Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

Signature guarantee shall be made by a guarantor institution participating in the Securities Transfer Agent Medallion Program or in such other guarantee program acceptable to the Registrar.

Notice: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

Please insert social security number or other tax identification number of transferee

DTC FAST RIDER

Each Bond shall remain in the Trustee's custody subject to the provisions of the FAST Balance Certificate Agreement currently in effect between the Trustee and DTC.

36509382.1

BOND PURCHASE AGREEMENT

Dated November __, 2023

by and among

RAYMOND JAMES & ASSOCIATES, INC.,

**THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF
THE CITY OF CHATTANOOGA, TENNESSEE**

and

ESPERO CHATTANOOGA, LP

Relating to:

\$10,700,000

**The Health, Educational and Housing Facility Board of
the City of Chattanooga, Tennessee
Collateralized Multifamily Housing Bonds
(Espero Chattanooga Project)
Series 2023**

TABLE OF CONTENTS

	Page
Section 1. Definitions and Background.	1
Section 2. Purchase and Sale.	1
Section 3. Offering of Bonds and Issue Price Certificate.	2
Section 4. Closing and Second Draw Date.	2
Section 5. Remarketing Circular; Disclosure Matters.	3
Section 6. Representations of the Issuer.	4
Section 7. Representations and Warranties of the Borrower.	6
Section 8. Covenants of the Issuer.	8
Section 9. Covenants of the Borrower.	8
Section 10. Conditions of Closing and Second Draw Date.	9
Section 11. Actions and Events on the Closing Date and the Second Draw Date.	13
Section 12. Termination of Agreement.	14
Section 13. Fees and Expenses.	15
Section 14. Indemnification.	16
Section 15. Limitation of Liability.	17
Section 16. Miscellaneous.	18
Section 17. Survival of Certain Representations and Obligations.	19
EXHIBIT A TERMS OF BONDS	A-1
EXHIBIT B PROPOSED FORM OF OPINION OF BOND COUNSEL	B-1
EXHIBIT C FORM OF OPINION OF COUNSEL TO THE BORROWER	C-1
EXHIBIT D FORM OF BORROWER RULE 15c-2-12 CERTIFICATE	D-1
EXHIBIT E FORM OF CERTIFICATE OF PURCHASER	E-1

BOND PURCHASE AGREEMENT

Raymond James & Associates, Inc. (the “*Placement Agent*,” and with respect to the Bonds excluding the Closing Draw of the Bonds, the “*Underwriter*,” and together, “*Raymond James*”), with respect to the Bonds (as defined herein), on its own behalf and not as your fiduciary, hereby offers to enter into this Bond Purchase Agreement dated November __, 2023 (this “*Purchase Contract*”) with The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee (together with its successors and assigns, the “*Issuer*”) and Espero Chattanooga, LP, a Tennessee limited partnership (the “*Borrower*”), for the sale by the Issuer and the purchase by Raymond James of the Bonds defined below which are being issued by the Issuer for the benefit of the Borrower. The Underwriter is an “underwriter” as defined in Section 2(a)(11) of the Securities Act of 1933, as amended (the “*1933 Act*”). This offer is made subject to the written acceptance hereof by the Issuer and the Borrower and delivery of such acceptance (in the form of one or more counterparts hereof) at or prior to 5:00 p.m., Eastern Time, on the date hereof, and will expire if not so accepted at or prior to such time (or such later time as Raymond James may agree in writing). Upon such acceptance, this Purchase Contract will be binding upon each of the Issuer, the Borrower and Raymond James.

Section 1. Definitions and Background.

1.1 Capitalized terms used in this Purchase Contract but not defined herein have the meanings assigned to them in the Trust Indenture by and between the Issuer and _____, a(n) _____ (the “*Trustee*”) dated as of November 1, 2023 (the “*Indenture*”).

1.2 This Purchase Contract is for the sale and delivery of the Issuer’s Collateralized Multifamily Housing Bonds (Espero Chattanooga Project) Series 2023 (the “*Bonds*”) which are being issued by the Issuer on a draw down basis in two installments (as described herein) to provide financing for the Project. The Bonds will be issued pursuant to and in accordance with (i) that certain resolution of the Issuer adopted October 16, 2023 (the “*Bond Resolution*”), (ii) Part 3, Chapter 101, Title 48 of the Tennessee Code Annotated, as amended (the “*Act*”), and (iii) the terms of the Indenture. The Bonds will be payable solely from sources pledged under the Indenture, including the property, rights, moneys, securities and other amounts pledged and assigned to the Trustee in the funds and accounts established under the terms of the Indenture (collectively, the “*Trust Estate*”). In connection with the issuance of the Bonds, the Issuer will execute and deliver this Purchase Contract; the Indenture; the Loan Agreement by and between the Issuer and the Borrower (the “*Loan Agreement*”) dated as of November 1, 2023; the Tax Compliance Certificate and Agreement of the Borrower, the Issuer and the Trustee, dated November __, 2023 (the “*Tax Agreement*”); and the Land Use Restriction Agreement (the “*Land Use Restriction Agreement*”) (collectively, the “*Issuer Documents*”) and the Borrower will execute and deliver this Purchase Contract, the Loan Agreement, the Remarketing Agreement, the Tax Agreement, and the Land Use Restriction Agreement (collectively, the “*Borrower Documents*”). The Issuer Documents and the Borrower Documents are referred to herein as the “*Financing Documents*.”

Section 2. Purchase and Sale.

2.1 Subject to the terms and conditions set forth in this Purchase Contract, the Placement Agent hereby agrees to purchase from the Issuer and the Issuer hereby agrees to sell to the Placement Agent, on a draw down basis in the following two installments: (i) at the Closing (as hereafter defined), \$100,000 principal amount of the initial Draw of Bonds at a price set forth in Exhibit A attached hereto (the “*Closing Draw*”) and (ii) on the Second Draw Date (as hereafter defined), \$10,600,000 principal amount of the second Draw of Bonds as set forth in Exhibit A attached hereto (the “*Second Draw*”) plus accrued interest from the immediately prior Payment Date to the Second Draw Date. The Underwriter also hereby agrees to advance an additional amount equal to \$____; \$____ of such funds for deposit into the Negative

Arbitrage Account and \$_____ of such funds for deposit into the Collateral Fund as set forth under the Indenture (the “Underwriter’s Advance”). The Underwriter will be reimbursed on or before the Closing Date by the Borrower for the Underwriter’s Advance.

2.2 The Bonds will (i) be issued pursuant to the Indenture and (ii) have the payment related terms (that is, the dated date, maturity date, interest rate and price) set forth in Exhibit A attached hereto, and, with respect to the Second Draw, will otherwise correspond to the description thereof contained in the hereinafter-defined Remarketing Circular.

2.3 The Issuer and the Borrower each acknowledge and agree that (i) the purchase and sale of the Bonds pursuant to this Purchase Contract is an arm’s-length commercial transaction among the Issuer, the Borrower and Raymond James, (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, Raymond James is and has been acting solely as a principal and is not acting as the agent, municipal advisor, financial advisor, or fiduciary of the Issuer or the Borrower, (iii) Raymond James has not assumed individually or collectively any advisory or fiduciary responsibility in favor of the Issuer or the Borrower with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether Raymond James has advised or provided other services or is currently advising or providing other services to the Issuer or the Borrower on other matters) and Raymond James has no contractual obligation to the Issuer or the Borrower with respect to the offering contemplated hereby except the obligations expressly set forth in this Purchase Contract, and (iv) the Issuer and the Borrower have consulted their own legal, financial, accounting, tax and other advisors to the extent they deem appropriate in connection with the offering of the Bonds. The primary role of the Underwriter is to purchase the Bonds for resale to investors in an arm’s-length commercial transaction among the Issuer, the Borrower and the Underwriter. Raymond James has financial and other interests that differ from those of the Issuer.

Section 3. Offering of Bonds and Issue Price Certificate.

Raymond James hereby agrees that: (a) with respect to the Closing Draw, is purchasing the Bonds as a direct placement; (b) with respect to the Second Draw, the Underwriter will make a bona fide public offering of the Bonds at a price of par; (c) the Underwriter will provide to the Issuer and Bass, Berry & Sims PLC (“Bond Counsel”) an executed Certificate of Purchaser dated the Closing Date (as defined herein) in the form attached hereto as Exhibit E in order to establish the issue price of the Bonds; and (d) the Underwriter will provide to the Issuer and Bond Counsel an executed written confirmation dated the Second Draw Date (as defined herein) in a form reasonably required by Bond Counsel in order to confirm that the Bonds were remarketed at a price of par.

Section 4. Closing and Second Draw Date.

Subject to the terms and conditions hereof, the delivery of the Closing Draw and the payment of the purchase price thereof as set forth in Exhibit A hereof (the “Closing”) will take place at 10:00 a.m. Eastern Time on November __, 2023, or at such other time or on such other date mutually agreed upon by the Issuer, the Borrower and the Raymond James, which date shall be referred to herein as the “Closing Date.” Subject to the terms and conditions hereof, the delivery of the Second Draw and the payment of the purchase price thereof as set forth in Exhibit A hereof will take place at 10:00 a.m. Eastern Time, on or before the Initial Remarketing Date (as defined in the Indenture), mutually agreed upon by the Issuer, the Borrower, and Raymond James, which date shall be referred to herein as the “Second Draw Date.”

