

**VILLAGE OF DOWNERS GROVE**  
**REPORT FOR THE VILLAGE COUNCIL MEETING**  
**AUGUST 12, 2014 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Ordinance Authorizing Issuance of Multifamily Housing Bonds and Resolution authorizing an Agreement between the Village and Downers Grove Supportive Living Facility, LLC and Downers Grove SLF, JV, LLC	<ul style="list-style-type: none"> <li>✓ Resolution</li> <li>✓ Ordinance</li> <li>Motion</li> <li>Discussion Only</li> </ul>	Enza Petrarca, Village Attorney

**SYNOPSIS**

An ordinance has been prepared authorizing issuance of multifamily housing revenue bonds in an amount not to exceed \$20,114,920 and a resolution has been prepared authorizing an agreement between the Village of Downers Grove and Downers Grove Supportive Living Facility, LLC and Downers Grove SLF, JV, LLC.

**STRATEGIC PLAN ALIGNMENT**

The goals for 2011-2018 identified *Strong, Diverse Local Economy*.

**FISCAL IMPACT**

N/A

**BACKGROUND**

In December of 2013 the Village Council approved a petition authorizing the construction of a 120 unit sheltered care facility (Supportive Living Facility) for senior citizens located at 4200 – 4240 Lacey Road. Also in December of 2013, pursuant to the Tax Reform Act of 1986, the Village authorized the issuance of tax-exempt economic development revenue bonds, also known as private activity bonds for this project. The bonds were to be used by the developer for payment and reimbursement of the costs of acquiring, constructing and equipping the SLF.

While conducting the due diligence for issuance of said bonds, the financing team discovered an issue with one of the owners of the borrower that would have made the sale of public bonds difficult. Accordingly, a new entity, Downers Grove Supportive Living Facility, LLC, has been formed to act as the Borrower. Since there is a new entity acting as the borrower, Bond Counsel has recommended adopting a new ordinance and a new TEFRA hearing. The final structure of these new bonds will be simpler than the previous as it involves a direct purchase of the bonds by Heartland Bank, rather than a public offering.

The Bond Ordinance authorizes the Village to issue Multifamily Housing Revenue Bonds in an amount not to exceed \$20,114,920 (Downers Grove SLF Project), the proceeds of which will be loaned to Downers Grove Supportive Living Facility, LLC. The Bonds are special, limited obligations of the Village and the principal, redemption premiums, if any, and interest on the Bonds are payable **solely** from revenues and

income derived from a Loan Agreement entered into with the Borrower. The Bonds and the obligation to pay the premium, if any, and interest are not considered indebtedness or an obligation of the Village and default will not affect the Village's credit rating.

Attached to the Ordinance are drafts of the following documents:

1. The Loan Agreement dated as of August 1, 2014, between the Village and the Borrower (the "Loan Agreement");
2. The Indenture of Trust dated as of August 1, 2014 (the "Indenture"), between the Village and the Trustee, setting forth terms, conditions and security requirements for the proposed bond issue and containing the form of the Bonds; and
3. The Regulatory Agreement dated as of August 1, 2014 (the "Regulatory Agreement") among the Village, the Borrower and the Trustee.

Pursuant to the Loan Agreement between the Village and the Borrower, the Borrower will agree to release the Village and indemnify, hold harmless and defend the Issuer Indemnified Parties from and against any and all losses, claims, damages, liabilities and expenses relating to the bonds and the project. The indemnification shall extend to and include, without limitation, all reasonable costs, counsel fees, expenses and liabilities incurred in connection with any such claim, or proceeding brought with respect to such claim, except to the extent such damages are caused by the gross negligence or willful misconduct of the Village. The full language on the indemnification is found in Section 6.6 (Page 27) of the Loan Agreement.

Also, since a new entity has been formed a new development agreement between the Village and Downers Grove SLF, JV, LLC (the developer) and Downers Grove Supportive Living Facility, LLC (the borrower) must be executed. The terms of this agreement essentially remain the same as the previous agreement executed by the Village in December of 2013. The parties agree to rescind the 1993 Consent Decree that currently encumbers the land upon which the proposed supportive living facility is to be built. The agreement also provides that the Village will waive any permit and plan review fees associated with the construction of the facility, provided that the fees are not out-of-pocket costs to the Village. Additionally, the Village will be waiving its portion of the recapture fees owed to the Village pursuant to a 1998 recapture agreement with the Sanitary District in connection with the construction of the sanitary sewer at Lacey Road and Ogden Avenue.

#### **ATTACHMENTS**

Ordinance authorizing bonds

Bond Agreements

Resolution

Agreement

**VILLAGE OF DOWNERS GROVE**  
**COUNCIL ACTION SUMMARY**

**INITIATED:** Village Manager **DATE:** August 12, 2014  
(Name)

**RECOMMENDATION FROM:** \_\_\_\_\_ **FILE REF:** \_\_\_\_\_  
(Board or Department)

**NATURE OF ACTION:**

- Ordinance
- Resolution
- Motion
- Other

**STEPS NEEDED TO IMPLEMENT ACTION:**

Motion to Adopt "AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS MULTIFAMILY HOUSING REVENUE BOND (DOWNERS GROVE SUPPORTIVE LIVING FACILITY), SERIES 2014 IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$20,114,920 IN CONNECTION THEREWITH; AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS AND THE BORROWER; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING SAID BOND; AUTHORIZING THE EXECUTION AND DELIVERY OF A REGULATORY AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE CONTRACT; AND RELATED MATTERS", as presented.

*Yes*

**SUMMARY OF ITEM:**

Adoption of the attached ordinance will authorize the issuance of Multifamily Housing Revenue Bonds, Series 2014.

**RECORD OF ACTION TAKEN:**

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS MULTIFAMILY HOUSING REVENUE BOND (DOWNERS GROVE SUPPORTIVE LIVING FACILITY), SERIES 2014 IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$20,114,920 IN CONNECTION THEREWITH; AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS AND THE BORROWER; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING SAID BOND; AUTHORIZING THE EXECUTION AND DELIVERY OF A REGULATORY AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE CONTRACT; AND RELATED MATTERS.

WHEREAS, the Village of Downers Grove, DuPage County, Illinois (the "Village") is a municipal corporation and a home rule unit of local government and is authorized and empowered by the provisions of Section 6 of Article VII of the Illinois Constitution of 1970 and the Downers Grove Revenue Bond Ordinance constituting Chapter 27 of the Downers Grove Municipal Code (the "Act") to issue its revenue bonds and to finance or refinance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any economic development project in order to encourage economic development of the Village; and

WHEREAS, as a result of negotiations between the Village and Downers Grove Supportive Living Facility, LLC, an Illinois limited liability company (the "Borrower"), the Borrower has requested that the Village issue its revenue bonds for the purpose of (i) making a first mortgage loan to the Borrower to provide funds for the payment and reimbursement of the costs of acquiring, constructing and equipping a 120-unit supportive living/multifamily housing facility located in the Village (the "Project"), (ii) fund the Debt Service Reserve Fund Requirement, (iii) pay capitalized interest on the Bond (as hereinafter defined), and (iv) the payment of costs related to the issuance thereof; and

WHEREAS, the Project will be of the character and will accomplish the purposes provided by the Act; and the Village is willing to issue its revenue bond to finance the Project, as set forth in the details and provisions of a Loan Agreement dated as of the date thereof by and between the Village and the Borrower (the "Loan Agreement"); and

WHEREAS, it is estimated that the costs of the Project, including costs relating to the costs of issuance of the revenue bond herein authorized, will not exceed \$20,114,920; and

WHEREAS, it is necessary and proper for the Village for the benefit of the inhabitants of the Village to authorize the financing of the Project and issuance of revenue bond hereinafter authorized and designated "Multifamily Housing Revenue Bond (Downers Grove Supportive Living Facility), Series 2014" (the "Bond") in the aggregate principal amount of not to exceed \$20,114,920; and

WHEREAS, the Bond will be sold directly to [a purchaser] [Heartland Bank and Trust Company] (the "Purchaser") pursuant to a Bond Purchase Contract (the "Bond Purchase Contract") or other agreement, dated as of date of delivery, between the Issuer, the Borrower and the Purchaser, as set forth in the Bond Purchase Contract; and

WHEREAS, it is necessary to authorize the execution of a Loan Agreement between the Village and the Borrower under the terms of which the Village will lend the proceeds of the sale of the Bond to the Borrower to reimburse the Borrower for costs related to the Project, the payments to be paid by the Borrower to the Village in repayment of the loan to be sufficient to pay at maturity the principal of, premium, if any, and interest on the Bond; and

WHEREAS, it is necessary for the Village to execute and deliver a Trust Indenture to Heartland Bank and Trust Company, as Trustee (the "Trustee") [or, if applicable, to the direct Purchaser of the Bond,] for the holder(s) from time to time of the Bond pursuant to which the Bond will be issued; and

WHEREAS, it is necessary for the Village to authorize the execution of a Regulatory Agreement; and

WHEREAS, it is necessary to authorize the sale of the Bond and to execute a Bond Purchase Contract as hereinafter defined in connection therewith; and

WHEREAS, the Village has caused to be prepared and presented to this meeting the following documents, which the Village proposes to enter into:

1. The Loan Agreement dated as of the date thereof, between the Village and the Borrower (the "Loan Agreement");

2. The Indenture of Trust dated as of the date thereof (the "Indenture"), between the Village and the Trustee [and/or the Purchaser], setting forth terms, conditions and security requirements for the proposed bond issue and containing the form of the Bond; and

3. The Regulatory Agreement and Declaration of Restrictive Covenants dated the date thereof (the "Regulatory Agreement") among the Village, the Borrower and the Trustee [and/or the Purchaser]; and

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS, AS FOLLOWS:

Section 1. Pursuant to the Act, in order to relieve the conditions of unemployment and to encourage the increase of economic development, the Project shall be and is hereby authorized to be financed as described herein. It is hereby found and declared that the financing of the Project and the use thereof by the Borrower as hereinafter provided is necessary to accomplish the public purposes described in the preamble hereto and in the Act.

Section 2. That the form, terms and provisions of the proposed Loan Agreement and Indenture be, and they hereby are, in all respects approved, and that the Mayor and the Village Clerk of the Village be, and they are hereby authorized, empowered and directed to execute and

deliver such instruments in the name and on behalf of the Village, to cause the Loan Agreement to be delivered to the Borrower and to cause the Indenture to be delivered to the Trustee and/or the Purchaser; that the Indenture shall constitute a lien for the security of the Bond and upon all right, title and interest of the Village in and to the Loan Agreement (except for certain rights of the Village to notice, indemnification and payment of expenses) and in and to the payments, revenues and receipts payable to the Village pursuant thereto, and said revenues are hereby and in the Indenture pledged for such purpose; that the Loan Agreement and the Indenture are to be in substantially the respective forms submitted to this meeting and are hereby approved, with such changes therein as shall be approved by the officials of the Village executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the forms of the Loan Agreement and the Indenture hereby approved; and that from and after the execution and delivery of such instruments, the officials, agents and employees of the Village are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of such instrument as executed.

Section 3. That the form, terms and provisions of the proposed Regulatory Agreement, a copy of which is before this meeting, be, and it hereby is, in all respects approved, and that the Mayor and the Village Clerk of the Village be, and they hereby are, authorized, empowered and directed to execute the Regulatory Agreement in the name and on behalf of the Village and thereupon to cause the Regulatory Agreement to be delivered to the Borrower and the Trustee, or, if applicable, the Purchaser, that the Regulatory Agreement is to be in substantially the form thereof submitted to this meeting and hereby approved, with such changes therein as shall be approved by the officials of the Village executing the same, their execution thereof to constitute conclusive evidence of their approval of a Regulatory Agreement shall be entered into with the

Borrower and the Trustee or, if applicable, the Purchaser; and that from and after the execution and delivery of such instrument, the officials, agents and employees of the Village are hereby authorized, empowered and directed to do all such acts and things necessary to carry out and comply with the provisions of such instrument as executed.

Section 4. That the issuance of the Bond in the aggregate principal amount of not to exceed \$20,114,920 to mature on the date and with an interest rate, with such interest rate being either fixed or variable in nature at a rate not to exceed twelve percent (12%), to be as determined in accordance with the Indenture is hereby approved and the Mayor and the Village Clerk of the Village be and are hereby authorized, empowered and directed to cause to be prepared the Bond in the form and having the other terms and provisions specified in the Indenture (as executed and delivered); that the Bond shall be executed in the name of the Village with the manual or facsimile signature of its Mayor and the manual or facsimile signature of its Village Clerk and the seal of the Village shall be impressed or reproduced thereon, and that the Mayor or any other officer of the Village shall cause the Bond, as so executed and attested, to be delivered to the Trustee for authentication and the Trustee is hereby requested to authenticate the not to exceed \$20,114,920 aggregate principal amount of Bond; and the form of the Bond submitted to this meeting as the same appears in the Indenture, subject to appropriate insertion and revision in order to comply with the provisions of said Indenture be, and the same hereby is, approved, and when the same shall be executed on behalf of the Village in the manner contemplated by the Indenture and this Ordinance in the aggregate principal amount of not to exceed \$20,114,920, it shall represent the approved form of the Bond of the Village.

Section 5. That the sale of the Bond, upon the terms and conditions set out in the Bond Purchase Contract, be, and is, in all respects authorized and approved.



Section 6. That from and after the execution and delivery of the Loan Agreement, the Indenture, the Regulatory Agreement and the Bond Purchase Contract, the proper officials, agents and employees of the Village are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of said documents as executed and to further the purposes and intent of this Ordinance, including the preamble hereto. The Mayor and the Village Clerk be, and they are hereby, further authorized and directed for and on behalf of the Village, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of the authority conferred by this Ordinance or to evidence said authority, including without limitation the signing of IRS Form 8038 and the filing thereof as therein required and the certifications relating to Section 148 of the Code and the regulations promulgated thereunder and changes in the documents approved hereby as approved by the officials of the Village executing the same, and to exercise and otherwise take all necessary action to the full realization of the rights, accomplishments and purposes of the Village under the Loan Agreement, the Regulatory Agreement, the Indenture, and the Bond Purchase Contract and to discharge all of the obligations of the Village thereunder. For purposes of certifying to matters of arbitrage, the Mayor is hereby designated an officer responsible for issuing the Bond.

Section 7. That all acts and doings of the officials of the Village which are in conformity with the purposes and intent of this Ordinance and in furtherance of the issuance and sale of the Bond in the aggregate principal amount of not to exceed \$20,114,920 and the financing of the Project hereby are, in all respects, approved and confirmed.

Section 8. That the Bond shall be issued in compliance with and under the authority of the provisions of the Act, this Ordinance and the Indenture.

Section 9. All documents previously authorized by the Village to be executed with Downers Grove SLF, LLC are hereby authorized to be executed by the Mayor and the Village Clerk with the Borrower.

Section 10. That the provisions of this Ordinance are hereby declared to be separable, and if any section, phrase or provision shall, for any reason, be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions.

Section 11. That all ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby superseded.

Section 12. This Ordinance shall be in full force and effect from and after its passage and approval, in accordance with law.