Section 5. Remarketing Circular; Disclosure Matters.

5.1 In connection with the Second Draw, the Issuer and the Borrower each hereby agree to (a) confirm its authorization or ratification of the use by the Underwriter of a Preliminary Remarketing Circular, relating to the Bonds (the "*Preliminary Remarketing Circular*") in the marketing of the Bonds and (b) authorizes the Underwriter to prepare, use and distribute (at the expense of the Borrower) a Remarketing Circular, relating to the Bonds (the "*Remarketing Circular*") in final form in connection with the offering and sale of the Bonds.

5.2 In connection with the Second Draw, the Issuer (to the extent of the provisions referred to in Section 5.4(a) hereof) and the Borrower each agree to the extent permitted by applicable law to cooperate (at the cost and expense of the Borrower) with the Underwriter so as to enable the Underwriter to comply with the requirements of Rule 15c2-12 ("*Rule 15c2-12*") under the Securities Exchange Act of 1934, as amended (the "*1934 Act*"), and any other rules of the Securities and Exchange Commission (the "*SEC*") and the Municipal Securities Rulemaking Board (the "*MSRB*"), in connection with the offer and sale of the Bonds.

5.3 In connection with the Second Draw, the Borrower will, at its expense, supply to the Underwriter, in sufficient time to accompany any confirmation requesting payment which the Underwriter might send to its customers with respect to the Bonds, a copy of the Remarketing Circular in a searchable portable document format to enable the Underwriter (1) to send a copy of the Remarketing Circular to any potential customer upon request until the earlier of (x) 90 days from the End of the Underwriting Period (as defined in paragraph 5.6 below) or (y) the time when the Remarketing Circular is available to any person from MSRB, but in no case less than 25 days following the End of the Underwriting Period and (2) to comply with any applicable rules of the MSRB.

5.4 During the period commencing on the date of this Purchase Contract and ending on the earlier of (a) 90 days from the End of the Underwriting Period or (b) the time when the Remarketing Circular is available to any person from the MSRB, but in no case less than 25 days following the End of the Underwriting Period (the "*Update Period*"), if any event shall occur which would cause the Remarketing Circular to contain any untrue statement of a material fact or to omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading, and in the judgment of the Underwriter, such event requires the preparation and publication of a supplement or amendment to the Remarketing Circular, the Issuer (to the extent of the provisions referred to in Section 10.4(e) hereof) and the Borrower will, at the reasonable expense of the Borrower, prepare or cooperate in the preparation of such supplement or amendment to the Remarketing Circular in a form approved by the Underwriter and furnish or cooperate in the furnishing to the Underwriter (at the expense of the Borrower) a reasonable number of copies of an amendment of, or a supplement to, the Remarketing Circular so that, as supplemented or amended, it will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading. If the Remarketing Circular is so supplemented or amended prior to the Closing, the approval by the Underwriter of a supplement or amendment to the Remarketing Circular shall not preclude the Underwriter from thereafter terminating this Purchase Contract in accordance with the provisions of Section 12 hereof. The "*End of the Underwriting Period*" means the later of the delivery of the Bonds by the Issuer to the Underwriter or when the Underwriter no longer retains (directly or as a syndicate member) an unsold balance of the Bonds for sale to the public; provided, that the "*End of the Underwriting Period*" shall be deemed to be the Second Draw Date, unless the Underwriter otherwise notifies the Issuer and the Borrower in writing prior to such date that there is an unsold balance of the Bonds, in which case the End of the Underwriting Period shall be deemed to be extended for 30 days. The deemed End of the Underwriting Period may be extended for two additional periods of 30 days each upon receipt of an additional written notification from the Underwriter

containing the same information as required in the initial written notice. If, during the Update Period, the Issuer becomes aware of any event relating to the information concerning the Issuer under the captions “THE ISSUER” and “ABSENCE OF LITIGATION – The Issuer” of the Remarketing Circular which would cause such portions of Remarketing Circular to contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading, the Issuer will promptly notify the Underwriter of such event.

5.5 The Issuer shall promptly advise the Underwriter, during the Update Period, of any action, suit, proceeding, inquiry or investigation against the Issuer, of which the Issuer has actual knowledge, seeking to prohibit, restrain or otherwise affect the use of the Remarketing Circular in connection with the offering, sale or distribution of the Bonds.

5.6 If, during the Update Period, the Borrower becomes aware of any event which would cause the Remarketing Circular to contain any untrue statement of a material fact or to omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading, the Borrower will promptly notify the Underwriter and the Issuer of such event.

5.7 The Borrower shall promptly advise the Underwriter, during the Update Period, of any action, suit, proceeding, inquiry or investigation against the Borrower, of which they receive written or actual notice, seeking to prohibit, restrain or otherwise affect the use of the Preliminary Remarketing Circular or the Remarketing Circular in connection with the offering, sale or distribution of the Bond.

5.8 The Borrower represents and warrants to the Underwriter and the Issuer that neither the Borrower nor any affiliates thereof are in default under any undertakings with respect to continuing disclosure requirements designed to comply with Rule 15c2-12 in connection with any issue of municipal securities.

Section 6. Representations of the Issuer.

6.1 The Issuer hereby makes the following representations to Raymond James:

(a) The Issuer is a public nonprofit corporation and an instrumentality of the City of Chattanooga, Tennessee (the “State”), and has full power and authority under the Act to adopt the Bond Resolution and to enter into and to perform its obligations under the Issuer Documents; and when executed and delivered by the respective parties thereto, the Issuer Documents will constitute the legal, valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors’ rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitation on legal remedies against units of government of the State;

(b) By official action of the Issuer prior to or concurrently with the acceptance hereof, the Issuer has approved and authorized the execution and delivery of the Issuer Documents and the consummation by the Issuer of the transactions contemplated thereby;

(c) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, or to the Issuer’s knowledge, pending against the Issuer seeking to restrain or enjoin the sale or issuance of the Bonds, or in any way contesting or affecting any proceedings of the Issuer taken concerning the sale thereof, the

pledge or application of any moneys or security provided for the payment of the Bonds, in any way contesting the validity or enforceability of the Issuer Documents or contesting in any way the powers of the Issuer relating to the sale of the Bonds;

(d) The execution and delivery by the Issuer of the Issuer Documents and compliance with the provisions on the Issuer's part contained therein will neither (i) conflict with or constitute a material breach of or default under any law, administrative regulation, judgment, decree, financing agreement, indenture, bond, security, note, resolution, agreement or other instrument to which the Issuer is a party or is otherwise subject, nor (ii) result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the Issuer under the terms of any such law, administrative regulation, judgment, decree, financing agreement, indenture, bond, security, note, resolution, agreement or other instrument, except as provided by the Issuer Documents;

(e) Except as may be required under Blue Sky or other securities laws of any state and for filings to be made with the Internal Revenue Service on Form 8038, to the Issuer's knowledge, there is no consent, approval, authorization or other order of, or filing with, or certification by, any state court, or state or federal governmental agency, or public body of any state required for the execution and delivery of the Issuer Documents or the consummation by the Issuer of the transactions on its part contemplated herein or therein, which has not been duly obtained or made on or prior to the date hereof;

(f) Upon delivery of the Bonds, the Issuer will have good right, full power and lawful authority to pledge and assign the Trust Estate described in the Indenture to the Trustee as provided in the Indenture and the Bond Resolution;

(g) The Issuer has complied in all material respects with any obligations on its part in the Bond Resolution and the Issuer Documents that are to have been complied with on or before the date hereof; and

(h) The Bonds, when delivered in accordance with the Indenture and paid for by Raymond James on the Closing Date and the Second Draw Date as provided herein, will be validly issued and outstanding special, limited obligations of the Issuer entitled to all the benefits and security of the Indenture.

6.2 The execution and delivery of this Purchase Contract by the Issuer shall constitute a representation by the Issuer to Raymond James that the representations and agreements contained in this Section are true as of the date hereof; provided, however, that as to information furnished by the Borrower pursuant to this Purchase Contract, the Issuer is relying solely on such information in making the Issuer's representations and agreements, and as to all matters of law the Issuer is relying on the advice of Bond Counsel; and provided further, that no member, officer, agent or employee of the Issuer shall be individually liable for the breach of any representation, or agreement contained herein.

6.3 It is understood that the representations and covenants of the Issuer contained in this Section 6 and elsewhere in this Purchase Contract shall not create any general obligation or liability of the Issuer, and that any obligation or liability of the Issuer hereunder or under the Issuer Documents is payable solely out of the Trust Estate. It is further understood and agreed that the Issuer makes no representations, except as set forth in paragraph 5.4(a) above, as to (i) the financial condition, results of operation, business or prospects of the Borrower, (ii) any statements (financial or otherwise), representations, documents or certification provided or to be provided by the Borrower in connection with the offer or sale of the Bonds, or (iii) the correctness, completeness or accuracy of such statements, representations, documents or

certifications. The Issuer, furthermore, has not undertaken any independent investigation into the financial condition or capabilities of the Borrower to acquire, construct, manage, or operate the Project or the Borrower's ability to discharge its obligations under the Loan Agreement or any other obligation whatsoever. The Issuer makes no warranty, either express or implied, as to the suitability or condition of the Project being financed by the Loan Agreement for the purposes specified in the Bond Documents.

Section 7. Representations and Warranties of the Borrower.

7.1 In addition to the representations and warranties made in Section 5 herein, the Borrower hereby makes the following representations and warranties to Raymond James, all of which will continue in effect subsequent to the purchase of the Bonds:

(a) The Borrower is a limited partnership duly organized and existing under and pursuant to the laws of the State and is qualified to own the Project and conduct its business in the State.

(b) The Borrower has, and as of the Closing Date and the Second Draw Date will have, full legal right, power and authority to (i) execute and deliver the Borrower Documents, (ii) in connection with the Second Draw, assist in the preparation, distribution and use of a Preliminary Remarketing Circular and a Remarketing Circular, and (iii) otherwise consummate the transactions contemplated by the Borrower Documents.

(c) The Borrower has duly authorized the (i) execution and delivery of the Borrower Documents, (ii) performance by the Borrower of the obligations contained in the Borrower Documents, (iii) in connection with the Second Draw, the preparation of the Preliminary Remarketing Circular and the Remarketing Circular and execution of the Continuing Disclosure Agreement, and (iv) consummation by the Borrower of all of the transactions contemplated by the Borrower Documents.

(d) The Borrower Documents are, and, when executed and delivered by the Borrower and the other parties thereto, will be, the legal, valid and binding obligations of the Borrower (assuming due authorization, execution and delivery by the respective other parties thereto, where necessary), enforceable in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(e) All consents, approvals, orders or authorizations of, notices to, or filings, registrations or declarations with any governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of the Borrower for the execution and delivery by the Borrower of the Borrower Documents or the consummation by the Borrower of the transactions contemplated hereby or thereby, have been obtained or will be obtained prior to the Closing Date or, as to actions to be funded with proceeds of the Second Draw, prior to the Second Draw Date.

(f) The execution and delivery by the Borrower of the Borrower Documents and the consummation by the Borrower of the transactions contemplated hereby and thereby are not prohibited by, do not violate any provision of, and will not result in the breach of or default under (i) the organizational documents of the Borrower, (ii) any applicable law, rule, regulation, judgment, decree, order or other requirement to which the Borrower is subject, or (iii) any contract, indenture, agreement, mortgage, lease, note, commitment or other obligation or instrument to which the Borrower is a party or by which the Borrower or its properties are bound.

(g) There is no legal action, suit, proceeding, investigation or inquiry at law or in equity, before or by any court, agency, arbitrator, public board or body or other entity or person, pending or, to the best knowledge of the Borrower, threatened against or affecting the Borrower or any partner of the Borrower, in their respective capacities as such, nor, to the knowledge of the Borrower, any basis therefor, (i) which would restrain or enjoin the issuance or delivery of the Bonds, in connection with the Second Draw, the use of the Preliminary Remarketing Circular or the Remarketing Circular in the marketing of the Bonds or the collection of revenues pledged under or pursuant to the Borrower Documents or (ii) which would in any way contest or affect the organization or existence of the Borrower or the entitlement of any officer of the Borrower to its position or (iii) which would contest or have a material and adverse effect upon (A) the due performance by the Borrower of the transactions contemplated by the Borrower Documents, (B) the validity or enforceability of the Bonds, the Borrower Documents or any other agreement or instrument to which the Borrower is a party and that is used or contemplated for use in the consummation of the transactions contemplated hereby and thereby, (C) the exclusion from gross income for federal income tax purposes of the interest on the Bonds or (D) the financial condition or operations of the Borrower, or (iv) which questions the power or authority of the Borrower to carry out the transactions on its part contemplated by the Borrower Documents, or the power of the Borrower to own or operate the Project. The Borrower is not subject to any judgment, decree or order entered in any lawsuit or proceeding brought against it that would have such an effect.

(h) On the Closing Date or the Second Draw Date, the Borrower shall not have granted any interests in or rights or options to sell the Bonds to any other party.

(i) All permits (including building permits), licenses and authorizations necessary for the ownership and operation of its Project in the manner contemplated by each of the Borrower Documents have been obtained or will be obtained, and said ownership and operation are not in conflict with any zoning or similar ordinance applicable to the Project. The Project conforms to all material environmental regulations.

(j) None of the Borrower, any guarantor of the Borrower or any “related person” to the Borrower within the meaning of Section 147 of the Code has acquired or shall acquire, pursuant to any arrangement, formal or informal, any Bonds.

(k) The Borrower has not taken or omitted to take on or prior to the date hereof any action that would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(l) On the Closing Date and the Second Draw Date, each of the representations and warranties of the Borrower contained in the Borrower Documents and all other documents executed by the Borrower in connection with the Bonds shall be true, correct and complete in all material respects.

(m) As of the Closing Date and the Second Draw Date, the Borrower will not be in material default under any document, instrument or commitment to which the Borrower is a party or to which any of its property is subject which default would or could reasonably be expected to adversely affect the ability of the Borrower to carry out its obligations under the Borrower Documents. As of the Closing Date and the Second Draw Date, the Borrower will be in compliance with all of its obligations under the Land Use Restriction Agreement.

(n) The Borrower is in compliance with all of its prior continuing disclosure undertakings entered into pursuant to Rule 15c2-12, if any.

7.2 Each of the representations and warranties set forth in this Section 7 will survive the Closing.

7.3 Any certificate signed by any officer of the Borrower and delivered to Raymond James in connection with the delivery of the Bonds will be deemed to be a representation and warranty by the Borrower to Raymond James as to the statements made therein.

Section 8. Covenants of the Issuer.

8.1 The Issuer hereby makes the following covenants with Raymond James:

(a) The Issuer will not amend, terminate or rescind, and will not agree to any amendment, termination or rescission of the Issuer Documents without the prior written consent of Raymond James.

(b) Except as provided in the Issuer Documents, the Issuer will not create, assume or guarantee any indebtedness payable from, or pledge or otherwise encumber, the revenues, assets, properties, funds or interests which will be pledged pursuant to the Indenture, including, without limitation, the Bonds or the Issuer Documents.

(c) The Issuer will not take any action which will in any way cause the proceeds of the Bonds to be applied in a manner other than as provided in the Indenture or which would cause the interest on the Bonds to be includable in the gross income of the holders thereof for federal income tax purposes.

(d) The Issuer will obtain all governmental consents, approvals, orders or authorizations of any governmental authority or agency that would constitute a condition precedent to the performance by it of obligations under the Issuer Documents and the Bonds.

(e) The Issuer will reasonably cooperate with Raymond James upon request, without cost to the Issuer, in the qualification of the Bonds for offering and sale and the determination of their eligibility for investment under the laws of such jurisdictions as Raymond James may designate; provided that the foregoing shall not require the Issuer to expend its own funds, execute a general or special consent to service of process or to qualify as a foreign corporation in connection with such qualification in any foreign jurisdiction.

Notwithstanding the foregoing, none of the provisions of this Purchase Contract 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 it shall first have been adequately indemnified to its satisfaction against the cost, expenses and liability which may be incurred thereby.

Section 9. Covenants of the Borrower.

9.1 The Borrower hereby makes the following covenants with Raymond James and the Issuer:

(a) The Borrower will not amend, terminate or rescind, and will not agree to any amendment, termination or rescission of the Borrower Documents without the prior written consent of Raymond James.

(b) Except as provided in the Borrower Documents, the Borrower will not create, assume or guarantee any indebtedness payable from, or pledge or otherwise encumber, the

revenues, assets, properties, funds or interests which will be pledged pursuant to the Indenture, including, without limitation, the Bonds, the Financing Documents or any indebtedness allowed under the Financing Documents.

(c) The Borrower will cooperate with the Issuer to cause the Bonds to be delivered to the address and at the time specified by Raymond James in conjunction with the Closing and the Second Draw Date.

(d) The Borrower will not take or omit to take any action which will in any way cause the proceeds of the Bonds, or other moneys on deposit in any fund or account in connection with the Bonds, to be applied in a manner other than as provided in the Indenture or which would cause the interest on the Bonds to be includable in the gross income of the holders thereof for federal income tax purposes.

(e) The Borrower will cooperate with Raymond James in the qualification of the Bonds for offering and sale and the determination of their eligibility for investment under the laws of such jurisdictions as Raymond James may designate.

(f) The Borrower agrees to cause the necessary amount to be paid to the Trustee and/or the escrow agent on the Closing Date and the Second Draw Date to pay costs of issuance.

(g) The Borrower agrees to provide Raymond James, at the Borrower's expense, a reasonable number of additional copies of the Financing Documents as Raymond James shall request.

Section 10. Conditions of Closing and Second Draw Date.

10.1 The obligations of Raymond James to consummate the Closing Draw on the Closing Date, the Second Draw on the Second Draw Date and the transactions contemplated hereby are subject to receipt by Raymond James of the items described in Section 10.2 hereof and to the satisfaction of the following conditions:

(a) Raymond James will not have discovered any material error, misstatement or omission in the representations and warranties made in this Purchase Contract, which representations and warranties will be deemed to have been made again at and as of the times of the Closing and the Second Draw Date, and will then be true in all material respects.