Section 13. The Bond, including but not limited to the principal of, premium, if any, interest thereon and any expenses thereto shall be limited obligations of the Village, payable solely and only from the revenues and receipts derived by the Village pursuant to the Loan Agreement and shall be otherwise secured as provided in the Loan Agreement and the Indenture. The Bond shall not in any respect be a general obligation of the Village, nor shall they be payable in any manner from funds of the Village raised by taxation. The Bond shall state that they do not constitute an indebtedness of the Village or a loan of credit thereof within the meaning of any constitutional or statutory provision. Nothing in this Ordinance, the Loan Agreement, the Indenture, the Regulatory Agreement, the Bond Purchase Contract, or the form of the Bond (hereinafter referred to collectively as the "Financing Documents") or in any document or agreement required hereby and thereby, shall be construed as an obligation or commitment by the Village to expend any of its funds other than (i) the proceeds derived from the sale of the Bond, (ii) the revenues and receipts derived from the Loan Agreement, and (iii) any monies arising out of the investment or reinvestment of said proceeds, income, revenues, receipts or monies.



PASSED this \_\_\_\_\_ day of August, 2014.

APPROVED this \_\_\_\_\_ day of August, 2014.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Village Clerk

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

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**LOAN AGREEMENT**

between

**VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS**  
as Issuer

and

**DOWNERS GROVE SUPPORTIVE LIVING FACILITY, LLC,**  
an Illinois limited liability company,  
as Borrower

Relating to:

**Not to Exceed**

**\$20,114,920**

**VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS**  
**MULTIFAMILY HOUSING REVENUE BOND**  
**(DOWNERS GROVE SUPPORTIVE LIVING FACILITY), SERIES 2014**

Dated as of August 1, 2014

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The interest of the Village of Downers Grove, DuPage County, Illinois (the "Issuer") in this Loan Agreement has been assigned (except for "Unassigned Rights of the Issuer" defined in the Indenture) pursuant to the Trust Indenture (the "Indenture") dated as of the date hereof from the Issuer to Heartland Bank and Trust Company, an [Illinois state banking corporation], as trustee (the "Trustee"), and is subject to the security interest of the Trustee thereunder.

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## LOAN AGREEMENT

This LOAN AGREEMENT (this "**Agreement**" or "**Loan Agreement**"), dated as of August 1, 2014, is entered into by the **VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS**, a municipal corporation and a home rule unit of local government duly organized and existing under the laws of the State of Illinois (the "**Issuer**"), and **DOWNERS GROVE SUPPORTIVE LIVING FACILITY, LLC**, an Illinois limited liability company (the "**Borrower**").

### WITNESSETH:

**WHEREAS**, the Issuer is authorized by the provisions of Section 6 of Article VII of the Illinois Constitution of 1970 and the Downers Grove Revenue Bond Ordinance constituting Chapter 27 of the Downers Grove Municipal Code (the "**Act**") to finance or refinance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any economic development project in order to encourage economic development of the Issuer; and

**WHEREAS**, in order to further the purposes of the Act, the Issuer is issuing its Multifamily Housing Revenue Bond (Downers Grove Supportive Living Facility), Series 2014, in the aggregate principal amount not to exceed \$20,114,920 (the "**Bond**") to loan the proceeds to the Borrower to (a) finance all or a portion of the costs of acquisition, construction and furnishing of a 120-unit supportive living multifamily housing facility and certain functionally-related improvements located at 4200 – 4240 Lacey Road in Downers Grove, Illinois (the "**Project**"), as further described in Exhibit A attached hereto, (b) pay capitalized interest on the Bond, and (c) pay a portion of the costs of issuance of the Bond; and

**WHEREAS**, the Bond will be issued under the terms of a Trust Indenture (the "**Indenture**") of even date herewith between the Issuer and Heartland Bank and Trust Company, as trustee (the "**Trustee**"); and

**WHEREAS**, the Borrower's obligation to repay the loan is evidenced by this Loan Agreement and the Borrower's execution and delivery to the Issuer of a promissory note (the "**Note**") concurrent herewith; and

**WHEREAS**, the Bond is secured by (i) an assignment and pledge by the Issuer to the Trustee of this Loan Agreement and the Note, and (ii) the Mortgage and the Assignment of Contracts in favor of the Trustee for the benefit of the owners from time to time of the Bond;

**NOW, THEREFORE**, in consideration of the respective representations and agreements herein contained, the parties hereto agree as follows (provided, that in the performance of the agreements of the Issuer herein contained, any obligation it may thereby incur shall not constitute a debt, liability or obligation of the State of Illinois, or any instrumentality thereof, including, without limitation, the Issuer and shall never be payable from tax revenues or other public or general funds or assets of the State of Illinois (the "**State**") or the Issuer, except to the extent the Bond shall be a special, limited obligation of the Issuer payable solely out of the revenues and receipts derived from this Loan Agreement, the Note, the sale of the Bond, and the income from the temporary investment, all as herein provided):

## ARTICLE I.

### DEFINITIONS

**Section 1.1. Definitions.** All words and phrases defined in Article I of the Indenture shall have the same meanings when used in this Loan Agreement. In addition, the following words and phrases shall have the following meanings:

["**Bond Purchase Contract**" means the Purchase Contract with respect to the Bond dated August \_\_, 2014, among the Borrower, the Issuer and the Purchaser.]

"**Collateral**" shall have the meaning given to such term in Section 4.6 hereof.

"**Construction Budget**" means the budget for acquisition, construction and equipping of the Project attached as *Exhibit C* as modified to the date of reference pursuant to Section 3.3.

"**Construction Monitor**" means \_\_\_\_\_ or such other independent third party construction monitor agreed to by the Purchaser.

"**Days Cash on Hand**" means as of any date of determination, the product of 75 times a fraction, (i) the numerator of which is the aggregate amount of the Borrower's total Operating Expenses plus interest expense for the previous 12 months ending on the testing date, determined in accordance with generally accepted accounting principles, and (ii) the denominator of which is 365.

"**Debt Service Coverage Ratio**" means for any consecutive twelve (12) month period, the ratio of (a) Revenues minus Operating Expenses for such consecutive twelve (12) month period other than depreciation determined in accordance with generally accepted accounting principles, divided by (b) the sum of the Bond Service Charges plus the regularly scheduled principal of and interest on any other Indebtedness of the Borrower for any bank debt or equipment leases entered into in the normal course of business under Section 6.19(a) hereof for such consecutive twelve (12) month period.

"**Fiscal Year**" means the fiscal year of the Borrower which commences January 1 and ends on the succeeding December 31, or any other consecutive twelve month period which the Borrower shall designate in writing to the Issuer and the Trustee.

"**Force Majeure**" means that term as it is defined in Section 7.1 hereof.

"**Indebtedness**" means (i) all the indebtedness of the Borrower for borrowed money or that has been incurred in connection with the acquisition of assets, excluding, however, (a) indebtedness incurred in connection with a gift, bequest or devise of Property that is secured by a lien, charge or other encumbrance on such property and liability for which is effectively limited to the property subject to such lien, charge or other encumbrance with no recourse, directly or indirectly, to any other Property of the Borrower, (b) all unsecured indebtedness of Borrower, and (c) the making of a bridge loan or the additional bridge loan to the Borrower by the Investor Member, the Managing Member or a third party, (ii) the capitalized value of the liability under

any lease of real or personal property which is properly capitalized on the balance sheet of the Borrower in accordance with generally accepted accounting principles consistently applied, and (iii) any guaranties by the Borrower of the Indebtedness of any other Person.

**"Indenture"** means the Trust Indenture, dated as of August 1, 2014, from the Issuer to Heartland Bank and Trust Company, as trustee, under which the Bond is being issued, as amended, restated, supplemented or otherwise modified from time to time.

**"Independent Insurance Consultant"** means a person who or firm which is not a director, trustee, employee or officer of the Borrower or a director, trustee, employee or commissioner of the Issuer, appointed by an authorized officer of the Borrower and satisfactory to the Borrower, qualified to survey risks and to recommend insurance coverage for such Project and having a favorable reputation for skill and experience in such surveys and such recommendations, and who may be a broker or agent with whom the Borrower transacts business.

**"Issuer Documents"** means this Loan Agreement, the Indenture, the Bond Purchase Contract, the Regulatory Agreement and the Tax Agreement and all certificates executed and delivered by the Issuer with respect to the issuance of the Bond.

**"Investor Member"** means AHP Housing Fund 77, a Delaware limited liability company together with its successors, affiliates and assigns.

**"Managing Member"** means Downers Grove SLF, JV, LLC, an Illinois limited liability company, as the managing member of the Borrower.

**"Operating Agreement"** has the meaning given in Section 4.9 hereof.

**"Permitted Encumbrances"** means those title exceptions listed more specifically on *Schedule B* attached hereto and made a part hereof and as of any particular time, any of the following:

(a) Liens for taxes and special assessments on the Project not then due or delinquent; (b) Liens arising under the Borrower Documents; (c) purchase money security interests with respect to any item of equipment related to the Project; (d) utility, access, and other easements and rights-of-way, mineral rights and reservations, restrictions and exceptions which would not in the aggregate (i) materially interfere with or impair any present use of the Project or any reasonably probable future use of the Project, or (ii) materially reduce the value which would be reasonably expected to be received for the Project upon any sale (including any foreclosure of the mortgage granted by the Mortgage); (e) mechanics' and materialmen's Liens related to the Project when payment of the related bill is not overdue; (f) judgment Liens against the Borrower so long as such judgment is being contested and execution thereon is stayed or while the period for responsive pleading has not lapsed, *provided* the Borrower has established cash reserves relating to such Lien to the extent required under generally accepted accounting principles or has otherwise bonded over or caused the title company to insure against; (g) (1) rights reserved to or vested in any municipality or public authority by the terms of any right, power, franchise, grant, license or permit, or provision of law,

affecting the Project, to (A) terminate such right, power, franchise, grant, license or permit, *provided* that the exercise of such right would not materially impair the use of the Project or materially and adversely affect the value thereof, or (B) purchase, condemn, appropriate, or recapture, or designate a purchaser of, the Project; (2) Liens on the Project for taxes, assessments, levies, fees, water and sewer charges, and other governmental and similar charges not yet due or delinquent; (3) currently existing easements, rights-of-way, servitudes, restrictions and other minor defects, encumbrances and irregularities in the title to the Project which do not materially impair the use of the Project or materially and adversely affect the value thereof; or (4) rights reserved to or vested in any municipality or public authority to control or regulate the Project or to use the Project in any manner, which rights do not materially impair the use of the Project or materially and adversely affect the value thereof; and (h) Liens on the Project and/or the Revenues (subordinate to the Indenture and the Mortgage and subject to a subordination agreement acceptable to the Purchaser [and the Trustee] in its reasonable discretion) to secure payment of Indebtedness subordinate to the obligations of the Borrower under this Loan Agreement.

**"Preliminary Expenditure"** means Preliminary Expenditure as defined in Regulation §1.150-2(f)(2); or an amount not in excess of the lesser of \$100,000 or five percent (5%) of the proceeds of the issue. The term "Preliminary Expenditure" includes architectural, engineering, surveying, soil testing and similar costs that are incurred prior to commencement of acquisition or construction of the Project, other than land acquisition, site preparation, and similar costs incident to commencement of construction. Preliminary Expenditures are limited to twenty percent (20%) of the aggregate issue price of the Bond that finance, or are reasonably expected to finance, the capital facility for which the Preliminary Expenditure was paid.

**"Project"** means a 120-unit supportive living multifamily housing facility and certain functionally-related improvements located at 4200 – 4240 Lacey Road in Downers Grove, Illinois, which facility and the real property on which it is located is described on ***Exhibit A*** hereto. The term "Project" includes the **"Project Site"**, the **"Project Equipment"** and the **"Project Facilities"** as described in ***Exhibit A***.

**"Purchaser"** means Heartland Bank and Trust Company, in its capacity as initial purchaser of the Bond.

**"Qualified Portion"** means the portion of the Project which is a qualified residential rental project as defined in Section 142 of the Code.

**"Regulatory Agreement"** means the Regulatory Agreement and Declaration of Restrictive Covenants in the form of ***Exhibit G*** attached hereto, filed in the office of the Recorder of Deeds of DuPage County, Illinois, which restricts the use of the Qualified Portion of the Project to that of a qualified residential rental property as described in Section 142 of the Code.

The terms **"herein," "hereunder," "hereby," "hereto," "hereof"** and any similar terms refer to this Loan Agreement; the term **"heretofore"** means before the date of execution of this Loan Agreement; and the term **"hereafter"** means after the date of execution of this Loan Agreement.

**Section 1.2. Interpretation.** Words importing persons include firms, associations and corporations. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate.

## **ARTICLE II.**

### **REPRESENTATIONS AND WARRANTIES**

**Section 2.1. Representations and Warranties of the Issuer.** The Issuer makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The Issuer is a municipal corporation and a home rule unit of local government duly organized and validly existing under the laws of the State. Under the provisions of the Act and the ordinance adopted by the Issuer, the Issuer is authorized to enter into this Loan Agreement, the Regulatory Agreement, the Mortgage and the Indenture and the transactions contemplated hereunder and thereunder and to carry out its obligations hereunder and thereunder. By proper action of its Village Council, the Issuer has been duly authorized to execute and deliver the Issuer Documents and to issue and sell the Bond.

(b) To provide funds to loan to the Borrower for the purposes described in this Loan Agreement, the Issuer has authorized its Bond in the aggregate principal amount of not to exceed \$20,114,920 to be issued upon the terms set forth in the Indenture, under the provisions of which the Issuer's interest in this Loan Agreement and the payments of principal, premium, if any, interest and other revenues hereunder (other than Unassigned Rights) and under the Note are pledged and assigned to the Trustee as security for the payment of the principal of, premium, if any, and interest on the Bond. The Issuer covenants that it has not and will not pledge or assign its interest in this Loan Agreement, or the revenue and receipts derived pursuant to this Loan Agreement, excepting Unassigned Rights, other than to the Trustee under the Indenture to secure the Bond.

(c) The Issuer hereby finds and determines that financing the Project by the issuance of the Bond will further the public purposes of the Act.

(d) To the best of its knowledge, no member or director of the Issuer, nor any other official or employee of the Issuer, has any interest, financial, employment or other, in the Borrower, the Project or in the transactions contemplated hereby.

(e) The Issuer makes no representation or warranty, express or implied, that the proceeds of the Bond will be sufficient to finance the acquisition, renovation and equipping of the Project or that the Project will be adequate or sufficient for the Borrower's intended purposes.

(f) There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Issuer, threatened against the Issuer by or before any court, governmental agency or public board or body, which (i) affects or questions the existence or the title to office of any member of the Issuer; (ii) affects or seeks to prohibit, restrain or enjoin the execution and

delivery of any of the Issuer Documents, or the issuance, execution or delivery of the Bond; (iii) affects or questions the validity or enforceability of any of the Issuer Documents or the Bond; (iv) questions the exclusion from gross income for federal income taxation of interest on the Bond; or (v) questions the power or authority of the Issuer to perform its obligations under any of the Issuer Documents or the Bond or to carry out the transactions contemplated by any of the Issuer Documents or the Bond.

**Section 2.2. Representations, Warranties and Certain Covenants of the Borrower.** The Borrower represents, warrants and covenants as of the date of issuance of the Bond as follows:

(a) The Borrower is a limited liability company duly organized and validly existing under the laws of the State of Illinois, is in good standing and duly authorized to conduct its business in the State and is duly authorized and has full power under all applicable laws and its operating agreement to create, issue, enter into, execute and deliver, as the case may be, the Borrower Documents. There has been no event of dissolution of the Borrower under its operating agreement or applicable law.