(b) The Issuer and the Borrower will have performed and complied with all agreements and conditions required by this Purchase Contract to be performed or complied with by such respective parties at or prior to Closing.

(c) The Bonds, the Financing Documents and the Remarketing Circular shall each have been executed and delivered by each of the parties thereto, shall be in full force and effect on and as of the Closing Date and shall not have been amended, modified or supplemented prior to the Closing except as may have been agreed to in writing by Raymond James and no event of default shall exist under any such documents.

(d) Raymond James will have received orders for all of the Bonds (or such amount of the Bonds as is acceptable to Raymond James) and such orders have not been withdrawn at the time of the Closing or the Second Draw Date.

(e) Between the date hereof and the Closing Date the market price or marketability, at the initial offering price set forth in Exhibit A, of the Bonds shall not have been materially and adversely affected, in the judgment of Raymond James.

(f) As of the Second Draw Date, the Borrower shall have entered into the Continuing Disclosure Agreement containing covenants meeting the requirements of Rule 15c2-12 under the 1934 Act as required under the Rule.

10.2 In addition to the conditions set forth in Section 10.1 hereof, the obligations of the Underwriter to consummate on the Closing Date the transactions contemplated hereby are subject to receipt by the Underwriter of the following items:

(a) An approving opinion of Bond Counsel, addressed to the Underwriter, dated the Closing Date, relating to the validity of the Bonds and the tax-exempt status of the Bonds, substantially in the form attached hereto as Exhibit B.

(b) An opinion of Egerton McAfee Armistead & Davis, P.C., counsel to the Issuer, satisfactory in form and substance to the Underwriter.

(c) An opinion of counsel to the Borrower, dated the Closing Date, satisfactory in form and substance to the Underwriter, the Trustee, Bond Counsel and the Issuer and in substantially the form attached hereto as Exhibit C.

(d) A certificate of the Issuer, dated the Closing Date and signed by an authorized official or officer of the Issuer, to the effect that (i) each of the Issuer's representations contained herein and in all other Issuer Documents, which representations will be deemed to have been made again at and as of the time of Closing, are true and correct in all material respects; and (ii) the Issuer has performed and complied with all agreements and conditions required by this Purchase Contract to be performed or complied with by it at or prior to the Closing.

(e) A certificate of the Issuer, dated the Closing Date and signed by an authorized officer of the Issuer, in form and substance satisfactory to the Issuer, the Underwriter and Bond Counsel, respecting certain tax matters as may be reasonably required by Bond Counsel to enable it to give its opinion.

(f) A certificate of the Borrower, dated the Closing Date and signed by its authorized representative, to the effect that: (i) each of the Borrower's representations and warranties contained herein and in all Borrower Documents, which representations and warranties will be deemed to have been made again at and as of the time of Closing, are true and correct in all material respects; (ii) the Borrower has performed and complied with all agreements and conditions required by this Purchase Contract to be performed or complied with by it at or prior to the Closing; and (iii) such other matters as the Underwriter may reasonably request.

(g) A certificate of the Borrower dated the Closing Date and signed by its authorized representative, in form and substance satisfactory to the Underwriter and Bond Counsel, respecting certain tax matters as may be reasonably required by Bond Counsel to enable it to give its opinion.

(h) Certified copies of the organizational documents of the Borrower and copies of the resolutions or actions of its partners (if applicable) authorizing the execution and delivery of the Borrower Documents.

(i) The Financing Documents (or certified copies thereof) duly executed and delivered by the respective parties thereto, with such amendments, modifications or supplements as may have been agreed to by the Underwriter.

(j) A certificate from the Trustee, dated the Closing Date and signed by an authorized officer of the Trustee, satisfactory in form and substance to the Underwriter, dated the Closing Date, and delivered to the Underwriter, the Issuer, and Bond Counsel.

(k) Evidence of closing of the Closing Draw.

(l) The Investor Letter dated as of the Closing Date.

10.3 The obligations of the Underwriter to consummate the Second Draw on the Second Draw Date and the transactions contemplated hereby are subject to receipt by the Underwriter of the items described in Section 10.4 hereof and to the satisfaction of the following conditions:

(a) The Underwriter will not have discovered any material error, misstatement, or omission in the representations and warranties made in this Purchase Contract, which representations and warranties will be deemed to have been made again at and as of the time of the Second Draw Date and will then be true in all material respects.

(b) The Issuer and the Borrower will have performed and complied with all agreements and conditions required by this Purchase Contract to be performed or complied with by such respective parties at or prior to the Second Draw Date.

(c) The Bonds, the Financing Documents and the Remarketing Circular shall each have been executed and delivered by each of the parties thereto, shall be in full force and effect on and as of the Second Draw Date and shall not have been amended, modified or supplemented prior to the Second Draw Date except as may have been agreed to in writing by the Underwriter and no event of default shall exist under any such documents.

(d) Between the date hereof and the Second Draw Date, the Underwriter has confirmed orders of 100% of the Second Draw and the market price or marketability, at the initial offering price set forth in Exhibit A, of the Bonds shall not have been materially and adversely affected, in the judgment of the Underwriter.

(e) The Borrower shall have entered into the Continuing Disclosure Agreement containing covenants meeting the requirements of Rule 15c2-12 under the 1934 Act.

(f) The Closing Draw has been successfully remarketed pursuant to the terms of the Remarketing Agreement.

10.4 In addition to the conditions set forth in Section 10.3, the obligations of the Underwriter to consummate on the Second Draw Date the transactions contemplated hereby are subject to receipt by the Underwriter of the following items:

(a) An approving opinion of Bond Counsel, dated the Second Draw Date, relating to the validity of the Bonds and the tax-exempt status of the Bonds, substantially in the form attached to the Remarketing Circular, and a letter of such counsel, addressed to the Underwriter to the effect that such opinion may be relied upon by the Underwriter, together with a supplemental opinion of

Bond Counsel, satisfactory in form and substance to the Underwriter, the Trustee and the Issuer, dated the Second Draw Date.

(b) An opinion of counsel to the Issuer, satisfactory in form and substance to the Underwriter.

(c) An opinion of counsel to the Borrower, dated the Second Draw Date, satisfactory in form and substance to the Underwriter, the Trustee, Bond Counsel and the Issuer.

(d) An opinion of Tiber Hudson LLC, counsel to the Underwriter, satisfactory in form and substance to the Underwriter.

(e) A certificate of the Issuer, dated the Second Draw Date and signed by an authorized official or officer of the Issuer, to the effect that (i) each of the Issuer's representations contained herein and in all other Issuer Documents, which representations will be deemed to have been made again at and as of the time of the Second Draw Date, are true and correct in all material respects; (ii) the Issuer has performed and complied with all agreements and conditions required by this Purchase Contract to be performed or complied with by it at or prior to the Second Draw Date; and (iii) the information contained in the Preliminary Remarketing Circular and the Remarketing Circular under the captions "THE ISSUER" and "ABSENCE OF LITIGATION – The Issuer" is true and correct and does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(f) A certificate of the Issuer, dated the Second Draw Date and signed by an authorized officer of the Issuer, in form and substance satisfactory to the Issuer, the Underwriter and Bond Counsel, respecting certain tax matters as may be reasonably required by Bond Counsel to enable it to give its opinion.

(g) A certificate of the Borrower, dated the Second Draw Date and signed by its authorized representative, to the effect that (i) each of the Borrower's representations and warranties contained herein and in all Borrower Documents, which representations and warranties will be deemed to have been made again at and as of the time of the Second Draw Date, are true and correct in all material respects; (ii) the Borrower has performed and complied with all agreements and conditions required by this Purchase Contract to be performed or complied with by it at or prior to the Second Draw Date; (iii) since the date of the Remarketing Circular and except as set forth therein, there has not been any material adverse change in the Borrower's operations, financial or otherwise; (iv) the information contained in the Preliminary Remarketing Circular and the Remarketing Circular is true and correct and does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and (v) such other matters as the Underwriter may reasonably request.

(h) A certificate of the Borrower dated the Second Draw Date and signed by its authorized representative, in form and substance satisfactory to the Underwriter and Bond Counsel, respecting certain tax matters as may be reasonably required by Bond Counsel to enable it to give its opinion.

(i) The Borrower's 15c2-12 Certificate, substantially in the form attached hereto as Exhibit D, duly executed by the Borrower.

(j) Certified copies of the organizational documents of the Borrower and copies of the resolutions or actions of its partners (if applicable) authorizing the execution and delivery of the Borrower Documents.

(k) The Financing Documents (or certified copies thereof) duly executed and delivered by the respective parties thereto, with such amendments, modifications or supplements as may have been agreed to by the Underwriter.

(l) A certificate from the Trustee, dated the Second Draw Date and signed by an authorized officer of the Trustee, satisfactory in form and substance to the Underwriter, dated the Closing Date, and delivered to the Underwriter, the Issuer, and Bond Counsel.

(m) Evidence of closing of the Closing Draw.

(n) The Investor Letter dated as of the Closing Date.