(b) The execution and delivery of the Borrower Documents on the Borrower's part have been duly authorized by all necessary action, and neither the Borrower's execution and delivery of the Borrower Documents, the Borrower's consummation of the transactions contemplated hereby or thereby, nor the Borrower's fulfillment of or compliance with the terms and conditions hereof or thereof, conflicts with or results in a material breach of the operating agreement of the Borrower or any material agreement or instrument to which the Borrower is now a party or by which it or any of its property is bound (except for any such breaches for which the Borrower has obtained a waiver or a required consent), or constitutes a material default (or would constitute a material default with due notice or the passage of time or both) under any of the foregoing, or, except as described in the Borrower Documents, results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the property or assets of the Borrower under the terms of any material instrument or agreement to which the Borrower is now a party or by which it, or any of its property, is bound.

(c) The Borrower Documents have been duly authorized by all necessary action by the Borrower, executed and delivered and constitute the valid and binding obligations of the Borrower, enforceable in accordance with their terms, except as such enforcement may be limited by applicable bankruptcy, insolvency or other similar laws affecting the rights and remedies of creditors generally. No authorization or approval of any other governmental body or agency is required for the execution by the Borrower of the Borrower Documents or the performance by the Borrower of its obligations under the Borrower Documents or the transactions contemplated thereby.

(d) The Borrower will not use any of the proceeds of the Bond in such a manner as to impair the exclusion from gross income of the interest on the Bond from federal income taxation or take or fail to take any action that would so impair such exclusion. The Borrower will comply fully with its covenants and agreements under the Borrower Documents and the Tax Agreement.

(e) The Project is of the type authorized and permitted by the Act and will, from the Closing Date forward, be operated in compliance with the provisions of the Act and the provisions of the Code applicable thereto. The Borrower will use due diligence to cause the Project to be operated in accordance with the Act and all other applicable laws, rulings, regulations and ordinances of any applicable Governmental Authority and the departments, agencies and political subdivisions thereof. The Borrower has obtained or will cause to be obtained all requisite approvals of the Issuer and of any applicable Governmental Authority or other federal and local governmental bodies required for the operation of the Project.

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

(g) With respect to the construction and equipping of the Project with proceeds of the Bond, the Borrower has complied with and will comply with the Illinois Prevailing Wage Act, 820 ILCS 130/1 to 130/12, to the extent required by applicable state laws.

(h) 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 Regulatory Agreement, including all applicable requirements of the Act and the Code, and pursuant to leases, which comply with all applicable laws.

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

(j) As of the date hereof, the Borrower is in full compliance with all of the terms and conditions of this Loan Agreement, the Borrower Documents and the Bond and no "Event of Default" has occurred and is continuing with respect thereto and no event has occurred and is continuing which with the lapse of time or the giving of notice or both would constitute such an "Event of Default".

(k) All amounts of Project Costs to be paid from proceeds of the Bond shown in Section 7.3 of the Tax Agreement are costs of a project eligible to be financed by bonds issued

by the Issuer under the Act. None of the proceeds of the Bond will be used directly or indirectly as working capital or to finance inventory.

(l) The availability of financial assistance from the Issuer as provided herein and in the Indenture has induced the Borrower to proceed with the Project. The Borrower does not intend to lease the Qualified Portion of the Project, except to residents in the living units contained in the Project or otherwise in the ordinary course of business of the Borrower.

(m) The Borrower has good and marketable title in fee simple to the Project Site, sufficient for the purposes of this Loan Agreement, subject only to Permitted Encumbrances.

(n) The Borrower has obtained a standard American Land Title Association ("**ALTA**") title insurance policy from a title insurance company in an amount at least equal to the face amount of the Bond insuring the Issuer and the Trustee on behalf of the Bondholders as their respective interests may appear, and containing only such exceptions as listed on *Schedule B*.

(o) The Project is in material compliance with all applicable federal, state and local laws and ordinances relating to zoning, building, safety and those environmental laws and regulations that are applicable to the Project.

(p) The representations and covenants contained in the Tax Agreement are true and correct and are incorporated herein by this reference and shall have the same effect as if such representations and covenants were actually contained in this Loan Agreement.

(q) No portion of the proceeds of the Bond will be used for costs paid prior to sixty days before the date of the Declaration of Official Intent adopted by the Issuer or paid eighteen (18) months prior to the Issuance Date other than a Preliminary Expenditure.

(r) No property shall be substituted for the property described in *Exhibit A* unless an opinion is received from Bond Counsel to the effect that such substitution will not cause interest on the Bond to become subject to Federal income taxation.

(s) No litigation, proceedings or investigations are pending or, to the knowledge of the Borrower, threatened against the Borrower seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of the Borrower Documents or which would in any manner challenge or adversely affect the corporate existence or powers of the Borrower to enter into and carry out the transactions described in or contemplated by or the execution, delivery, validity or performance by the Borrower of the Borrower Documents. In addition, no litigation, proceedings or investigations are pending or, to the knowledge of the Borrower, threatened in writing against the Borrower, except litigation, proceedings or investigations involving claims for which the probable ultimate recoveries and the estimated costs and expenses of defense, in the opinion of management of the Borrower (i) will be entirely within the applicable insurance policy limits (subject to applicable deductibles) or are not in excess of the total of the available assets held under applicable self-insurance programs or (ii) will not have a material adverse effect on the operations or condition, financial or otherwise, of the Borrower.



(t) The Borrower has filed or caused to be filed all federal, state and local tax returns which are required to be filed, 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.

(u) The Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party.

(v) The Qualified Portion consists of buildings or structures that contain complete living facilities which are to be used on other than a transient basis and facilities which are functionally related and subordinate to the living facilities. No actions will be taken by the Borrower which will in any way adversely affect the use of the residential rental portion of the Project for such purposes.

(w) The information furnished, or to be furnished, by the Borrower and filed, or to be filed, by the Issuer with the Internal Revenue Service pursuant to Section 149(e) of the Code was or will be true and correct in all material respects as of the date of filing said information.

(x) The average maturity of the Bond does not exceed 120 percent of the average reasonably expected economic life of the Project.

(y) None of the proceeds of the Bond were or will be used in such a manner as to cause the Bond to be "federally guaranteed" within the meaning of Section 147(b) of the Code.

(z) The prior owner of the real estate on which the Project is to be constructed (prior to acquisition by affiliated parties to the Borrower in anticipation of the construction of the Project) are not related persons to the Borrower under the Code after applying any of the ownership attribution rules established in the Code, including Section 267 of the Code. The Project has been and will continue to be operated in compliance with the Code, and the Borrower shall take all actions which would cause the non-compliance of such laws to be remedied.

(aa) The purchase of the Project by the Borrower, as further described above in (z), was negotiated by the parties at arm's length and the cost of acquiring the Project financed by Bond proceeds is not less than fair market value.

(bb) The information used in the preparation of the financial statements, this Loan Agreement, the Tax Agreement and any other written statement furnished by the Borrower to the Issuer do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein or herein not misleading. There is no fact which the Borrower has not disclosed to the Issuer in writing which materially adversely affects or, so far as the Borrower can now foresee, will materially adversely affect the financial condition of the Borrower, the ability of the Borrower to own and operate the Project or the Borrower's ability to make payments on the Note and under this Loan Agreement when and as the same become due and payable.

(cc) The Borrower has or will have any and all necessary licenses and permits to occupy and operate their existing facilities and has obtained, will obtain or will cause to be

obtained all necessary licenses and permits to acquire, occupy and operate the Project, as they become required.

(dd) Except as otherwise provided by Section 3.3 of this Loan Agreement or Section 5.3 of the Indenture, no amounts shall be withdrawn from the Bond Proceeds Account of the Construction and Acquisition Fund except to pay, or to reimburse the Borrower for, any Costs of the Project or, to the extent permitted by the Code, Costs of Issuance.

(ee) The Managing Member of the Borrower has entered into a management agreement with BMA Management, Ltd., as Managing Agent, a certified copy of which has been delivered and made part of the closing transcript.

(ff) The proceeds of the sale of the Bond shall be used exclusively to acquire, construct and equip the Qualified Portion, to fund capitalized interest and to pay a portion of the Costs of Issuance of the Bond. The Project will be operated in compliance with the Code. The Borrower will take all commercially reasonable actions necessary to remedy any non-compliance with the Code arising in connection with the operation of the Project.

(gg) When recorded, the Regulatory Agreement shall be valid and enforceable in accordance with its terms subordinate, however, to the Mortgage and the Assignment.

(hh) The Borrower shall use or cause the Project to be used as an authorized project for a purpose and use as provided for under the Act until payment in full of the Bond. The Borrower hereby acknowledges and agrees that the Project is to be owned, managed and operated as "a qualified residential rental project" within the meaning of Section 142(d) of the Code and shall comply with the Act. Subject to the exceptions provided in regulations promulgated under the Code, the Borrower agrees to execute and, for the Qualified Project Period or until the Bond are no longer Outstanding, whichever is later, comply with the terms and provisions of the Regulatory Agreement, to insert into any deed of conveyance transferring any interest in the Project provisions requiring compliance with the Regulatory Agreement during the Term (as defined in the Regulatory Agreement) thereof by any transferee and to obtain from such transferee an agreement to comply with the Regulatory Agreement during the Term thereof. The representations, warranties, and covenants of the Borrower made in the Regulatory Agreement are incorporated herein and made a part hereof. The Borrower will file or record the Regulatory Agreement at the place or places specified therein and assure the re-recording of the Regulatory Agreement if required under the laws of the State to continue the effectiveness of the original filings and recordings.

**Section 2.3. Bond Counsel May Rely on Representations and Warranties.** The Issuer and the Borrower agree that Bond Counsel shall be entitled to rely upon the factual representations and warranties of the Issuer and the Borrower set forth in this Article II in connection with the delivery of its opinion.

**Section 2.4. Inspections of Project.** The Borrower agrees that during the term of this Loan Agreement, the Issuer, the Purchaser, the Trustee, and their duly authorized agents shall have the right, but shall be under no duty or obligation to exercise this right, during regular business hours, with reasonable notice, to enter upon the premises and examine and inspect the

Project, subject to such limitations, restrictions and requirements as the Borrower may reasonably prescribe.

## **Section 2.5. Financial Records and Statements.**

(a) The Borrower will keep true books of record and account in which full, true and correct entries will be made of all dealings or transactions in relation to its business and activities on an accrual basis.

(b) The Borrower shall furnish to the Trustee and to the Issuer, the following: (i) annual audited financial and operating statements as soon as practicable after the end of each fiscal year of the Borrower, and in any event within one hundred twenty (120) days thereafter, copies of an audited consolidated balance sheet of the Borrower at the end of such year, prepared in accordance with generally accepted accounting principles, (ii) quarterly unaudited financial and operating statements within thirty (30) days after the end of each quarter, (iii) with the quarterly financial statements, a summary comparison of actual to budgeted results with respect to the previous quarter and year-to-date, and (iv) with the quarterly and annual financial statements, the occupancy rate for such quarter or year, as the case may be.

(c) Concurrently with the delivery of the unaudited financial and operating statements required pursuant to paragraph (b)(ii) above, the Borrower shall provide to the Trustee a written certificate signed by an officer of the Borrower in the form set forth in (d) below and accompanied by (i) a management discussion of operating results, and (ii) current calculations of the Debt Service Coverage Ratio (for the preceding 12 months) and Days Cash on Hand (as of the last day of the quarter).

(d) The Borrower shall deliver to the Purchaser within one hundred twenty (120) days after the end of each of Borrower's fiscal years a written statement signed by an Authorized Borrower Representative stating, as to the signer thereof, that (i) a review of the activities of the Borrower during such year and performance under the Borrower Documents has been made under such Representative's supervision, and (ii) to the best of the knowledge of such Representative, based on such review, the Borrower has fulfilled all its obligations under the Borrower Documents throughout such year, or if there has been a default in the fulfillment of any such obligation, specifying each such default known to such Representative and the nature and status thereof.

(e) The Borrower shall notify the Purchaser in writing of the occurrence of any Event of Default hereunder or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default hereunder or under the Indenture, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. Such notice shall be given promptly, and in no event less than ten (10) Business Days after the Borrower receives notice or knowledge of the occurrence of any such event. The Borrower further agrees that it will give prompt written notice to the Trustee if insurance proceeds or condemnation awards are received with respect to the Project and are not used to repair or replace the Project, which notice shall state the amount of such proceeds or award.

(f) The Borrower shall deliver to the Purchaser [and the Trustee] not later than the forty-fifth (45th) day preceding each fiscal year of the Borrower, its budget for such fiscal year, which shall include, on a monthly basis, all Operating Expenses, and capital expenditures (as determined in accordance with generally accepted accounting principles) to be made with respect to the Project and Bond Service Charges, together with rents and other income projected to be produced by the Project. Such budget may be amended from time to time by the Borrower and any amended annual budget shall be promptly provided to the Trustee.

(g) The Borrower shall provide to the Purchaser [and the Trustee] (i) monthly construction reports regarding expenditures relative to the budget for the Project, including explanations for deviations from the budget, (ii) during the rent-up phase, the waiting lists for the Project and monthly move-ins, as well as overall occupancy for the Project, and (iii) on an ongoing basis, the amount of Medicaid payments versus private payments and the status of the Project reserves on a monthly basis.

(h) The Borrower shall provide all information and reports required by this Section to all Interested Beneficial Holders at the same time as such information and reports are provided to the Trustee. The Trustee's only responsibility with respect to such information and reports required by this Section shall be to post the information provided pursuant to subsections (b) and (c) above on "EMMA" as provided in the Continuing Disclosure Agreement.

(i) The Borrower shall provide such other information with respect to the Project and its results of operations as the Issuer, the Purchaser or the Trustee shall from time to time reasonably request.

Each set of financial statements so delivered will be accompanied by a certificate of an Authorized Borrower Representative certifying that (i) said financial statements fairly represent the financial position and results of operations of the Borrower at and for the period indicated, and (ii) he or she has reviewed the relevant terms of this Loan Agreement and the Indenture and to the best of such representative's knowledge after due inquiry, there does not exist, as at the end of such reporting period, any condition or event which constitutes a Default or an Event of Default under said documents or, if any such condition or event exists, specifying the nature thereof and what action the Borrower has taken or proposes to take with respect thereto.

The Trustee shall have no duty to review, analyze or verify such financial statements or the completeness or accuracy thereof and shall hold such financial statements solely as a repository for the benefit of the Bondholders; the Trustee shall not be deemed to have notice of any information contained therein or event of default which may be disclosed therein in any manner.

**Section 2.6. Modification with Respect to Excludability of Interest from Gross Income and the Act.**

(a) This Loan Agreement may not be amended, changed, modified, altered or terminated except as permitted herein and by the Indenture and with the written consent of the Borrower, the Investor Member and the Issuer. Anything contained in this Loan Agreement or the Indenture to the contrary notwithstanding, the Issuer and the Borrower hereby agree to

amend this Loan Agreement as is in the opinion of Bond Counsel required or reasonably desirable in order for interest on the Bond to remain excludable from gross income for federal income tax purposes under Section 103 of the Code or to comply with any provision of the Act applicable to the Borrower or the Project. The party requesting such amendment shall notify the other party to this Loan Agreement, the Investor Member and the Trustee of the proposed amendment, and shall deliver a copy of such requested amendment to Bond Counsel. After review of such proposed amendment, Bond Counsel shall render to the Trustee an opinion as to the effect of such proposed amendment upon the excludability of interest on the Bond in the income of the recipient thereof for federal income tax purposes or compliance with the Act, one or both, as applicable, and shall send a copy of such opinion to the Borrower. The Borrower shall pay the reasonable fees and disbursements of Bond Counsel for reviewing any such proposed amendment and rendering any such opinion.