(o) Such additional legal opinions, certificates, instruments and other documents as the Underwriter may reasonably deem necessary to evidence the truth and accuracy as of the Closing Date of the respective representations and warranties of the Issuer and the Borrower herein contained, and to evidence compliance by the Issuer and the Borrower with this Purchase Contract and all applicable legal requirements, and the due performance and satisfaction by the Issuer and the Borrower at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Issuer and the Borrower.

10.5 If any of the conditions set forth in Sections 10.1 or 10.2 hereof have not been met on the Closing Date, and Sections 10.3 or 10.4 have not been met on the Second Draw Date, the Underwriter may, at its sole option, terminate this Purchase Contract or proceed to Closing and the Second Draw Date respectively upon waiving any rights under this Purchase Contract with respect to any such condition. If this Purchase Contract is terminated pursuant to this Section 10, no party will have any rights or obligations to any other, except as provided in Section 13 hereof.

Section 11. Actions and Events on the Closing Date and the Second Draw Date.

The following events will take place on or before the Closing Date and the Second Draw Date, respectively:

(a) The Issuer will cause the Trustee to deliver the Closing Draw on the Closing Date and the Second Draw on the Second Draw Date to the Underwriter, at the offices of Bond Counsel or other location agreed upon by the Underwriter. The Bonds so delivered will be in the form required by the Indenture, duly authenticated by the Trustee, and will be fully registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York.

(b) The Issuer and the Borrower, as applicable, will deliver or cause to be delivered to the Underwriter at the offices of Bond Counsel, or at such other place or places as the Issuer, the Borrower and the Underwriter may mutually agree upon, the materials described in Section 10.1 and Section 10.2 hereof on or before the Closing Date and Section 10.3 and Section 10.4 hereof on or before the Second Draw Date.

(c) The Underwriter will deliver to the Trustee, for the account of the Issuer, a wire, payable in immediately available funds, in an amount equal to the amount of the Closing Draw of the Bonds as set forth in Exhibit A hereto.

Section 12. Termination of Agreement.

Raymond James may terminate this Purchase Contract, without liability therefor, by notifying the Issuer and the Borrower at any time prior to the Closing Date with respect to the Closing Draw and the Second Draw Date with respect to the Second Draw, if:

(a) Legislation is enacted or introduced in the Congress or recommended to the Congress for passage by the President of the United States, or favorably reported for passage to either house of the Congress of the United States by a committee of such house to which such legislation has been referred for consideration, or a decision is rendered by a court established under Article III of the Constitution of the United States or by the Tax Court of the United States, or an order, ruling, regulation (final, temporary or proposed), press release, statement or other form of notice or official statement is issued or made: (i) by or on behalf of the President, the Treasury Department of the United States or the Internal Revenue Service with the purpose or effect, directly or indirectly, of imposing federal income taxation upon such interest as would be received by the owners of the Bonds, or (ii) by or on behalf of the SEC, or any other governmental entity having jurisdiction of the subject matter, to the effect that obligations of the general character of the Bonds or any arrangements underlying the Bonds, are not exempt from registration under the 1933 Act, or that the Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended;

(b) The declaration of a general banking moratorium by federal, New York or State authorities, or general suspension of trading in securities on the New York Stock Exchange or any other national securities exchange, or the establishment by the New York Stock Exchange, by the SEC, by any federal or state agency or by the decision of any court, of any limitation on prices for such trading, or any outbreak or escalation of hostilities or occurrence of any other national or international calamity or crisis, or escalation of such calamity or crisis, the effect of which on the financial markets of the United States shall be such as to make it impracticable for Raymond James to proceed with the purchase and offering of the Bonds;

(c) Any event or condition which, in the reasonable judgment of Raymond James, (i) renders untrue or incorrect any statement of material fact in the Preliminary Remarketing Circular or the Remarketing Circular and the Issuer and the Borrower do not agree to supplement or amend the Remarketing Circular to correct the deficiency, or (ii) causes the Preliminary Remarketing Circular or the Remarketing Circular to omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, and the Issuer and the Borrower do not agree to supplement or amend the Remarketing Circular to correct the deficiency, or (iii) has a material adverse effect upon the marketability of the Bonds, or (iv) would materially and adversely affect the ability of Raymond James to enforce contracts for the sale of the Bonds;

(d) The imposition by the New York Stock Exchange or other national securities exchange, or any governmental entity, of any restrictions not now in force with respect to any of the Bonds or obligations of the general character of the Bonds or securities generally, or the increase of any such restrictions now in force, including those relating to the extension of credit by, or the charge to the net capital requirements of Raymond James;

(e) An order, decree or injunction of any court of competent jurisdiction, or order, filing, regulation or official statement by the SEC, or any other governmental entity having jurisdiction of the subject matter, issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds or the issuance, offering or sale of the Bonds or

any arrangements underlying the Bonds, as contemplated hereby or by the Preliminary Remarketing Circular or the Remarketing Circular, is or would be in violation of the federal securities laws as then in effect;

(f) With respect to the Second Draw, the Rating on the Bonds, once given, shall not have been thereafter downgraded or withdrawn by the Rating Agency; or

(g) A material disruption in securities settlement, payment, or clearance services shall have occurred.

Section 13. Fees and Expenses.

13.1 The Borrower shall pay to the Placement Agent a fee in the amount of \$_____ (the “Closing Purchasing Fee”), payable in immediately available funds on the Closing Date from which the Placement Agent will pay certain expenses. The Closing Purchasing Fee shall not include the fee of Placement Agent’s counsel. The Borrower shall also agree to pay the Underwriter a fee (the “Second Draw Purchasing Fee” and together with the Closing Purchasing Fee, the “Purchasing Fee”), payable in immediately available funds on the Second Draw Date from which the Underwriter will pay certain expenses. The Purchasing Fee shall not include the fee of the Underwriter’s counsel. The Borrower acknowledges that it has had an opportunity, in consultation with such advisors as it may deem appropriate, if any, to evaluate and consider the fees and expenses being incurred in connection with the issuance of the Bonds. The Borrower has agreed to pay the Purchasing Fee set forth in this Section 13.1, and inclusive in the expense component of the Purchasing Fee are actual expenses incurred or paid for by Raymond James on behalf of the Borrower in connection with the marketing, issuance, and delivery of the Bonds, including, but not limited to, advertising expenses, the costs of any preliminary and final blue sky memoranda, CUSIP fees, and transportation, lodging, and meals for the Borrower’s employees and representatives.

13.2 The Borrower shall pay the costs of issuance of the Bonds, including all expenses incident to the performance of Raymond James’s obligations hereunder, including, but not limited to, (i) the cost of the preparation, printing or other reproduction of this Purchase Contract, the Preliminary Remarketing Circular and the Remarketing Circular, as supplemented or amended, the Indenture and the other Financing Documents in reasonable quantities for distribution; (ii) the cost of engraving, reproducing and signing the definitive Bonds; (iii) the reasonable fees and disbursements of all applicable legal counsel, including Bond Counsel, counsel to the Issuer, counsel to the Trustee (if any), and counsel to Raymond James; (iv) the initial fees and costs of paying the Trustee and all paying agents, transfer agents and registrars; (v) the fees and expenses of the Issuer, if any; (vi) CUSIP fees; (vii) the cost of qualifying the Bonds for sale in various states chosen by the Underwriter and the cost of preparing or printing any Preliminary Blue Sky Survey to be used in connection with such sale; (viii) the fees and expenses of the experts retained by the Borrower with respect to the acquisition, construction and financing of the Project; (ix) the fees of the Rating Agency in connection with the rating of the Bonds; (x) reimbursement to the Underwriter of the Underwriter’s Advance; and (xi) all other applicable fees of professionals hired in conjunction with the issuance of the Bonds.

13.3 In the event that the Issuer, the Borrower or Raymond James shall have paid obligations of the other as set forth in this Section, appropriate adjustments will promptly be made.

13.4 In addition to the provisions set forth in Section 14 hereto, the Borrower shall indemnify the Issuer and Raymond James with respect to the foregoing costs and expenses in the event that the purchase provided for herein is not consummated.

Section 14. Indemnification.

14.1 The Borrower will indemnify and hold harmless the Issuer and Raymond James, and each of their officers, directors, employees, agents, officials, members and each person who “controls” (as such term is used in Section 15 of the Securities Act of 1933 and Section 20 of the Securities Exchange Act of 1934, as amended) the Issuer and Raymond James (each referred to individually as an “*Indemnified Party*” and collectively as the “*Indemnified Parties*”) against any losses, claims, expenses (including, without limitation, to the extent permitted by law, reasonable attorneys’ fees and expenses actually incurred), damages or liabilities, causes of action (whether in contract, tort or otherwise), suits, claims, demands and judgments of any kind, character and nature (collectively referred to herein as the “*Liabilities*”), joint or several, to which the Indemnified Parties may be threatened or become subject, caused by or directly or indirectly arising from or in any way relating to (i) the Bonds, the Project, the loan of the proceeds of the Bonds, this Purchase Contract or any document related to the Bonds, the Project or the loan of the proceeds of the Bonds or any transaction or agreement, written or oral, pertaining to the foregoing, (ii) any untrue statement or alleged untrue statement of any material fact contained in the Preliminary Remarketing Circular or the Remarketing Circular, or any supplement or amendment thereto, by the Borrower relating to the Borrower or the Project contained in the Remarketing Materials and approved by the Borrower, or (iii) any omission or alleged omission to state in the Preliminary Remarketing Circular or the Remarketing Circular a material fact relating to the Borrower or the Project necessary to be stated therein in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading. This indemnification provision shall not be construed as a limitation on any other liability which the Borrower may otherwise have to any indemnified person, provided that in no event shall the Borrower be obligated for double indemnification. Notwithstanding the foregoing, to the extent permitted by law, the Borrower shall not be required to indemnify Raymond James or its related Indemnified Parties for the gross negligence or willful misconduct of Raymond James or its related Indemnified Parties, nor shall the Borrower be required to indemnify the Issuer or its related Indemnified Parties for the willful misconduct of the Issuer or its related Indemnified Parties.