(b) The Borrower and the Issuer shall execute, deliver and, if applicable, file or record any and all documents and instruments, including without limitation, any amendment to the Regulatory Agreement necessary to effectuate the intent of this Section 2.6, and both the Borrower and the Issuer hereby appoint the Trustee as their true and lawful attorney-in-fact to execute, deliver and, if applicable, file or record on behalf of the Borrower or the Issuer, as is applicable, any such document or instrument (in such form as approved by Bond Counsel) if either the Borrower or the Issuer defaults in the performance of its obligation under this subsection (b); *provided, however*, that the Trustee shall take no action under this subsection (b) without first notifying the Borrower or the Issuer, or both, as is applicable, of its intention to take such action and providing the Borrower or the Issuer, or both, as is applicable, a reasonable opportunity to comply with the requirements of this Section 2.6. The Trustee shall have no obligation to act under this Section 2.6 unless (i) directed to do so in writing by the Borrower or the Issuer, and (ii) all fees and expenses to be incurred by the Trustee shall be paid by the Borrower.

### ARTICLE III.

#### ISSUANCE OF THE BOND; APPLICATION OF THE BOND PROCEEDS AND BORROWER DEPOSITS

**Section 3.1. Issuance of the Bond; Deposit of Bond Proceeds and Borrower Deposits.** To provide funds to make the Loan, the Issuer will, on the Issuance Date, issue, sell and deliver the Bond to the Purchaser. The Loan shall be advanced from time to time by making deposits into the Construction and Acquisition Fund, and subject to the satisfaction of the conditions set forth in the [Disbursing Agreement], disbursed and applied as provided herein. The Bond will be issued pursuant to the Indenture in the aggregate principal amount, will bear interest, will mature, will be subject to redemption and will contain such other terms as are set forth in the Bond and the Indenture and will be limited obligations of the Issuer payable solely from the sources described in the Indenture. The Borrower hereby approves the terms and conditions of the Indenture and the Bond, and the terms and conditions under which the Bond will be issued, sold and delivered. On the Issuance Date, the proceeds from the sale of the Bond will be loaned to the Borrower and deposited directly with the Trustee who is hereby directed to apply such proceeds as described in the Indenture and herein.

**Section 3.2. Investment of Funds and Arbitrage.** Any moneys held as a part of any of the funds established under the Indenture shall be invested or reinvested by the Trustee as directed by the Authorized Borrower Representative in accordance with the Indenture. The Borrower covenants to the Issuer and to and for the benefit of the purchasers and owners of the Bond from time to time outstanding that so long as the Bond remain outstanding, moneys on deposit in any fund established under the Indenture in connection with the Bond, whether or not such moneys were derived from the proceeds of the Bond or from any other sources, will not be used in a manner which will cause the Bond to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code. The Borrower covenants and agrees to comply with the provisions of the Tax Agreement and to timely make any deposits required thereunder.

**Section 3.3. Agreement to Acquire, Construct and Equip the Project; Disbursement of Construction and Acquisition Fund.**

(a) The Borrower agrees that the Bond proceeds will be applied to the various funds and accounts as set forth in *Schedule A* hereto which, not to the exclusion of the other accounts, provides that \$\_\_\_\_\_ in the Bond Proceeds Account of the Construction and Acquisition Fund, as defined in the Indenture, shall be used for the purpose of paying the costs of acquiring, constructing or equipping the Project or reimbursing the Borrower for any such costs paid by the Borrower. All such funds will be used in accordance with the Construction Budget and the outline specifications supplied to the Issuer and attached to the Regulatory Agreement incorporated hereto as *Exhibit G*. The Borrower shall make and enter into all contracts required for such acquisition and construction. The Borrower will cause the acquisition and construction of the Qualified Portion to be completed with reasonable dispatch and in no event later than two (2) years from the Issuance Date. The Borrower also covenants to comply with the provisions of Section 6.12(d) hereof relating to certain environmental remediation necessary to be accomplished in connection with the Project.

(b) Pursuant to the Indenture, the Trustee shall disburse funds from the Construction and Acquisition Fund to pay the cost of acquisition, equipping and construction pursuant to the Construction Budget or to reimburse the Borrower for any such costs paid by the Borrower. Disbursements from the Construction and Acquisition Fund shall be made only by means of a requisition in the form set forth in *Exhibit D* hereto executed by the Authorized Borrower Representative and approved by the Investor Member and the Construction Monitor and only to the extent the amount requested is available pursuant to the relevant line-item in the Development Budget or from the contingency line-item or pursuant to paragraph (d) in this Section 3.3. The Trustee shall not be responsible for verifying the accuracy of the information contained in the requisition. The Borrower shall cause such requisitions to be directed to the Trustee as may be necessary to effect payments from the Construction and Acquisition Fund in accordance with the terms of this Section 3.3 and the Indenture. The Trustee shall retain a record of all requisitions. If applicable, the Borrower shall provide with each requisition appropriate waivers of any statutory liens by the party that performed the work and a detailed requisition form as provided by the general contractor or for the work completed. In making any payments from the Construction and Acquisition Fund, the Trustee may conclusively rely on any requisitions and certificates delivered pursuant hereto.

(c) The Borrower will be entering into a Construction Loan Escrow Disbursing Agreement (the "Escrow Agreement") with \_\_\_\_\_ (the "Title Company") which sets forth certain requirements pertaining to the disbursement of funds for the construction of the Project. The Trustee shall disburse funds from the Construction and Acquisition Fund to the Title Company upon receipt by the Trustee of written requisitions from the Authorized Borrower Representative and approved by the Investor Member and the Construction Monitor in substantially the form attached to this Loan Agreement as Exhibit D.

(d) Any changes to the Construction Budget including allocations from one line item to another, shall be made only with the written approval of the Borrower and the Purchaser; *provided* that the Borrower may allocate an amount up to the greater of \$10,000 or 10% of a line item in the original Construction Budget to another line item without such approval upon submitting an affidavit to Purchaser [and the Trustee] stating that the amount reallocated will not be required for the purpose originally allocated.

(e) Within ninety (90) days after the completion of all items in the Construction Budget, the Borrower shall submit to Purchaser [and the Trustee] a certificate (the "Completion Certificate") signed by the Authorized Borrower Representative certifying that all portions of the work provided for in the Construction Budget have been fully completed substantially in accordance with the Construction Budget, the construction contracts therefor and any outline specifications for such work. Upon delivery of such certificate, all funds then remaining in the Bond Proceeds Account of the Construction and Acquisition Fund shall be transferred to the Bond Fund for a redemption under Section 3.1(e) of the Indenture.

(f) If the money in the Construction and Acquisition Fund available for payment of the construction and repair costs of the Project shall not be sufficient to make such payment in full, the Borrower agrees to pay directly, or to deposit (or cause to be deposited) moneys in the Construction and Acquisition Fund for the payment of, such costs as may be in excess of the moneys available therefor in the Construction and Acquisition Fund. **THE ISSUER DOES NOT MAKE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, THAT THE MONEYS WHICH WILL BE DEPOSITED INTO THE CONSTRUCTION AND ACQUISITION FUND, AND WHICH UNDER THE PROVISIONS OF THE LOAN AGREEMENT WILL BE AVAILABLE FOR PAYMENT OF THE CONSTRUCTION COSTS OF THE PROJECT, WILL BE SUFFICIENT TO PAY ALL OF THE COSTS WHICH WILL BE INCURRED IN CONNECTION THEREWITH.** The Borrower agrees that if, after exhaustion of the moneys in the Construction and Acquisition Fund, the Borrower should pay, or deposit moneys in the Construction and Acquisition Fund for the payment of, any portion of the costs of the Project pursuant to the provisions hereof, it shall not be entitled to any reimbursement therefor from the Issuer, the Trustee, or from the owners of any of the Bond, nor shall it be entitled to any diminution of the amounts payable under Article IV hereof.

**Section 3.4. Replacement Reserve Account.** The Replacement Reserve Account of the Project Fund shall be established to pay amounts requisitioned by the Borrower to pay for capital repairs and restoration of the Project. The Borrower shall pay or cause to be paid to the Trustee, pursuant to Section 5.7(b)(vii) of the Indenture, for deposit in the Replacement Reserve Account the amount of \$45,000 to be funded from the Investor Member's first capital contribution. Thereafter, the Borrower is required to pay to the Trustee for deposit in the

Replacement Reserve Account the amount of \$5,000 on the 20th day of each month, *subject, however,* to any greater amount as provided by a notice by the Borrower or any future adjustment which will be the greater of: (a) 3%, adjusted a year after the first \$5,000 deposit is made and each year thereafter or (b) as determined by a report prepared by the independent engineer in accordance with Section 6.14 herein, in such amounts sufficient to fund any necessary repairs and/or restoration as determined by such findings of the independent engineer. The Borrower shall provide to the Trustee annually at least thirty (30) days prior to the commencement of each Fiscal Year of Borrower, a budget showing all costs and expenses expected to be paid from the Replacement Reserve Account for the following Fiscal Year of the Borrower. Subsequent to five (5) years after Project completion and receipt of certificate of occupancy, such budget shall be based on the engineer's reports provided for in Section 6.14 hereof. Disbursements shall be made from the Replacement Reserve Account solely to pay the costs and expenses provided for in the budget based on a requisition signed by the Authorized Borrower Representative, and with the written consent of the Investor Member, certifying with respect to each payment, (i) the name and address of the person to whom payment is due (which may be the Borrower if the payment is to reimburse the Borrower for amounts previously paid and the Borrower provides evidence of prior payment), (ii) the line item of the approved budget to which the payment relates, (iii) the unexpended budgeted amount remaining in regard to such line item before the payment requested, (iv) the amount to be paid, and (v) that the obligation to be paid has been properly incurred in regard to the Project and is a proper charge against the Replacement Reserve Account. Notwithstanding the foregoing, the Trustee shall, upon receipt of a written requisition of the Borrower, with the written consent of the Investor Member, make unanticipated disbursements from the Replacement Reserve Account for emergency repairs to the Project affecting essential mechanical and/or structural elements of the Project and/or the health and safety of the Project residents and/or staff.

**Section 3.5. No Warranty by Issuer.** THE BORROWER RECOGNIZES THAT THE ISSUER HAS NOT MADE AN INSPECTION OF THE PROJECT OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY THEREOF. THE BORROWER FURTHER RECOGNIZES THAT THE ISSUER HAS NO TITLE INTEREST TO ANY PART OF THE PROJECT AND THAT THE ISSUER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND AS TO THE BORROWER'S TITLE THERETO OR OWNERSHIP THEREOF OR OTHERWISE, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY THE BORROWER. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, THE ISSUER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF,



WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OF THE STATE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

**Section 3.6. Limitation of Issuer's Liability.** All obligations of the Issuer incurred under any of the Bond Documents shall be limited obligations of the Issuer, payable solely and only from the Trust Estate (as defined in the Indenture). The Bond shall be payable solely from the Revenues (as defined in the Indenture) and other funds pledged under the Indenture for the payment of the Bond, and no owner or owners of any of the Bond shall ever have the right to compel any exercise of the taxing power of the Issuer, the State or any political subdivision or other public body of the State, nor to enforce the payment of the Bond against any development of Issuer, the State or any such political subdivision or other public body, except as provided in the Indenture. No commissioner, officer, agent, director, employee, or attorney of the Issuer, including any person executing this Loan Agreement or the Indenture on behalf of Issuer, shall be liable personally under this Loan Agreement or the Indenture for any reason relating to the issuance of the Bond. No recourse shall be had for the payment of the principal of, premium, if any, or the interest on the Bond, or for any claim based on the Bond, or otherwise in respect of the Bond, or based in or in respect of this Loan Agreement or any amendment to this Loan Agreement, against any commissioner, officer, agent, director, employee or attorney of the Issuer, as such, of the Issuer or any successor whether by virtue of any constitution, statute or rule of law, or by enforcement of any assessment or penalty or otherwise; all such liability is, by acceptance of this Loan Agreement and as part of the consideration for the issuance of Bond, expressly waived and released.

#### ARTICLE IV.

#### THE LOAN AND OTHER COVENANTS OF THE BORROWER

**Section 4.1. The Loan.** The Issuer agrees, upon the terms and subject to the conditions hereinafter set forth, to utilize the proceeds of the Bond to cause the Loan to be made to the Borrower. The Issuer shall pledge its interest in the Loan and other documents related to the Loan (other than the Unassigned Rights, as defined in the Indenture) to the Trustee, all pursuant to the Indenture. The Issuer retains the right to enforce any or all of the Unassigned Rights, and may take independent action to so enforce such Unassigned Rights.

**Section 4.2. Borrower's Repayment Obligation.** The Borrower promises to pay to Trustee, as assignee of the Issuer, on the basis specified herein and in the Indenture and the Note, with interest, the principal sum of not to exceed \$20,114,920. Interest shall be determined, and principal and interest on the Loan shall be payable, as set forth herein and in the Note. The Borrower shall in all events pay the entire principal amount outstanding on the Bond together with any accrued but unpaid interest upon the final maturity of the Bond and shall pay any redemption premium applicable in the event of any optional or other redemption of the Bond that requires the payment of redemption premium to owners of the Bond. The Borrower waives presentment for payment, notice of dishonor, demand, protest, notice of protest, and all demand, notice and suretyship defenses generally in connection with the delivery, acceptance, performance, default or endorsement of this repayment obligation and specifically assents to any extension or postponement of the time for payment or other indulgence and/or to the addition or release of any other party or person primarily or secondarily liable.

The Borrower agrees to direct the Department to pay all SLF Payments directly to the Trustee. In addition, the Borrower agrees to maintain a collection account (the "Collection Account") in which Revenues from operation of the Project not paid directly to the Trustee will be deposited, and such Collection Account shall, to the extent practical operationally be maintained with the Trustee. The Borrower agrees to deposit on receipt all such Revenues not paid directly to the Trustee to be deposited directly into the Collection Account, and to cause such amount to be deposited weekly (and on the 20th day of each month) into the Revenues Account under the Indenture, in order to secure payment of the Loan and of the following amounts. The Borrower agrees to pay, to the extent not paid from the funds held under the Indenture, the following amounts:

(a) Notwithstanding any other provision of this Loan Agreement to the contrary contained herein or in the Note, this Loan Agreement evidences, and the Borrower agrees to pay, the principal of, redemption premium, if any, and interest on the Bond issued pursuant to the Indenture, as said principal, redemption premium, if any, and interest becomes due. Payments of principal, redemption premium, if any, and interest due under this Loan Agreement shall be made in lawful money of the United States of America to the Trustee at the address set forth in the Indenture or at such other place as any assignee of this Loan Agreement may designate by a notice in writing given to the Borrower.

(b) The Borrower agrees to pay: (i) all costs and other expenses incurred by the Issuer including, but not limited, to fees of Bond Counsel, Counsel to the Issuer or of consultants retained by the Issuer in connection with the authorization, issuance, sale, preparation, execution and delivery of any and all documents required in connection with this financing, payable at or before Closing; and (ii) such other amounts required to pay or reimburse the Issuer's reasonable costs and expenses including, but not limited to, consultants fees, attorney's fees, etc., incurred from time to time in connection with the making by the Issuer of the Loan to the Borrower of the proceeds of the Bond and all other services or actions of the Issuer in connection with this Loan Agreement, all such payments to be made within thirty (30) days of submission of invoices for same. The Issuer shall not be responsible for payment of any such fees or expenses.