14.2 The indemnity agreements in paragraph 14.1 of this Section shall be in addition to any liability which the Borrower may otherwise have hereunder or under the other Borrower Documents, and shall extend on the same terms and conditions to each partner, principal, official, officer, attorney or employee of the Borrower and to each person, if any, who “controls” (as such term is used in Section 15 of the Securities Act of 1933 and Section 20 of the Securities Exchange Act of 1934, as amended) the Borrower.

14.3 Promptly after receipt by an Indemnified Party under paragraph 14.1 of this Section of notice of the commencement of any action against such Indemnified Party in respect of which indemnity or reimbursement may be sought against the Borrower under any such paragraph, such Indemnified Party will notify the Borrower in writing of the commencement thereof; provided that any delay or failure to give such notification shall be of no effect except to the extent that the Borrower is prejudiced thereby.

14.4 In case any action, claim or proceeding, as to which the Borrower is to provide indemnification hereunder, shall be brought against the Indemnified Party and the Indemnified Party notifies the Borrower of the commencement thereof, the Borrower may, or if so requested by the Indemnified Party shall, participate therein or assume the defense thereof, with counsel reasonably satisfactory to the Indemnified Party; provided that, except as provided below, the Borrower shall not be liable for the expenses of more than one separate counsel representing the Indemnified Parties in the action, claim or proceeding.

14.5 If the Borrower shall not have employed counsel to have charge of the defense of the action, claim or proceeding, or if any Indemnified Party shall have concluded reasonably that there may be a

defense available to it or to any other Indemnified Party which is different from or in addition to those available to the Borrower or to any other Indemnified Party (hereinafter referred to as a “separate defense”), (i) the Borrower shall not have the right to direct the defense of the action, claim or proceeding on behalf of the Indemnified Party, and (ii) reasonable legal and other expenses incurred by the Indemnified Party (including without limitation, to the extent permitted by law, reasonable attorney’s fees and expenses actually incurred) shall be borne by the Borrower; provided, that the Borrower shall not be liable for the expenses of more than one additional separate counsel for each Indemnified Party with respect to such separate defenses. For the purpose of this paragraph, an Indemnified Party shall be deemed to have concluded reasonably that a separate defense is available to it or any other Indemnified Party if (a) such Indemnified Party shall have requested an unqualified written opinion from Independent Counsel to the effect that a separate defense exists, and such Independent Counsel shall have delivered such opinion to the Indemnified Party within ten (10) days after such request or (b) the Borrower agrees that a separate defense is so available. For purposes of this paragraph, Independent Counsel shall mean any attorney, or firm or association of attorneys, duly admitted to practice law before the supreme court of any state and not a full-time employee of any Indemnified Party. Nothing contained in this paragraph 14.5 will preclude any Indemnified Party, at its own expense, from retaining additional counsel to represent such party in any action with respect to which indemnity may be sought from the Borrower hereunder.

14.6 The Borrower agrees to reimburse any Indemnified Party for any reasonable expense (including reasonable fees and expenses of counsel) incurred as a result of producing documents, presenting testimony or evidence, or preparing to present testimony or evidence (based upon time expended by an Indemnified Party at its then current time charges), in connection with any court or administrative proceeding (including any investigation which may be preliminary thereto) arising out of or relating to any public distribution of the Bonds. The Borrower will not be required to reimburse any Indemnified Party if such court or administrative hearing arises out of the gross negligence of, willful misconduct or breach of, this Purchase Contract by an Indemnified Party.

14.7 In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in paragraph 14.1 or 14.2 of this Section 14 is for any reason held to be unavailable, the Borrower and the Indemnified Party shall contribute proportionately to the aggregate Liabilities to which the Borrower and the Indemnified Party may be subject, so that the Indemnified Party is responsible for that portion represented by the percentage that the fees paid by the Borrower to the Indemnified Party in connection with the issuance and administration of the Bonds bears to the aggregate offering price of the Bonds, with the Borrower responsible for the balance; provided, however, that in no case shall the Indemnified Party be responsible for any amount in excess of the fees paid by the Borrower to the Indemnified Party in connection with the issuance and administration of the Bonds.

14.8 The Indemnified Parties, other than Raymond James and the Issuer, shall be considered to be third-party beneficiaries of this Purchase Contract for purposes of this Section 14. The provisions of this Section 14 will be in addition to all liability which the Borrower may otherwise have and shall survive any termination and cancellation of this Purchase Contract, the offering and sale of the Bonds and the payment or provisions for payment of the Bonds.

14.9 Notwithstanding anything to the contrary in this Purchase Contract, the Issuer may employ its own counsel (whether one or more separate counsel) in any manner it deems appropriate and the Borrower shall indemnify the Issuer for fees and expenses of such counsel.

Section 15. Limitation of Liability.

Notwithstanding any provision herein to the contrary, any member, officer, director, partner, agent or employee of the Issuer, Raymond James or the Borrower, including any person executing this Purchase

Contract, shall not bear any liability as a result of any failure of the Issuer, Raymond James or the Borrower to perform the obligations of each, respectively, set forth in this Purchase Contract.

Section 16. Miscellaneous.

16.1 All notices, demands and formal actions hereunder will be in writing and mailed, telecopied or delivered to the following address or such other address as any of the parties shall specify:

If to Raymond James: Raymond James & Associates, Inc.
One Burton Hills Blvd., Suite 225
Nashville, TN 37215
Attention: Ted R. Fellman

If to the Issuer: The Health, Educational and Housing Facility Board of
the City of Chattanooga, Tennessee
c/o Office of the Chattanooga City Attorney
100 E. 11th Street, Suite 200
Chattanooga, TN 37402
Attention: Christopher Trump

If to the Borrower: Espero Chattanooga, LP

Attention: _____

16.2 This Purchase Contract will inure to the benefit of and be binding upon the parties hereto and their successors and assigns and, except as provided in Section 14 hereof will not confer any rights upon any other person. The terms “successor” and “assigns” will not include any purchaser of any of the Bonds from Raymond James merely because of such purchase.

16.3 This Purchase Contract may not be assigned by any of the parties hereto.

16.4 If any provision of this Purchase Contract is held or deemed to be or is, in fact, inoperative, invalid or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provision of any constitution, statute, rule of public policy, or any other reason, such circumstances will not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions of this Purchase Contract invalid, inoperative or unenforceable to any extent whatever.

16.5 This Purchase Contract will be construed in accordance with and governed by the internal laws of the State, without regard to conflict of law principles of the State.

16.6 Raymond James hereby certifies, pursuant to Tennessee Code, Section 12-4-119, that Raymond James, including any wholly-owned subsidiaries, majority-owned subsidiaries, parent companies or affiliates of Raymond James & Associates, Inc., is not currently engaged in, and will not for the duration of this Purchase Contract, engage in, a boycott of goods or services from Israel or territories under its control, except as otherwise required by applicable Federal law.

16.7 This Purchase Contract may be executed in several counterparts (including counterparts exchanged by email in PDF format), each of which will be regarded as an original and all of which will constitute one and the same document.

Section 17. Survival of Certain Representations and Obligations.

The respective agreements, covenants, representations, warranties and other statements of the Issuer and the Borrower and each of their respective officers set forth in or made pursuant to this Purchase Contract shall survive delivery of and payment for the Bonds and shall remain in full force and effect, regardless of any investigation, or statements as to the results thereof, made by or on behalf of Raymond James.

[Signature Pages to Follow]

If the foregoing is in accordance with your understanding, please sign and return to us two counterparts hereof and, upon the acceptance hereof by the Issuer and the Borrower, this Purchase Contract and such acceptance shall constitute the binding agreement among us as to the matters set forth above.

Very truly yours,

RAYMOND JAMES & ASSOCIATES, INC.,
as Placement Agent and Underwriter

By: _____
Ted R. Fellman
Director

[Signatures continue on following page]

[Issuer's signature page to Purchase Contract]

**THE HEALTH, EDUCATIONAL AND HOUSING
FACILITY BOARD OF THE CITY OF
CHATTANOOGA, TENNESSEE**

By: _____
Chair

[Signatures continue on following page]

[Borrower's signature page to Purchase Contract]

ESPERO CHATTANOOGA, LP,
a Tennessee limited partnership

By: Espero GP Corporation, a Tennessee nonprofit
corporation,
its General Partner

By: _____
[Name]
President

EXHIBIT A

TERM OF BONDS

Collateralized Multifamily Housing Bonds (Espero Chattanooga Project) Series 2023

<u>Dated Date</u>	<u>Maturity Date</u>	<u>Principal Amount</u> ¹	<u>Interest Rate</u>	<u>Price</u>
November __, 2023	____ 1, 20__	\$100,000	____%	100%

¹ Funding of the remaining principal amount of \$10,600,000 is subject to the conditions set forth herein.

EXHIBIT B

PROPOSED FORM OF OPINION OF BOND COUNSEL

November __, 2023

The Health, Educational and Housing Facility Board
of The City of Chattanooga, Tennessee, Tennessee
Chattanooga, Tennessee

[Trustee]
[City, State]

Re:

\$10,700,000
The Health, Educational and Housing Facility Board of
the City of Chattanooga, Tennessee
Collateralized Multifamily Housing Bonds
(Espero Chattanooga Project)
Series 2023

Ladies and Gentlemen:

We have acted as bond counsel in connection with the issuance by The Health, Educational and Housing Facility Board of the City of Chattanooga, Tennessee, Tennessee (the “Issuer”) of the referenced bonds (the “Bonds”) which are dated the date hereof. In such capacity, we have examined the law and such certified proceedings and other papers as deemed necessary to render this opinion.

The Bonds are issued pursuant to a Trust Indenture dated as of November 1, 2023 (the “Indenture”), between the Issuer and _____, as trustee (the “Trustee”). Under the terms of a Loan Agreement dated as of November 1, 2023 (the “Agreement”), between the Issuer and Espero Chattanooga, LP, a Tennessee limited partnership (the “Borrower”), the Borrower has agreed to make payments to be used to pay when due the principal of, premium, if any, and interest on the Bonds, and such payments and other revenues under the Agreement and certain rights of the Issuer under the Agreement have been assigned by the Issuer pursuant to the Indenture as security for the Bonds. The Bonds are payable solely from the Trust Estate pledged to the Trustee under the Indenture.

As to questions of fact material to our opinion, we have relied upon representations of the Issuer and the Borrower contained in the Agreement, the certified proceedings and other certifications of public officials and others furnished to us, and certifications furnished to us by or on behalf of the Borrower (including certifications as to the use of bond proceeds which are material to paragraph 4 below), without undertaking to verify the same by independent investigation.

Reference is made to an opinion of even date of _____, counsel to the Borrower, upon which we have relied with your permission with respect, among other matters, to the good standing of the Borrower, the power of the Borrower to enter into and perform the Agreement, the authorization, execution and delivery of the Agreement by the Borrower, and the enforceability of the Agreement against the Borrower, and we express no opinion with respect to these issues.

The use and operation of the Project is subject to the provisions of the Land Use Restriction Agreement dated as of November 1, 2023 (the “Restrictive Covenants”), among the Issuer, the Borrower

and the Trustee. The Restrictive Covenants require that (i) at least [40%] of the residential units of the Project be occupied at all times by individuals or families (with appropriate adjustments for family size) whose income is [60%] or less of area median gross income, within the meaning of Section 142(d) of the Internal Revenue Code of 1986, as amended (the “Code”), for the Qualified Project Period, as defined in the Restrictive Covenants, and (ii) that the Project be owned, managed and operated as residential rental property, all as required by Section 142(d)(1) of the Code.

Based on our examination, and assuming continued compliance by the Issuer and the Borrower with certain covenants in the Agreement, the Restrictive Covenants and the Indenture which are designed to ensure that interest on the Bonds remains excluded from gross income for federal income tax purposes, we are of the opinion that, under existing law:

1. The Issuer is duly incorporated, validly existing and in good standing under the laws of the State of Tennessee with the corporate power and authority to enter into and perform its obligations under the Agreement and the Indenture and to issue the Bonds.

2. The Agreement, the Indenture and the Restrictive Covenants have been duly authorized, executed and delivered by the Issuer and are valid and binding obligations of the Issuer enforceable upon the Issuer. The Indenture creates a valid lien on the Trust Estate and certain rights of the Issuer under the Agreement.

3. The Bonds have been duly authorized, executed and delivered by the Issuer and are the valid and binding limited obligations of the Issuer, payable solely from the Trust Estate.

4. Interest on the Bonds is excluded from gross income for federal income tax purposes, except for interest on any Bond for any period during which such Bond is held by a “substantial user” of the facilities financed by the Bonds or a “related person” within the meaning of Section 147(a) of the Code. Interest on the Bonds is not an item of tax preference for purposes of the federal alternative minimum tax; however, such interest is taken into account in determining the annual adjusted financial statement income of applicable corporations (as defined in Section 59(k) of the Code) for the purpose of computing the alternative minimum tax imposed on corporations for tax years beginning after December 31, 2022. The opinion set forth in the first sentence of this paragraph is subject to the condition that the Issuer and the Borrower comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Bonds in order that interest thereon be (or continue to be) excluded from gross income for federal income tax purposes. The Issuer and/or the Borrower have covenanted to comply with such requirements. Failure to comply with such requirements could cause the interest on the Bonds to be included in gross income for federal income tax purposes retroactively to the date of issuance of the Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Bonds.

5. Under existing law, the Bonds and the income therefrom are exempt from all present state, county and municipal taxation in Tennessee except (a) Tennessee excise taxes on all or a portion of the interest on any of the Bonds during the period such Bonds are held or beneficially owned by any organization or entity, other than a sole proprietorship or general partnership, doing business in the State of Tennessee, and (b) Tennessee franchise taxes by reason of the inclusion of the book value of the Bonds in the Tennessee franchise tax base or any organization or entity, other than a sole proprietorship or general partnership, doing business in the State of Tennessee.

6. It is not necessary in connection with the sale of the Bonds to register the Bonds under the Securities Act of 1933, as amended, or to qualify the Indenture under the Trust Indenture Act of 1939, as amended.

It is to be understood that the rights of the owners of the Bonds and the enforceability of the Bonds and the Agreement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally and by equitable principles, whether considered at law or in equity.

This opinion is given as of the date hereof, and we assume no obligation to update or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

Very truly yours,

EXHIBIT C

FORM OF OPINION OF COUNSEL TO THE BORROWER

November __, 2023

Raymond James & Associates, Inc.
Birmingham, Alabama

The Health, Educational and Housing Facility Board
of The City of Chattanooga, Tennessee, Tennessee
Chattanooga, Tennessee

Bass, Berry & Sims PLC
Knoxville, Tennessee

\$10,700,000
The Health, Educational and Housing Facility Board of
the City of Chattanooga, Tennessee
Collateralized Multifamily Housing Bonds
(Espero Chattanooga Project)
Series 2023

Ladies and Gentlemen:

We have acted as counsel to Espero Chattanooga, LP, a Tennessee limited partnership (the “Borrower”), in connection with the issuance of the above-captioned bonds (the “Bonds”) by The Health, Educational and Housing Facility Board of The City of Chattanooga, Tennessee, Tennessee (the “Issuer”).

Capitalized terms used but not defined herein have the meanings assigned to them in the Indenture or the Bond Purchase Agreement.

In our capacity as such counsel, in rendering the opinions set forth below, we have examined, among other things, originals or copies, certified or otherwise identified to our satisfaction, of the following documents: (i) the Land Use Restriction Agreement, between the Issuer, _____, as trustee (the “Trustee”) and the Borrower, dated as of November 1, 2023; (ii) the Loan Agreement, dated as of November 1, 2023, between the Issuer and the Borrower; (iii) the Bond Purchase Agreement, dated November __, 2023, among the Issuer, the Underwriter named therein and the Borrower (the “Bond Purchase Agreement”); (iv) the Remarketing Agreement, dated as of November 1, 2023, between the Borrower and the Remarketing Agent named therein; (v) the promissory note, dated the Closing Date, executed by the Borrower; (vi) the Tax Agreement among the Borrower, Trustee, and the Issuer, dated the Closing Date, executed by the Borrower; (vii) the Disbursement Agreement, dated as November 1, 2023, between the Borrower and [Trustee]; and (viii) such other documents, certificates and instruments as we have deemed necessary for the purposes of reaching the opinion expressed herein. We have also relied as to matters of fact upon a certificate of the Borrower and examined certain other certificates and documents.

In such examination, we have assumed the genuineness of all signatures (other than those relating to the Borrower), the authenticity of all documents submitted to us as originals, and the conformity to the original document of all documents submitted to us as photostatic or certified copies. We have assumed due authorization, execution and delivery of all documents referenced herein by the parties thereto other

than the Borrower and that each of such parties has full power, authority and legal right to execute and deliver each such instrument.

Based upon and subject to the foregoing, and subject to the qualifications, limitations and assumptions set forth herein, we are of the opinion that, as of the date hereof:

(i) The Borrower is (a) a limited partnership validly existing under the laws of the State of Tennessee (the "State"), (b) is in good standing and duly qualified to transact business in the State, and (c) has with full power and authority to execute and deliver the documents listed above numbered (ii) through (vii) (the "Financing Documents") and to perform its obligations under each respective agreement.

(ii) The Financing Documents have each been duly authorized, executed and delivered by the Borrower and constitute legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, except as the enforcement thereof may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization and similar laws (including fraudulent conveyance laws) affecting the enforcement of creditors' rights and remedies generally in effect from time to time, and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(iii) The execution and delivery of the Financing Documents and the performance by the Borrower of the terms of the respective agreements do not conflict with or violate any other document, instrument, decree, indenture or agreement by which the Borrower is bound.