(c) The Borrower agrees to pay to the Bond Registrar, the Paying Agent and the Trustee (i) the initial acceptance fee of the Trustee and the costs and expenses, including reasonable attorneys' fees, incurred by the Trustee in entering into and executing the Indenture, and (ii) during the term of this Loan Agreement (A) an amount equal to the annual fee of the Trustee for the ordinary services of the Trustee, as trustee, rendered and its ordinary expenses incurred under the Indenture, including reasonable attorneys' fees, as and when the same become due, (B) the reasonable fees, charges and expenses of the Trustee, the Bond Registrar, and Paying Agent, as and when the same become due, and (C) the reasonable fees, charges and expenses of the Trustee for the necessary extraordinary services rendered by it and including reasonable attorneys' fees, as and when the same become due.

(d) The Borrower agrees to pay to the United States of America all amounts due and owing as arbitrage rebate on the Bond in accordance with the Tax Agreement and the Code and applicable regulations thereunder.

(e) The Borrower agrees to pay with respect to the Project all taxes, assessments and related governmental charges and all insurance premiums (including public liability insurance and insurance against damage to or destruction of the Project) concerning or in any way related to the Project required to maintain the insurance coverage on the Project provided for herein and in the Mortgage.

(f) The Borrower agrees to pay all amounts referenced in Schedule A hereto to the Trustee by the dates and in the amounts set forth therein.

(g) The Borrower agrees to replace the DSRF Credit Enhancement with cash to be deposited in the Debt Service Reserve Fund within 30 days in the event the Moody's or S&P rating of the provider of the DSRF Credit Enhancement falls below "A" or its equivalent at any time.

**Section 4.3. Additional Covenants of the Borrower.** The Borrower covenants that it will complete the Project and that it will operate the Project Site and the Project Equipment for the purposes set forth herein. The Borrower further covenants and agrees that it will, throughout the term of this Loan Agreement, (1) comply with all applicable laws, regulations, ordinances, rules, and orders relating to the Project Site or the Project Equipment as provided in the Borrower Documents, (2) maintain and insure the Project Site and the Project Equipment and pay all taxes, payments-in-lieu-of-taxes, assessments and other governmental charges in accordance with the Borrower Documents, (3) not cause or permit the Project Site or the Project Equipment to become or remain a public nuisance, and (4) not allow any material change in the nature of the occupancy, use or operation of the Project Site or the Project Equipment which is substantially inconsistent with the Borrower's application for assistance to the Issuer, except that the Borrower may after notice to the Issuer permit any such change which does not disqualify the Project as an authorized project under the Act and the Code as in effect on the date hereof. Nothing in this Section is intended to require the Borrower to operate the Project Site or the Project Equipment in such manner as, in the good faith judgment of the Borrower, shall materially and adversely impair the operating results of the Borrower in connection with the use of the Project Site or the Project Equipment.

**Section 4.4. Assignment and Pledge of the Issuer's Rights; Obligations of the Borrower Hereunder Unconditional.** As security for the payment of the Bond, the Issuer will assign and pledges to the Trustee all rights, title and interest of the Issuer in and to this Loan Agreement and the Note, including the right to receive payments hereunder and thereunder (except its Unassigned Rights, including without limitation, the right to receive payment of expenses, fees, indemnification and the rights to make determinations and receive notices as herein provided), and hereby directs the Borrower to make said payments directly to the Trustee. The Borrower herewith assents to such assignment and pledge and will make payments directly to the Trustee without defense or set-off by reason of any dispute between the Borrower and the Issuer or the Trustee, and hereby agrees that its obligation to make payments hereunder and to perform its other agreements contained herein are absolute and unconditional. Until the principal of and interest on the Bond shall have been fully paid or provision for the payment of the Bond made in accordance with the Indenture, the Borrower (a) will not suspend or discontinue any payments provided for in this Loan Agreement, (b) will perform all its other duties and responsibilities called for by this Loan Agreement, and (c) will not terminate this Loan

Agreement for any cause including any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, any change in the laws of the United States or of the State or any political subdivision of either or any failure of the Issuer to perform any of its agreements, whether express or implied, or any duty, liability or obligation arising from or connected with this Loan Agreement.

**Section 4.5. Non-Recourse Obligation of the Borrower.** The Borrower and its members shall only be liable upon the indebtedness evidenced by this Loan Agreement, or sums or amounts to accrue or to become payable hereunder or under the Note or either of them, to the full extent (but only to the extent) of the security granted for the Loan and the Note and the funds held pursuant to the Indenture. If a default occurs in the timely and prompt payment of all or any part of said indebtedness, sums or amounts, any judicial proceedings or enforcement of the remedies under this Loan Agreement and the Note against the Borrower and/or its members shall be limited to the preservation, enforcement and foreclosure, or any thereof, of the liens, estates, assignments, titles, rights and security interests now or at any time hereafter acquired in such security and no judgment, attachment, execution or other writ of process shall be sought, issued or levied upon the assets, property or funds of the Borrower and/or its members other than the properties, rights, estates and interests of the Borrower as are identified as security for the Loan and the Note. In the event of a foreclosure or other disposition as provided for in the Mortgage and the Assignment or the Indenture of such liens, estates, assignments, titled, rights and security interests, whether by judicial proceedings or the exercise of the power of sale, no judgment for the deficiency of such indebtedness, sums and amounts shall be sought or obtained against the Borrower and/or its members.

Notwithstanding the foregoing provisions of this Section, nothing herein contained shall limit or restrict the ability of the Issuer or the Trustee to seek or obtain a judgment against the Borrower for damages caused by the Borrower as a direct consequence of the occurrence of any of the events set forth below (collectively, "**Recourse Events**"):

(a) fraud or any material misrepresentation made by the Borrower or any officer, agent or employee of the Borrower in any material writing or contained in any of the provisions of this Loan Agreement, the Mortgage and the Assignment of Contracts, or any related document or Borrower Document;

(b) material breach of any covenant contained in the Mortgage and the Assignment of Contracts, relating to the failure by the Borrower to pay, satisfy and discharge all general and special city, county and state taxes or special assessments or encumbrances, charges and liens which are or may be prior to or superior to the lien of the Mortgage;

(c) intentional misapplication of (i) proceeds paid under any insurance policies by reason of damage, loss or destruction to any portion of the Project to the full extent that such proceeds are payable or should be payable to the Trustee under the terms of the Mortgage; or (ii) proceeds or awards resulting from the condemnation or other taking in lieu of condemnation, relating to any portion of the Project to the full extent of any such proceeds or awards which are payable or should be paid to the Trustee under the terms of the Mortgage;

(d) failure by the Borrower to cause to be maintained upon the Project such insurance coverages as are required hereunder or under the Mortgage;

(e) the occurrence of willful acts or omissions of the Borrower which result in waste to or of the Project;

(f) failure by the Borrower to remit to the Trustee the Revenues held by Borrower promptly upon demand; and

(g) the incurrence of any expenses, damages, or liabilities including, without limitation, all reasonable attorneys' fees, whether incurred by the Issuer or the Trustee prior to or following foreclosure of the Mortgage and whether the Issuer or the Trustee shall be in the status of a lienholder or an owner of the Project following foreclosure, directly or indirectly arising out of or attributable to use, generation, storage, release, threatened release, discharge, disposal, or presence on, under, or about the Project of any materials, wastes, or substances defined or classified as hazardous or toxic under any federal, state or local laws, regulations or otherwise resulting from the breach by the Borrower of any of the environmental covenants contained in the Mortgage.

**Section 4.6. Security Interest.** As security for the Loan, the Note and all other debts, liabilities and obligations of Borrower to the Issuer now or hereafter arising (collectively, the "**Obligations**"), Borrower hereby grants the Issuer a perfected lien on and security interest in the Project, all monies held in certain funds and accounts established under the Indenture, all Revenues, including the SLF Payments, gross revenues from the Project, all rents and leases from the Project, all equipment, furniture, fixtures and machinery located at the Project of any kind, nature or description, and all additions to, substitutions of and replacements of or accessories to same, wherever located, and all attachments, components, parts, equipment and accessories installed thereon or affixed thereto, and all receipts, revenues, income and other moneys, whether in the form of cash, securities or other personal property and all insurance proceeds and proceeds of the foregoing, derived from same (collectively, the "**Collateral**"). The granting of any security interest hereby is in addition to and does not supersede the mortgage, assignments and security interests granted pursuant to the other Borrower Documents.

**Section 4.7. Recording and Maintenance of Liens.**

(a) The Borrower will, at its own expense, take all necessary action to maintain and preserve the liens and security interest in the Collateral so long as any principal, premium, if any, or interest on the Bond remains unpaid.

(b) The Borrower will, forthwith after the execution and delivery of the Bond Documents and thereafter from time to time, cause the Bond Documents, including any amendments thereof and supplements thereto, and any financing statements in respect thereof to be filed, registered and recorded in such manner and in such places as may be required by law in order to publish notice of and fully to perfect and protect (i) the lien and security interest thereof upon and the title of the Borrower to the Project, and (ii) the lien and security interest therein granted to the Trustee or the Investor Member, if any, to the rights, if any, of the Issuer assigned under the Bond Documents, and from time to time will perform or cause to be performed any

other act as provided by law. Except to the extent it is exempt therefrom, the Borrower will pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of such instruments of further assurance, and all Federal or State fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Bond Documents and such instruments of further assurance.

(c) The Issuer shall have no responsibility for the preparation, filing or recording of any instrument, document or financing statement or for the maintenance of any security interest intended to be perfected thereby. The Issuer will execute such instruments provided to it by the Borrower as may be reasonably necessary in connection with such filing or recording.

**Section 4.8. [Reserved]**

**Section 4.9. Maintenance of Existence and Qualification.** Unless the Borrower complies with the following provisions of this Section 4.9, the Borrower agrees that as long as any Bond are outstanding it will maintain its existence, will not dissolve, liquidate or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it. Any dissolution, liquidation, disposition, consolidation or merger shall be subject to the following conditions:

(a) the Borrower provides a certificate to the Issuer, the Purchaser [and the Trustee], in form and substance satisfactory to such parties, to the effect that no Event of Default exists hereunder or under the Indenture and that no Event of Default will be caused by the dissolution, liquidation, disposition, consolidation or merger;

(b) the entity surviving the dissolution, liquidation, disposition, consolidation or merger assumes in writing and without condition or qualification the obligations of the Borrower under each of the Borrower Documents;

(c) the Borrower or the entity surviving the dissolution, liquidation, disposition, consolidation or merger, within ten (10) days after execution thereof, furnishes to the Issuer, the Purchaser [and the Trustee] a true and complete copy of the instrument of dissolution, liquidation, disposition, consolidation or merger;

(d) neither the validity nor the enforceability of the Bond, the Indenture or any agreements to which the Borrower is a party is adversely affected by the dissolution, liquidation, disposition, consolidation or merger;

(e) the exclusion of the interest on the Bond from gross income for federal income tax purposes is not adversely affected by the dissolution, liquidation, disposition, consolidation or merger, and the provisions of the Act, the Indenture and the Borrower Documents are complied with concerning the dissolution, liquidation, disposition, consolidation or merger;

(f) no rating on the Bond, if the Bond are then rated, is reduced or withdrawn as a result of the dissolution, liquidation, disposition, consolidation or merger;

(g) the Project continues to be as described herein;

(h) any successor to the Borrower shall be qualified to do business in the State and shall continue to be qualified to do business in the State throughout the term hereof; and

(i) the Purchaser [and the Trustee] has executed a certificate acknowledging receipt of all documents, information and materials required by this Section 4.9.

As of the effective date of the dissolution, liquidation, disposition, consolidation or merger, the Borrower (at its cost) shall furnish to the Issuer, the Purchaser [and the Trustee] (i) an opinion of Bond Counsel, in the form and substance satisfactory to such parties, as to items (d) and (e) above, and (ii) an opinion of Independent Counsel, in form and substance satisfactory to such parties, as to the legal, valid and binding nature of item (b) above.

In addition, no such transaction described in this Section 4.9 shall be permitted without the written consent of the Purchaser, provided that the consent of the Purchaser shall not be required in connection with the following:

(i) the sale, transfer, conveyance or pledge of investor member interests in Borrower;

(ii) the sale, transfer, conveyance or pledge of any member interest in the Investor Member;

(iii) the appointment by the Investor Member of an additional or substitute Managing Member of the Borrower in accordance with the Borrower's operating agreement (the "Operating Agreement"), provided that the Managing Member delivers prior notice thereof to the Issuer, the Purchaser [and the Trustee] and any additional or substitute Managing Member of the Borrower is reasonably acceptable to the Issuer and is selected with reasonable promptness;

(iv) the dilution of the Managing Member's interest in cash flow and/or capital transaction proceeds in the Borrower in accordance with the terms of the Operating Agreement; and

(v) any amendment to the Operating Agreement other than an amendment that (i) changes the amount of the capital contributions or timing (other than adjustments which are contemplated in the Operating Agreement); (ii) causes any change that would affect the sale or dissolution of the Project; or (iii) would contravene Section 6.22 of this Loan Agreement.

**Section 4.10. Nature of Project and Public Purpose.** The Borrower represents to the Issuer that it will use the proceeds of the Bond to acquire, construct, improve and equip the Project substantially as described in *Exhibit A* hereto.

**Section 4.11. Covenants Respecting Arbitrage.** Unless an opinion is rendered by Bond Counsel to the effect that the following actions are not required in order to maintain the

exclusion from gross income of interest on the Bond for purposes of federal income taxation, the Borrower covenants that it will:

(a) expend all proceeds of the Bond and the investment income thereon (excluding amounts in the Rebate Account) within three years of the date of issuance of the Bond;

(b) invest all amounts held in the Bond Proceeds Account of the Construction and Acquisition Fund, Operating Reserve Fund, Medicaid Receivables Cash Flow Fund, Initial Lease-Up Reserve Fund, Insurance/Tax Account, Operating Expense Account and Borrower Account (including investment income) in taxable obligations having a yield not materially higher than the yield on the Bond or in obligations the interest on which is excludable from gross income for purposes of federal income taxation under Section 103(a) of the Code; and

(c) make the payments, if any, required to be made to the United States pursuant to the Code in order to establish or maintain the exclusion from gross income of interest on the Bond for purposes of federal income taxation. In this regard, the Borrower will maintain books and records complying with any related requirements of the Code.

## ARTICLE V.

### DAMAGE, DESTRUCTION AND CONDEMNATION

**Section 5.1. No Abatement of Payments.** If the Project shall be damaged or either partially or totally destroyed, or if title to or the temporary use of the whole or any part of the Project shall be taken or condemned by a competent authority for any public use or purpose, there shall be no abatement or reduction in the amounts payable under this Loan Agreement.