(iv) No approval, authorization or other action by, or filing with, the State or any agency thereof, is required in connection with the execution and delivery by the Borrower of the Bond Purchase Agreement.

(v) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before any court or public body pending or, to the best of our knowledge, threatened, to challenge the right, power or authority of the Borrower to acquire, own and operate the Project or to perform its obligations under the Bond Purchase Agreement or the other Financing Documents.

The opinions expressed above are subject to the following qualifications, limitations and/or assumptions:

1. Except in instances where we have independent actual knowledge of material facts, whenever our opinion is stated to be "known to us", or "to our knowledge" we have relied exclusively on the Closing Certificates and/or representations and warranties set forth in the Financing Documents as to questions of fact material to our opinion. We have not, except as expressly stated herein, made any independent review or investigation of agreements, instruments, judgments, decrees, orders, statutes, rules or regulations by which Borrower is or may be bound, nor have we physically examined any properties or facilities of Borrower. We acknowledge and confirm your agreement that we have no obligation to you to do so.

2. We have assumed the genuineness of all signatures (other than those of Borrower and General Partner), the authenticity of all documents submitted to us as originals, and the conformity with the original documents of all documents submitted to us as copies; that all parties (other than Borrower and General Partner) have the power and authority to enter into and have duly and validly executed and delivered the Financing Documents and that the Financing Documents are enforceable against such other parties; that such other parties will act in accordance with applicable law; and that those Financing Documents to be filed or recorded have been or will be properly filed or recorded in the proper place for

such filing or recording; and that such execution, delivery and performance by parties other than Borrower and General Partner is in accordance with all applicable laws and regulations.

3. We express no opinion as to matters of title to or ownership of property, real or personal or any collateral; the continuation of security interests; loss of security interests or perfection; property descriptions (including but not limited to legal descriptions); the existence (or nonexistence) of security interests, liens or other encumbrances other than those created by the Financing Documents; or priorities of security interests.

4. We express no opinion as to the laws of any jurisdiction other than the laws of the State of Tennessee.

5. All opinions are subject to qualification in respect of (a) the effects of state or federal bankruptcy, insolvency, conservatorship, liquidation, receivership, reorganization, arrangement, moratorium, fraudulent conveyance or transfer, forfeiture, seizure, and other similar laws applicable to or affecting creditors rights and (b) the effect of rules of law or principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, mitigation, impracticability or impossibility, unconscionability, and rules governing specific performance, injunctive relief, and other equitable remedies, regardless of whether raised in a proceeding in equity, at law, or otherwise.

6. Without limiting other qualifications contained herein, we express no opinion with respect to the enforceability of contractual provisions (a) waiving broadly or vaguely stated rights or unknown future rights, (b) waiving defenses or counterclaims where such waivers are against public policy, (c) waiving rights conferred by constitution or statute, (d) purporting to fix evidentiary standards or waive or modify court rules or statutes regarding litigation, (e) allowing a third party to take action as attorney-in-fact or otherwise for a party, (f) allowing extra-judicial setoff or setoff in circumstances not allowed by law, (g) allowing for severability of clauses or provisions, (h) stating that the determination of a party shall be final, binding or conclusive, (i) making ineffective oral waivers or modifications; or (j) irrevocably consenting to jurisdiction or irrevocably waiving objections to jurisdiction, venue or forum.

7. We express no opinion regarding any provision of the Financing Documents pertaining to post-default interest rates, liquidated damages, prepayment fees and any provisions in the nature of a penalty.

8. Rights to indemnification and contribution may be limited by considerations of public policy and by provisions of other laws. We express no opinion regarding the enforceability of provisions indemnifying a party for its negligent or wrongful acts.

9. Provisions of the Financing Documents that permit a lender to take action or make determinations (including but not limited to enforcement of certain covenants or remedies or acceleration of the indebtedness secured by the Financing Documents), or to benefit from indemnities and similar undertakings of Borrower may not be enforceable unless such action is taken or such determinations are made on a commercially reasonable basis and in good faith.

10. The enforceability of provisions of the Financing Documents regarding attorney's fees and costs will be subject to judicial interpretation.

11. We express no opinion as to the validity of the Bonds, permissible interest thereon, any tax matters related thereto (including but not limited to the status of the Bonds under the laws of any jurisdiction), whether the Bonds or any instruments executed in connection with them are required to be registered under any federal or state securities law or qualified under the Trust Indenture Act of 1939, or

the application of any other federal or state securities laws. With respect to certain of these matters, we understand that you are relying on the opinion of Bass Berry & Sims PLC and/or your own counsel.

We express no opinion as to any matter whatsoever, relating to the accuracy or completeness of any financial accounting or projection information furnished to any party, the accuracy or completeness of any representation made by our clients, the financial status of our clients, the ability of our clients to meet their obligations under any of the above-referenced agreements or any other related document.

Very truly yours,

EXHIBIT D

FORM OF BORROWER'S RULE 15c2-12 CERTIFICATE

\$10,700,000

**The Health, Educational and Housing Facility Board of
the City of Chattanooga, Tennessee
Collateralized Multifamily Housing Bonds
(Espero Chattanooga Project)
Series 2023**

The undersigned hereby certifies and represents to Raymond James & Associates, Inc. (the "Underwriter") that the undersigned is authorized to execute and deliver this certificate on behalf of Espero Chattanooga, LP, a Tennessee limited partnership (the "Borrower"), and hereby further certifies to the Underwriter as follows:

(a) This certificate is delivered to enable the Underwriter to comply with Securities and Exchange Commission Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule") in connection with the issuance and sale of the above captioned securities (the "Bonds").

(b) In connection with the issuance and sale of the Bonds, there has been prepared a Preliminary Remarketing Circular, dated _____, 2023, relating to the Bonds (the "Preliminary Remarketing Circular") setting forth information concerning the Bonds and the Borrower.

(c) As used herein, "Permitted Omissions" shall mean the offering price(s), interest rate(s), accreted values, yield to maturity, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings and other terms of the Bonds depending on such matters and the identity of the Underwriter(s), all with respect to the issuance and sale of the Bonds.

(d) The Preliminary Remarketing Circular is, as of the date thereof, deemed final within the meaning of the Rule, except for Permitted Omissions.

(e) The section of the Preliminary Remarketing Circular entitled "CONTINUING DISCLOSURE" describes the agreement the Borrower expects to make for the benefit of the Bondholders in the Continuing Disclosure Agreement dated as of _____ 1, 2023, executed by the Borrower and _____, as dissemination agent, by which the Borrower will undertake to provide continuing disclosure in accordance with the Rule.

Dated: _____, 2023

[Remainder of page intentionally left blank]

[Signature page to Rule 15c2-12 Certificate]

IN WITNESS WHEREOF, I have hereunto set my hand as of the date set forth above.

ESPERO CHATTANOOGA, LP,
a Tennessee limited partnership

By: Espero GP Corporation, a Tennessee nonprofit
corporation,
its General Partner

By: _____
[Name]
President

EXHIBIT E

FORM OF CERTIFICATE OF PURCHASER

\$10,700,000

**The Health, Educational and Housing Facility Board of
the City of Chattanooga, Tennessee
Collateralized Multifamily Housing Bonds
(Espero Chattanooga Project)
Series 2023**

The undersigned, on behalf of RAYMOND JAMES & ASSOCIATES, INC. (the “Purchaser”), hereby certifies as set forth below with respect to the purchase of the above-captioned obligations (the “Bonds”).

1. ***Purchase of the Bonds.*** On the date of this Certificate, the Purchaser is purchasing the Bonds for the amount of \$10,700,000.00 (equal to the par amount of the Bonds), with an initial draw of Bond proceeds on the date hereof equal to \$100,000.00, all as provided by the Bond Purchase Agreement dated November __, 2023 (the “Bond Purchase Agreement”) and executed in connection with the Bonds. Pursuant to the Bond Purchase Agreement, the Purchaser shall make additional advances of the purchase price of the Bonds as the requirements of the Bond Purchase Agreement are met for such advances to occur, and such advances shall be made based upon the par amount of the Bonds. As provided in the Bond Purchase Agreement and the Trust Indenture, if the Bonds are reoffered by the Purchaser, the Bonds shall be reoffered at par based upon then current market interest rates in the manner provided in the Bond Purchase Agreement and Trust Indenture. The Purchaser has no reason to believe that the requirements for additional advances of the purchase price of the Bonds will not be met.

The undersigned understands that the foregoing information will be relied upon by the Issuer and the Borrower with respect to certain of the representations set forth in the Tax Compliance Certificate and Agreement and with respect to compliance with the federal income tax rules affecting the Bonds, and by Bass, Berry & Sims PLC in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038, and other federal income tax advice that it may give to the Issuer and the Borrower from time to time relating to the Bonds. Capitalized terms used but not defined herein shall have the meanings set forth in the Bond Purchase Agreement.

Dated: November __, 2023

[Purchaser's signature page to Certificate of Purchaser]

Dated as of the date hereof.

RAYMOND JAMES & ASSOCIATES, INC.

By: _____
Ted R. Fellman
Director