**Section 5.2. Application of Proceeds.** If the Project shall be damaged or either partially or totally destroyed, or if title to or the temporary use of the whole or any part of the Project shall be taken or condemned by a competent authority for any public use or purpose, the Borrower shall immediately notify the Purchaser [and the Trustee] and each Interested Beneficial Holder of such event in writing and, within ninety (90) days after the occurrence of such event shall certify to the Trustee in writing its decision regarding the restoration of the Project. If the Borrower certifies to the Purchaser [and the Trustee] that it does not intend to restore the Project, all proceeds of insurance or condemnation, net of any expenses of recovering such amounts, shall be paid immediately on receipt to the Trustee for deposit in the Bond Fund. If the Borrower certifies to the Purchaser [and the Trustee] that it intends to restore the Project and that no Event of Default has occurred under this Loan Agreement or any of the Borrower Documents, the Borrower shall restore the Project to substantially the same condition as existed prior to the event causing the damage or destruction or the condemnation and may apply the proceeds of any insurance or condemnation to the payment or reimbursement of the costs of such repair or restoration, *provided* (i) such proceeds are sufficient to rebuild the Project in a manner that provides adequate security to the Issuer for repayment of the Loan or if such proceeds are insufficient, Borrower shall, at its sole cost and expense, fund any deficiency, and (ii) Trustee (as directed by the Purchaser) shall have the right to approve, in its reasonable discretion, any and all



plans and specifications for any major rebuilding (expenditures in excess of \$1,000,000) and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement.

## ARTICLE VI.

### SPECIAL COVENANTS

**Section 6.1. Preservation of Project.** The Borrower will preserve and protect the Project in decent, safe and sanitary condition and from time to time will make, or will cause to be made, all reasonably required, proper repairs, renewals, replacements, betterments and improvements thereto. The Borrower shall have the privilege of remodeling the Project or making substitutions, additions, modifications and improvements to the Project from time to time as the Borrower, in its discretion, may deem to be desirable for the Borrower's use for its purposes, the costs of which remodeling, substitutions, additions, modifications and improvements shall be paid by the Borrower, and the same shall be subject to the Mortgage and the Assignment of Contracts.

Notwithstanding the foregoing, the Borrower shall not make any material change to the overall scope of the Project without the approval of the Purchaser.

**Section 6.2. Insurance Required.** The Borrower agrees to insure the Project or cause it to be insured with insurance companies licensed to do business in the State in such amounts and in such manner and against such loss, damage and liability, including liability to third parties, as is customary with entities in the same or similar business, including without limitation:

(a) Fire and extended coverage property damage insurance, including, but not limited to all risk insurance, in an amount equal to the full replacement value of the Project, without coinsurance or deduction for depreciation, containing a waiver of subrogation clause and a deductible amount not to exceed \$100,000 per occurrence;

(b) Public liability insurance, and umbrella liability insurance, in such form, amount and deductible as is customary for supportive living facilities in Illinois, and naming Trustee as additional insured covering Trustee's interest in the Project;

(c) Workmen's compensation insurance for employees of the Borrower or other operator of the Project as required by the laws of the State;

(d) Business interruption or rent loss insurance endorsement in an amount at least equal to 100% of the sum of: Bond Service Charges for the current Bond Year, annual debt service on any other permitted financing, ground rents, if any, and operating expenses, including, without limitation, real estate taxes and assessments and insurance, for the Project;

(e) To the extent that the Project lies within the boundaries of the 100 year flood plain, flood insurance required by and obtainable through the National Flood Insurance Program sufficient to cover any damage which may be anticipated in the event of flood unless Borrower

has provided Trustee evidence satisfactory to Trustee that no portion of the Project is located within the boundaries of the 100 year flood plain; and

- (f) Boiler and machinery insurance when risks covered thereby are present.

The insurance coverages described in subsections (a), (c), (d) and (e) above shall name the Trustee under a standard noncontributory mortgagee clause or otherwise directly insure the Trustee's interest in the Project. All losses under said insurance shall be payable to the Trustee as its interests appear. All policies of insurance required hereunder shall be with a company or companies with a policy rating of A- and financial rating of at least Class VII in the most current edition of Best's Insurance Reports and authorized to do business in the State of Illinois. All policies of insurance shall provide that they will not be canceled or modified without thirty (30) days' prior written notice to the Purchaser [and the Trustee]. True copies of the above mentioned insurance policies or evidence of such insurance (in the form of Accord Form 27) shall be delivered to and held by the Trustee. True copies of all renewal and replacement policies or evidences of such insurance forms (Accord Form 27) thereof shall be delivered to the Purchaser [and the Trustee] at least thirty (30) days before the expiration of the expiring policies. If any renewal or replacement policy is not obtained as required herein, the Trustee is authorized to obtain the same in the Borrower's name and at the Borrower's expense. The Trustee shall not by the fact of failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and the Borrower hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

Not less than once every two (2) years, with the first such report filed no later than December 1, 2015, the Borrower shall cause the Independent Insurance Consultant to prepare and file a report with the Trustee certifying as to the adequacy of the Borrower's insurance program. To the extent any such report recommends changes to the existing program, the Borrower agrees to follow such recommendation to the extent feasible.

**Section 6.3. Further Contribution of Borrower.** The Borrower acknowledges that the moneys available from the proceeds of the sale of the Bond may not be sufficient to pay Project Costs and Issuance Costs in full and that the Borrower shall pay or cause to be paid all moneys necessary to pay Project Costs and Issuance Costs in excess of the moneys available therefor from such proceeds. The Borrower shall not be entitled to any reimbursement from the Issuer or the Trustee for any moneys the Borrower is obligated to pay or cause to be paid pursuant to this Section, nor shall it be entitled by virtue of such payment to any diminution in or postponement of the payments required to be paid by the Borrower under this Loan Agreement. At the closing the Borrower will contribute such additional funds to the Trustee to fund the accounts as set forth in *Schedule A* hereto.

**Section 6.4. Issuer and Borrower Representatives.** Whenever under the provisions of this Loan Agreement the approval of the Issuer or the Borrower is required to take some action at the request of the other, such approval or such request shall be given for the Issuer by an Authorized Issuer Representative and for the Borrower by an Authorized Borrower Representative, and any party hereto and the Trustee shall be authorized to act on any such approval or request, which approval or request shall not be unreasonably withheld.

**Section 6.5. Additional Payments.** The Borrower will pay the following within 30 days after receipt of a bill therefor:

(a) (i) the reasonable fees and expenses of the Trustee and all other fiduciaries and agents serving under the Indenture (including any expenses in connection with any redemption of the Bond), and (ii) all fees and expenses, including attorneys' fees, of the Trustee for any extraordinary services rendered by it under the Indenture. All such fees and expenses are to be paid directly to the Trustee or other fiduciary or agent for its own account as and when such fees and expenses become due and payable; and

(b) all other reasonable fees and expenses incurred in connection with the issuance of the Bond.

**Section 6.6. Indemnification.**

(a) The Borrower (the "**Indemnitor**") hereby agrees to release the Issuer and Trustee and their respective officers, directors, agents, officials, employees, commissioners of its governing body and any person who controls the Issuer or Trustee within the meaning of the Securities Act of 1933 (the "**Indemnified Parties**") from, and covenants and agrees to indemnify, hold harmless and defend the Indemnified Parties from and against any and all losses, claims, damages, liabilities and expenses (including reasonable attorneys' fees and expenses, litigation and court costs, costs incurred in connection with any audit by the Internal Revenue Service, amounts paid in settlement by or with the approval of the Borrower and amounts paid to discharge judgments), taxes, causes of action, suits, demands and judgments of any nature, joint or several, by or on behalf of any person arising out of:

(i) the approval of financing for the Project, or the making of the Loan;

(ii) the issuance and sale or resale of any Bond or any certifications or representations made by any person other than the party seeking indemnification in connection therewith, including, but not limited to, any (A) statement or information made by the Borrower with respect to the Borrower or the Project in any offering document or materials regarding the Bond, the Project or the Borrower or in the Tax Agreement or in any other certificate executed by the Borrower which, at the time made, is misleading, untrue or incorrect in any material respect; (B) untrue statement or alleged untrue statement of a material fact relating to the Borrower or the Project, which is made as approved by the Borrower and is contained in any offering material relating to the sale of the Bond, as from time to time amended or supplemented, or arising out of or based upon the omission or alleged omission to state in such offering material a material fact relating to the Borrower or the Project required to be stated in such offering material or necessary in order to make the statements in such offering material not misleading; or (C) failure to properly register or otherwise qualify the sale of Bond or failure to comply with any licensing or other law or regulation which would affect the manner in which or to whom the Bond could be sold;

(iii) the interpretation, performance, enforcement, breach, default or amendment of the Bond Documents or any other documents relating to the Project or the

Bond or in connection with any federal or state tax audit, or any questions or other matters arising under such documents;

(iv) the Borrower's failure to comply with any requirement of the Loan Agreement, or the Regulatory Agreement;

(v) the condition of the Project (environmental or otherwise), including any violation of any law, ordinance, court order or regulation affecting the Project or any part of it;

(vi) any damage or injury, actual or claimed, of whatsoever kind, cause or character to the Project (including loss of use of the Project) or persons, occurring or allegedly occurring in, on or about the Project or arising out of any action or inaction of the Borrower or any of its agents, servants, employees or licensees, whether or not related to the Project, or resulting from the acquisition, construction, design, repair, operation, use or management of all or any part of the Project;

(vii) any and all claims arising in connection with the operation of the Project, or the conditions, environmental or otherwise, occupancy, use, possession, conduct or supervision of work done in or about, or from the planning, design, construction, repair or equipping of, the Project or any part of it, including, but not limited to, the Americans with Disabilities Act; and

(viii) to the extent not mentioned in any of the preceding subsections of this Section 6.6, any cause whatsoever in connection with transactions provided for in this Loan Agreement and the other Bond Documents or otherwise in connection with the Project, the Bond or the execution or amendment of any document relating to the Bond or the Project.

This indemnification shall extend to and include, without limitation, all reasonable costs, counsel fees, expenses and liabilities incurred in connection with any such claim, or proceeding brought with respect to such claim, except to the extent such damages are caused by the gross negligence or willful misconduct of the Issuer.

(b) If any claim shall be made or any action shall be brought against any Indemnified Party in respect of which indemnity can be sought against the Borrower pursuant to this Section 6.6 or otherwise, the Indemnified Party shall promptly notify the Borrower in writing, and the Borrower shall promptly assume the defense of such claim or action, including the employment of counsel chosen by the Borrower and approved by the Indemnified Party, the payment of all expenses and the right to negotiate a settlement with the consent and approval of the Indemnified Party; if the Borrower shall have failed to assume the defense of such action or to retain counsel reasonably satisfactory to the Indemnified Party within a reasonable time after notice of the commencement of such action, the Borrower shall pay the reasonable fees and expenses of counsel retained by the Indemnified Party. If the Indemnified Party is advised in a written opinion of counsel that there may be legal defenses available to the Indemnified Party which are adverse to or in conflict with those available to the Borrower or that the defense of the Indemnified Party should be handled by separate counsel, the Borrower shall not have the

right to assume the defense of the Indemnified Party, but shall be responsible for the reasonable fees and expenses of counsel retained by the Indemnified Party in assuming its own defense. Notwithstanding the foregoing, the Indemnified Party shall have the right to employ separate counsel with respect to any such claim or in any such action and to participate in the defense thereof, but the Indemnified Party shall pay the fees and expenses of such counsel unless the employment of such counsel has been specifically authorized by the Borrower or unless the provisions of the immediately preceding sentence are applicable. The Borrower shall not be liable for any settlement of any such action effected without the consent of the Borrower, but if such claim or action is settled with the consent of the Borrower, or if there is a final judgment for the plaintiff in any such action with or without consent, the Borrower agrees to indemnify and hold harmless the Indemnified Party from and against any loss, liability or expense by reason of such settlement or judgment.

(c) The Borrower shall also indemnify the Indemnified Party for all reasonable costs and expenses, including reasonable counsel fees, incurred in: (i) enforcing any obligation of the Borrower under this Loan Agreement or any related agreement, (ii) taking any action requested by the Borrower, (iii) taking any action required by this Loan Agreement or any related agreement, or (iv) taking any action considered necessary by the Indemnified Party and which is authorized by this Loan Agreement or any related agreement. If the Indemnified Party is to take any action under this Loan Agreement or any other instrument executed in connection herewith for the benefit of the Borrower, it will do so if and only if (a) the Indemnified Party is a necessary party to any such action or proceeding, and (b) the Indemnified Party has received specific written direction from the Borrower, as required under this Loan Agreement or under any other instrument executed in connection with this Loan Agreement, as to the action to be taken by the Indemnified Party.

(d) All amounts payable to the Issuer under this Loan Agreement shall be deemed to be fees and expenses payable to the Issuer for the purposes of the provisions of this Loan Agreement, and of the Indenture dealing with assignment of the Issuer's rights under this Loan Agreement. The Issuer and its commissioners, officers, agents, employees and their successors and assigns shall not be liable to the Borrower for any reason.

(e) Any provision of this Loan Agreement or any other instrument or document executed and delivered in connection therewith to the contrary notwithstanding, the Issuer retains the right to (i) enforce any applicable Federal or State law or regulation or resolution of the Issuer, and (ii) enforce any rights accorded to the Issuer by Federal or State law or regulation of the Issuer, and nothing in this Loan Agreement shall be construed as an express or implied waiver thereof.

**Section 6.7. Limitations on Liability of Issuer and Trustee.** The Issuer and the Trustee shall each be entitled to the advice of counsel (who may also be counsel for the Trustee or the holder of a Bond or Bond Counsel) and shall be wholly protected as to action taken or omitted in good faith in reliance on such advice. Each may rely conclusively on any communication or other document furnished to it hereunder or under any other Bond Documents and reasonably believed by it to be genuine. Neither shall be liable for any action (a) taken by it in good faith and reasonably believed by it to be within the discretion or powers conferred upon it, or (b) in good faith omitted to be taken by it because reasonably believed to be beyond the

discretion or powers conferred upon it, or (c) taken by it pursuant to any direction or instruction by which it is governed under any Bond Document, nor shall either of them be responsible for the consequences of any error of judgment reasonably made by it. Neither shall in any event be liable for the application or misapplication of funds, or for other acts or defaults, by any person, except its own directors, officers, officials or employees, its liability with respect to acts or defaults of any kind of agents appointed by it being limited to liability for any, if any, willful malfeasance in the appointment of such agent. When any consent or other action by any one of them is called for by Borrower Documents, it may defer such action pending receipt of such evidence (if any) as it may require in support thereof. Except as otherwise provided in the Indenture in regard to the Trustee, neither shall be required to take any remedial action (other than the giving of notice) unless indemnity is furnished by the person or persons requiring such action for any expense or liability to be incurred thereby, and the furnishing of indemnity to the reasonable satisfaction of the Trustee, or of the Issuer, as the case may be, is hereby made a condition, which the Trustee, or the Issuer, as the case may be, may but need not assert, to the undertaking of such remedial action. Each shall be entitled to reimbursement for expenses reasonably incurred or advances reasonably made, with interest at the rate per annum announced by the Trustee from time to time as its prime rate, as such prime rate may change from time to time, in the exercise of its rights or the performance of its obligations to the extent that it acts without previously obtaining indemnity. No permissive right or power to act which any one of them may have shall be construed as a requirement to act; and no delay in the exercise of a right or power shall affect the subsequent exercise of the right or power. No recourse shall be had by the Borrower, the Trustee or any Bondholder for any claim based on this Loan Agreement, the Bond, the Indenture or any other Borrower Documents against any director, commissioner, officer, attorney, agent or employee, past, present or future, of the Issuer or of any successor body as such, either directly or through the Issuer or any such successor body, under any constitutional provision, statute or rule of law or by the assessment or penalty or by any legal or equitable proceeding or otherwise, unless such claim is based upon the willful dishonesty of or intentional violation of law by such person. No covenant, stipulation, obligation or agreement of the Issuer contained in this Loan Agreement, the Bond, the Indenture or any other Borrower Documents or in any document to which the Issuer is a party shall be deemed to be a stipulation, obligation or agreement of any present or future director, commissioner, officer, agent or employee of the Issuer in his individual capacity, and any director, commissioner, officer, agent or employee of the Issuer executing the Bond shall not be liable personally thereon or subject to any personal liability or accountability by reason of the issuance thereof.

**Section 6.8. Borrower's Approval of Issuance of Bond by Issuer.** The Borrower hereby approves the Issuer's issuance of the Bond pursuant to the Indenture. Except as otherwise provided in the Indenture, the Indenture shall not be modified or amended except with the written consent of the Borrower.

**Section 6.9. Tax Exempt Status of the Bond.** The Borrower and the Issuer, as the case may be, hereby represent, warrant and agree that:

(a) The Borrower will not take or permit, or omit to take or cause to be taken, any action that would adversely affect the excludability from gross income for purposes of Federal income taxation of the interest on the Bond and if the Borrower should take or permit, or omit to

take or cause to be taken, any such action, the Borrower shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof;

(b) Upon the request of the Issuer or the Trustee, the Borrower will take such action or actions as may be reasonably necessary, in the written opinion of Bond Counsel, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service pertaining to obligations issued under Section 142 of the Code;

(c) The Borrower and the Issuer agree that they will not make any use of the proceeds from the sale of the Bond in any manner which will cause the Bond to be an "arbitrage bond" within the meaning of the Code and the applicable regulations thereunder; and

(d) The Borrower and the Issuer agree that they will not take or permit to be taken any action in connection with the Project which would jeopardize the status of the Project as a "qualified residential rental project" within the meaning of Section 142 of the Code.

**Section 6.10. Assignment, Selling and Leasing.** This Loan Agreement may not be assigned and the Project or interest therein may not be leased or sold, as a whole or in part (other than leases for occupancy of individual units by residential tenants or leases of commercial space, if any), by the Borrower unless the Borrower satisfies each of the following conditions:

(a) An opinion of Bond Counsel is delivered to the effect that such assignment, lease or sale does not adversely affect the exclusion from gross income of the interest on the Bond for Federal income tax purposes;

(b) The assignee, purchaser or lessee shall assume the obligations of the Borrower hereunder to the extent of the interest assigned or leased;

(c) The Borrower shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Issuer and the Trustee a true and complete copy of each assignment, assumption of obligation, contract of sale, or lease, as the case may be; and

(d) The written consent of the Purchaser.

Notwithstanding the foregoing, the Borrower may transfer property or assets without meeting the conditions set forth above (i) in the ordinary course of business to the extent that such property is worn out or is no longer useful or necessary in connection with the operation of the Project, (ii) to the extent that such property is replaced with property of equal value and utility, or (iii) so long as the aggregate fair market value of any property removed other than pursuant to (i) or (ii) above does not exceed \$250,000 annually.

For the purposes of this Section, neither of the following in and of itself shall be deemed an assignment: (i) any foreclosure or conveyance in lieu of foreclosure by or to the Trustee pursuant to the terms of any deed to secure debt, mortgage or security agreement securing the Borrower Documents; and (ii) any other transfer to the Trustee or to a nominee or assignee of the Trustee.

**Section 6.11. Compliance with Applicable Laws.** The Borrower shall, through the term of this Loan Agreement and at no expense to the Issuer, promptly comply or cause compliance with all applicable laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities which may be applicable to the Project or to the repair and alteration thereof, or to the use or manner of use of the Project, including, but not limited to, the Americans with Disabilities Act, Illinois Accessibility Code, all Federal, State and local environmental, health and safety laws, rules, regulations and orders applicable to or pertaining to the Project and the Federal Worker Adjustment and Retraining Notification Act and Illinois Prevailing Wage Act.

**Section 6.12. Environmental Representation and Indemnity.** Except as set forth in *Exhibit E* attached hereto:

(a) To the best of the Borrower's knowledge, after reasonable due inquiry: (i) no dangerous, toxic or hazardous pollutants, contaminants, chemicals, wastes, materials or substances, as defined in or governed by the provisions of any applicable law, statute, code, ordinance, regulation, requirement or rule relating thereto (hereinafter collectively called "**Environmental Regulations**"), and also including urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos-containing materials, nuclear fuel or waste, radioactive materials, explosives and carcinogens, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Project to any damages, penalties or liabilities under any applicable Environmental Regulation (hereinafter collectively called "**Hazardous Substances**") are now or have ever been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Project; (ii) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Project into the environment; (iii) the Project has not ever been used as or for a mine, a landfill, a dump or other disposal facility, industrial or manufacturing purposes, or a gasoline service station; (iv) no underground storage tank is now located in the Project or has previously been located therein but has been removed therefrom; (v) no violation of any Environmental Regulation now exists in, upon, under, over or from the Project, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now nor has there ever been any investigation or report involving the Project by any governmental entity or agency which in any way relates to Hazardous Substances; (vi) no person, party or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (i) above; (vii) there are not now, nor have there ever been, any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under, over or from the Project; (viii) the Project is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and (ix) the Project is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release of any Hazardous Substance.



(b) Except in accordance with applicable law and in the ordinary course of business, the Borrower shall not store, locate, generate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit or dispose of any Hazardous Substance in, upon, under, over or from the Project, shall not permit any Hazardous Substance to be stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited, disposed of or to escape therein, thereupon, thereunder, thereover or therefrom, shall cause all Hazardous Substances found thereon to be properly removed therefrom and properly disposed of in accordance with all applicable Environmental Regulations, shall not install or permit to be installed any underground storage tank therein or thereunder, and shall comply with all Environmental Regulations which are applicable to the Project. At any time and upon reasonable belief by the Borrower, the Trustee or the Issuer that a violation of this section has occurred or is occurring, if the Trustee or the Issuer so requests, the Borrower shall have an environmental review, audit, assessment and/or report relating to the Project heretofore provided by the Borrower to the Trustee and the Issuer updated, at the Borrower's sole cost and expense, by an engineer or scientist acceptable to the Trustee and the Issuer, or shall have such a review, audit, assessment and/or report prepared for the Trustee and the Issuer, if none has previously been so provided. The Borrower shall indemnify the Trustee and Issuer against, shall hold Trustee and Issuer harmless from, and shall reimburse the Trustee and the Issuer for, any and all claims, demands, judgments, penalties, liabilities, costs, damages and expenses, including court costs and attorneys' fees directly or indirectly incurred by the Trustee or the Issuer (prior to trial, at trial and on appeal) in any action or proceeding involving the Trustee or the Issuer, resulting from any breach of the foregoing covenants, from the incorrectness or untruthfulness of any warranty or representation set forth herein, or from the discovery of any Hazardous Substance in, upon, under or over, or emanating from, the Project, whether or not the Borrower is responsible therefor, it being the intent of the Borrower and the Issuer that the Issuer and the Trustee shall have no liability or responsibility for damage or injury to human health, the environment or natural resources caused by, for abatement and/or clean-up of, or otherwise with respect to, Hazardous Substances by virtue of indemnity the interest of the Issuer and the Trustee in the Project created hereby or as the result of the Issuer and the Trustee exercising any of its rights or remedies with respect thereto hereunder, including, but not limited to, becoming the owner thereof by foreclosure or conveyance in lieu of foreclosure; *provided, however*, that the Borrower need not indemnify the Trustee for any claims, demands, judgments, penalties, liabilities, costs, damages and expenses which arise solely as a result of the gross negligence or willful misconduct of the Trustee. The foregoing representations, warranties and covenants in this section shall be deemed continuing covenants, representations and warranties for the benefit of the Issuer and the Trustee, and any successors and assigns of the Issuer and the Trustee, including, but not limited to, any purchaser at a foreclosure sale, any transferee of the title of the Issuer and the Trustee or any other purchaser at a foreclosure sale, and any subsequent owner of the Project, and shall survive the satisfaction or release of this mortgage, any foreclosure of this mortgage and/or any acquisition of title to the Project or any part thereof by the Issuer and the Trustee, or anyone claiming by, through or under the Issuer and the Trustee, by deed in lieu of foreclosure or otherwise. Any amounts covered by the foregoing indemnification shall bear interest from the date incurred at the prime interest rate publicly announced from time to time by the Trustee as a commercial bank plus 2% and shall be payable on demand, and shall be secured hereby.

(c) The Borrower agrees to immediately notify the Issuer and the Trustee in the event the Borrower becomes aware of any condition on the Project which does not comply with any Environmental Regulation regarding asbestos remediation. This includes notice to the Issuer and the Trustee of the creation of any lien pursuant to Illinois law or any similar federal laws or regulations. At its own cost, the Borrower will take all actions which are required by law to remediate, encapsulate or remove any and all asbestos and/or asbestos containing material affecting the Project or its improvements including, but not limited to, the removal, encapsulation, containment or any other remedial action required by Issuer or any appropriate governmental authorities. In connection therewith, the Borrower hereby agrees, unconditionally and absolutely, to provide the Issuer and the Trustee with such indemnification as set forth in subsection (b) of this provision.

(d) The Borrower covenants to comply with the recommendations made by Alpha Environmental, Inc., Streamwood, Illinois (“Alpha”) in its Phase I Environmental Site Assessment dated November 15, 2013, for the land upon which the Project will be located (the “Environmental Report”) and, in particular, its recommendations that (i) the two aboveground storage tanks, the diesel fuel and all other chemicals on-site at the Project be removed under the guidance of an environmental professional, (ii) oil stained materials and soils in and around the commercial building at the Project and any asbestos present be removed prior to demolition activities, and (iii) the on-site well and septic system must be properly abandoned by a licensed contractor.

**Section 6.13. Tax Agreement.** In order to maintain the exclusion from gross income for Federal income tax purposes of interest on the Bond and to assure compliance with the laws of the State of Illinois, the Act, and certain additional requirements of the Issuer, the Borrower hereby affirms that it has executed and delivered the Tax Agreement.

The Borrower shall comply with every term of the Tax Agreement, and the Borrower hereby acknowledges that in the event of a default under the Tax Agreement which is not cured for a period of thirty (30) days after receipt by the Borrower of notice thereof, the Loan may be accelerated.

**Section 6.14. Obligation to Hire Independent Consultants.** Promptly upon the occurrence of any of the following, the Borrower shall hire an independent consultant, approved by of the Purchaser, to prepare and issue, at the Borrower's expense, an appropriate report and to distribute each report to the Trustee, the Issuer and all holders of Bond:

If the Debt Service Coverage Ratio for any Fiscal Year commencing with the Fiscal Year ending December 31, 2017 is less than 1.10, the Borrower shall, at the request of of the Purchaser, hire an independent consultant with recognized expertise in the area of assisted/supportive living facilities (including the compliance requirements of Section 42 of the Code) to recommend in a written report, appropriate steps to increase coverage, and improve the operations and the value of the Project. Such report shall be provided within sixty (60) days after the engagement of such consultant. The Debt Service Coverage Ratio shall be tested annually (commencing with the Fiscal Year ending on December 31, 2017), for the preceding Fiscal Year.

The Borrower shall have a period of twelve calendar months to implement each recommendation of the independent consultant to the extent reasonably feasible, permitted by law, and not in conflict with any Regulatory Agreement. Within twelve (12) months after the submission of its initial report, the independent consultant shall submit to the Trustee a follow-up report indicating whether or not the recommendations contained in its initial report are being complied with.

Two and one-half months prior to the end of every fifth (5th) Fiscal Year, commencing with the Fiscal Year beginning the fifth year after completion of, and receipt of certificate of occupancy, for the Project, the Borrower shall hire an independent engineer or engineering firm expert in capital needs assessments for facilities such as the Project, to inspect the Project and recommend what capital expenditures and repairs are necessary or appropriate to maintain the Project in the ensuing five (5) Fiscal Years. The Borrower shall thereafter certify to the Trustee any upward adjustments needed (based on such report) to the monthly amount required to be deposited in the Replacement Reserve Account as described in Section 5.7(b) of the Indenture.

**Section 6.15. Change of Management.** The Borrower may not retain new management for the Project without the consent of of the Purchaser. If requested by the Purchaser, the Borrower shall be required to retain new management for the Project if (i) management does not implement the recommendation of a consultant retained pursuant to Section 6.14 hereof, and (ii) the Debt Service Coverage Ratio for any Bond Year commencing not less than twelve (12) months after delivery of the report is less than 1.00. Such new management shall be satisfactory to of the Purchaser, and shall be compensated with a management fee of not more than five percent (5.0%) of Revenues (except as may be agreed to by of the Purchaser). For purposes of this Section 6.15, the term "management" shall refer exclusively to BMA Management, Ltd., as "Manager" under that certain Supportive Living Facility Management Agreement of even date herewith between the Borrower and the Manager, or to any successor agent designated by the Borrower under any subsequent agreement to manage the property.

**Section 6.16. Permits and Licenses.** The Borrower covenants and agrees that in the renovation and operation of the Project it will comply with all federal, state and local statutes, laws, ordinances, building codes, regulations and rulings applicable to the Project.

**Section 6.17. Taxes and Liens.** The Borrower hereby agrees that it will promptly pay, or cause to be paid, all taxes, assessments or other governmental charges which may lawfully be levied or assessed upon the income or profits of the Borrower, or upon any property, real, personal or mixed, belonging to the Borrower or upon any part thereof, and also any lawful claims for labor, material and supplies which, if unpaid, might become a lien or charge against such property (including the Project); *provided, however*, the Borrower, shall not be required to pay any such, tax, assessment, charge, levy or claim that shall be actively contested in good faith, but shall be paid forthwith upon the commencement of any proceedings to foreclose any lien securing the same, unless a surety bond, in an amount satisfactory to the Trustee, is obtained and delivered to the Trustee.

**Section 6.18. Covenants in Regulatory Agreement.** The Borrower agrees to comply with its covenants in the Regulatory Agreement including (without limitation) those in Sections 6 and 8 of the Regulatory Agreement.

**Section 6.19. Additional Indebtedness.** The Borrower covenants that it will not incur, assume, guarantee or otherwise become liable in respect of any Indebtedness other than (a) up to \$500,000 of bank debt or equipment leases entered into in the normal course of business; (b) indebtedness that is outstanding on the Issuance Date [(including \_\_\_\_\_)]; (c) Indebtedness related to any Additional Bond or subordinated bonds permitted under Article XII of the Indenture; (d) any indebtedness (including, without limitation, any loans from any member of the Borrower, any guarantor, or any other entity or person affiliated with the Borrower or any guarantor), provided that such indebtedness is payable solely out of excess cash flow deposited in the Borrower Account of the Project Fund under the Indenture and approved by the Investor Member; (e) deferred developer or general contractor fees approved by the Investor Member and (f) the loan from Metropolitan Housing Development Corporation described \_\_\_\_\_.

**Section 6.20. Payment of Taxes and Claims.** The Borrower shall, prior to the time penalties shall attach thereto, pay and discharge or cause to be paid and discharged all taxes, assessments and governmental charges or levies lawfully imposed upon it or upon its income or profits or upon any of the Project or the Revenues from the Project and all lawful claims or obligations that, if unpaid, would become a lien upon the Project, real or personal, or upon any part thereof or the revenues from the Project; provided, however, that the Borrower shall not be required to pay any such tax, assessment, charge, levy, claim or obligation if it is being contested in good faith by the Borrower. The Borrower shall promptly pay or cause to be paid any valid, final judgment enforcing any such tax, assessment, charge, levy or claim and cause the same to be satisfied of record unless such judgment is then the subject of a good faith contest as referenced above.

**Section 6.21. Liens.** The Borrower shall not create or suffer to exist or permit any Lien upon or with respect to any of its properties or leasehold interests, except for Permitted Encumbrances.

*"Lien"* means any mortgage, pledge, security interest, hypothecation, collateral assignment, lien (statutory or other), or preference, priority or other security agreement, preferential arrangement or encumbrance which has the practical effect of constituting a security interest (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

**Section 6.22. Single Purpose Entity.** The Borrower will operate as a single purpose entity and, as such, agrees and represents as follows: (i) the Borrower is operating solely for the purpose of owning and implementing the Project; (ii) to hold itself out as a separate legal entity, conduct business in its own name, hold regular meetings, use separate stationery, invoices, checks and logos and observe all other entity-level formalities; (iii) not to commingle its assets or funds with those of any other Person; (iv) maintain books, records and accounts separate and apart from any other entity; (v) pay its obligations and expenses from its own funds and, to the

extent not otherwise provided in the Management Agreement, allocate fairly any employees or overhead shared with affiliates; (vi) transact business with affiliates on an arm's-length basis pursuant to agreements between the parties; (vii) not amend its organizational documents with respect to the requirements set forth herein without the consent of of the Purchaser; (viii) engage in any business or activity other than the ownership, operation and maintenance of the Project, and activities incidental thereto; and (x) acquire or own any material assets other than (A) its interest in the Project and related property, and (B) such incidental personal property as may be necessary for the ownership and maintenance of the Project.

**Section 6.23. Hedges.** The Borrower will not enter into any hedge, interest rate swap, interest rate cap, futures contract, forward contract, float agreement or option, without the consent of of the Purchaser.

**Section 6.24. Waiver of Borrower Covenants.** The Borrower acknowledges that of the Purchaser may, with the consent of the Borrower, and the Investor Member, waive or modify any affirmative or negative covenants contained in this Loan Agreement, without the need to go through the formal amendment process provided by the Indenture.

**Section 6.25. Change in Control of Managing Member.** Except as otherwise provided for in the Operating Agreement, [DG SLF, LLC] shall maintain directly or through control of one of its majority owned affiliates at least a majority owned interest in the Managing Member, except with the written consent of of the Purchaser. The consent of the ders shall be deemed given, if within 30 days following written request, no response is received. The consent of of the Purchaser shall not be unreasonably withheld.

## ARTICLE VII.

### DEFAULTS AND REMEDIES

**Section 7.1. Events of Default.** Upon the expiration of all applicable notice and cure periods, if any, any one or more of the following events shall constitute an Event of Default hereunder (an "**Event of Default**"):

(a) Except as specified in subsection (d) hereof, failure by the Borrower to observe and perform any covenant, condition or agreement herein or in the Note, the Mortgage, the Assignment of Contracts, and the SLF Agreement on its part to be observed or performed for a period of thirty (30) days after written notice specifying such failure has been given by the Trustee to the Borrower and the Investor Member, unless the Trustee shall agree in writing to an extension of such time prior to its expiration; *provided, however*, if the Borrower can show to the reasonable satisfaction of the Trustee that the failure stated in the notice cannot be corrected within the applicable period (but can be corrected within such longer period), and the Borrower initiates corrective action within said period, and diligently, continually, and in good faith works to effect a cure as soon as possible, the Trustee will not unreasonably withhold its consent to a reasonable extension of such time not to exceed ninety (90) days.

(b) The entry of a decree or order for relief by a court having jurisdiction in the Project in respect of the Borrower in an involuntary case under the federal bankruptcy laws, as

now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Borrower or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days.

(c) The commencement by the Borrower of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by the Borrower to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Borrower or for any substantial part of the property of the Borrower or the making by it of any assignment for the benefit of creditors, or the failure of the Borrower generally to pay its debts as such debts become due, or the taking of action by the Borrower in furtherance of any of the foregoing.

(d) Except as otherwise provided in Section 4.9 of this Loan Agreement, any dissolution, termination, partial or complete liquidation, merger or consolidation of the Borrower. Notwithstanding anything to the contrary in the Borrower Documents, the following shall not constitute a default under the Borrower Documents: (i) the sale, transfer, conveyance or pledge of investor member interests in Borrower; (ii) the sale, transfer, conveyance or pledge of any member interest in the Investor Member; (iii) the appointment by the Investor Member of an additional or substitute Managing Member of the Borrower in accordance with the Borrower's Operating Agreement, provided that the Managing Member delivers prior notice thereof to the Trustee and the Issuer and any additional or substitute Managing Member of the Borrower is reasonably acceptable to the Issuer and is selected with reasonable promptness; (iv) the dilution of the Managing Member's interest in cash flow and/or capital transaction proceeds in the Borrower in accordance with the terms of the Operating Agreement; and (v) if notified by the Borrower, any amendment to the Operating Agreement which does not affect the capital contribution or guaranty obligations of the members of guarantors under the Operating Agreement, and does not otherwise adversely affect the security interest of the Trustee in the Project.

(e) An Event of Default caused by the Borrower under the Indenture or any of the Borrower Documents.

(f) Any failure to pay principal of, redemption premium, if any, or interest on the Note or the Bond pursuant to Section 4.2(a) hereof or to pay any of the other amounts set forth in Section 4.2 hereof on the due date thereof, including any draw from the Debt Service Reserve Fund.

(g) The making of any representation or warranty by the Borrower in a Borrower Document or certificate, disbursement request or notice delivered pursuant thereto or executed in connection therewith which is false or misleading in any material respect when made or deemed made.

(h) For any semi-annual period, measured from January 1 to June 30 and July 1 to December 31, respectively, commencing with the semi-annual period beginning January 1, 2017

through June 30, 2017 and each subsequent semi-annual period thereafter, the Revenues deposited in the Revenues Account less Operating Expenses of the Project are less than 100% of the amounts required to be transferred to the Bond Fund pursuant to Section 5.7(b)(iii) of the Indenture during such semi-annual period, unless amounts from the Borrower Account, the Initial Lease-Up Reserve Fund, Operating Reserve Fund, or the Medicaid Receivables Cash Flow Fund are transferred to make up the shortfall.

(i) The Borrower shall fail to make any payment in respect of any Indebtedness (other than any subordinate obligations issued in connection with subordinated bonds reissued pursuant to Section 12.4 of the Indenture) in an amount exceeding \$100,000 which it has incurred and which shall remain outstanding (other than any amount due under or pursuant to this Loan Agreement) when due and payable (subject to any applicable grace period).

(j) A final and non-appealable judgment or judgments for the payment of money in excess of \$100,000 shall be rendered against the Borrower, and the same shall remain unpaid for a period of thirty (30) or more consecutive days from the date of entry thereof.

(k) Any grant of a Lien to the Trustee on the collateral having a value in excess of \$100,000 contained in the Borrower Documents shall cease to be a perfected Lien with the priority purported to be created thereby; *provided, however*, that the Borrower shall have thirty (30) days after knowledge or constructive knowledge to cure any such cessation.

The foregoing provisions of this Section are subject to the following limitations: if by reason of Force Majeure the Borrower is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of the Borrower contained in Section 4.2 hereof, the Borrower shall not be deemed in default under Section 7.1(a) hereof during the continuance of such inability. The term "**Force Majeure**" as used herein shall mean, without limitation, the following: acts of God; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or of any of their departments, agencies, or officials, or of any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions, breakage or accident to machinery, transmission pipes or canals; or any other similar cause or event not reasonably within the control of the Borrower. The Borrower agrees, however, to use its best efforts to remedy the cause or causes preventing the Borrower from carrying out its obligations hereunder.

Any notice of default sent to the Borrower shall be simultaneously sent to the Investor Member.

The following actions shall not constitute an Event of Default under the Borrower Documents:

(a) the making of a bridge loan or the additional bridge loan to Borrower by the Investor Member or a third party; and

(b) the pledge to the Investor Member by the Managing Member of the Managing Member's interest in the Operating Agreement, as security for the performance of all of the Managing Member's obligations under the Operating Agreement.

**Section 7.2. Remedies.** Upon the occurrence of an Event of Default pursuant to Section 7.1, the Trustee shall notify all holders of Bond and all Interested Beneficial Holders thereof promptly after the Trustee learns of such occurrence, and at any time during the continuance of such Event of Default, the Trustee may (and shall if required by Section 8.2 of the Indenture), pursue any action at law or in equity, appointing a receiver, collecting the payments then and thereafter due or enforcing performance and observance of any obligation, agreement or covenant of the Borrower thereunder, hereunder, or under any documents securing the Note.

The Investor Member shall have the right, but not the obligation, to cure any Event of Default existing under the Borrower Documents which right must be exercised by the later of (i) the cure period provided in the Borrower Documents or (ii) 15 days after receipt of written notice of default by the Investor Member (which 15 day period may be extended to 30 days in the event a remedy cannot reasonably be accomplished within said 15 day period, provided the Investor Member tries to accomplish the remedy within the 15 day period and diligently pursues such remedy.) For the Investor Member to exercise effectively its cure rights, the Investor Member must fully pay the amount past due or perform the defaulted obligations, including the payment of any amounts due for legal expenses incurred in connection with the default. Notwithstanding anything to the contrary in the Borrower Documents, upon the occurrence of an Event of Default arising out of (i) the bankruptcy, insolvency or assignment of assets for the benefit of creditors by the Managing Member of Borrower or by any guarantor, or (ii) the withdrawal from Borrower of the Borrower's Managing Member, or the death or incapacity of a Managing Member or guarantor, or (iii) a breach of the representations concerning such Managing or any guarantor, the Investor Member shall have the option, but not the obligation, within 45 days of receipt of written notice of such Event of Default from the Trustee or the Issuer, to cure any such default by appointing a substitute or additional Managing Member or guarantor that is an affiliate of the Investor Member to act as such Managing Member or guarantor.

If the Trustee shall have proceeded to enforce the rights of the Issuer under this Loan Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, then the Borrower, the Issuer and the Trustee shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Borrower, the Issuer and the Trustee shall continue as though no such proceedings had taken place.

**Section 7.3. Additional Remedies.** In addition to the above remedies, if the Borrower commits a breach of this Loan Agreement giving rise to an Event of Default the Trustee shall have the right and remedy, without posting bond or other security, to have the provisions of this Loan Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach will cause irreparable injury to the Issuer and that money damages will not provide an adequate remedy thereto.

**Section 7.4. No Remedy Exclusive.** No remedy herein conferred or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement and the Indenture now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default or



Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

**Section 7.5. No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Loan Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 7.6. Waiver of Extension, Appraisal, Stay, Laws.** To the extent permitted by law, the Borrower will not during the continuance of any Event of Default hereunder insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of Article IV of this Loan Agreement; nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Project prior to any sale or sales thereof which may be made pursuant to any provision herein contained, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted by the United States of America or by any state or territory, or otherwise, to redeem the Project so sold or any part thereof, and the Borrower hereby expressly waives all benefits or advantage of any such law or laws and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Issuer, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted.

## ARTICLE VIII.

### MISCELLANEOUS

**Section 8.1. Notice.** Unless otherwise specifically provided herein, any notice, request, complaint, demand, communication or other paper shall be sufficiently given and shall be deemed given when the same is: (i) deposited in the United States mail and sent by first class mail, postage prepaid, or (ii) delivered, in each case to the parties at the addresses set forth below or at such other address as a party may designate by notice to the other parties:

If to the Issuer: Village of Downers Grove  
801 Burlington Ave  
Downers Grove, IL 60515  
Attention: Village Manager

With a copy to: []

If to the Borrower: Downers Grove Supportive Living Facility, LLC  
8 South Michigan Ave, 31<sup>st</sup> Floor  
Chicago, IL 60603  
Attention: Greg Stec

With a copy to: Michael Fiandaca Law Office  
6756 N Harlem Avenue  
Chicago, IL 60631  
Attention: Michael Fiandaca

If to the Trustee: Heartland Bank and Trust Company  
\_\_\_\_\_  
\_\_\_\_\_, IL \_\_\_\_  
Attention: \_\_\_\_\_

If to the Investor Member: AHP Housing Fund 77, LLC  
c/o Affordable Housing Partners, Inc.  
1999 Avenue of the Stars, Suite 3425  
Los Angeles, California 90067  
Attention: Michael L. Fowler

With a copy to: Kutak Rock LLP  
1801 California St.  
Suite 3000  
Denver, CO 80202  
Attention: Ellen O'Brien

If to the Managing Member: []  
[Address]  
[City], Illinois [60---]  
Attention: Greg Stec

With a copy to: [Managing Member Counsel]  
[Address]  
[City], Illinois [60---]  
Attention: [Contact]

**Section 8.2. Concerning Successors and Assigns.** All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the financing herein contemplated and shall continue in full force and effect so long as the obligations hereunder are outstanding and unpaid. Whenever in this Loan Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Loan Agreement shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Issuer.

**Section 8.3. Governing Law.** This Loan Agreement and the Exhibits attached hereto shall be construed in accordance with and governed exclusively by the internal laws of the State of Illinois without regard to conflicts of laws principles, except to the extent that the laws of the United States of America may prevail.

**Section 8.4. Amendments to Borrower Documents.** Subject to provisions of the Indenture, modification or waiver of any provisions of this Loan Agreement or any other Borrower Document, or consent to any departure by the Borrower therefrom, shall in no event be effective unless the same shall be in writing approved by the parties thereto and the Investor Member, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given and in all cases subject to the terms of Article XI of the Indenture. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice of demand in the same circumstances.

**Section 8.5. Further Assurances and Corrective Instruments.** The Issuer and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required and agreed upon for correcting any inadequate or incorrect description of the provisions of this Loan Agreement.

**Section 8.6. Captions.** The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Loan Agreement.

**Section 8.7. Severability.** In the event any provision of this Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof; *provided, however*, that no finding of illegality or unenforceability shall require payment by the Issuer of any funds from any source other than revenues derived hereunder.

**Section 8.8. Counterparts.** This Loan Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

**Section 8.9. Amounts Remaining in Bond Fund or Other Funds.** It is agreed by the parties hereto that any amounts remaining in the Bond Fund or other funds established under the Indenture upon expiration or sooner termination of the term hereof, as provided below, after payment in full of the Bond (or provisions for payment thereof having been made in accordance with the provisions of the Indenture) and the fees and expenses of the Issuer, the Trustee and any Paying Agents in accordance with the Indenture, shall be paid in accordance with the Indenture.

**Section 8.10. Effective Date and Term.** This Loan Agreement shall be in full force and effect from the date hereof, and shall continue in effect until the payment in full of all principal of, premium, if any, and interest on the Bond, or provision for the payment thereof shall have been made pursuant to Section 7.1 of the Indenture; all fees, charges, indemnities and expenses of the Issuer and the Trustee have been fully paid or provision made for such payment (the payment of which fees, charges, indemnities and expenses shall be evidenced by a written certification of the Borrower that it has fully paid or provided for all such fees, charges, indemnities and expenses); and all other amounts due hereunder and under the Note have been duly paid or provision made for such payment. All representations, certifications and covenants by the Borrower as to the indemnification of various parties and the payment of fees and

expenses of the Issuer as described in Section 6.6 hereof, and all matters affecting the tax-exempt status of the Bond shall survive the termination of this Loan Agreement.

**Section 8.11. Default by Issuer; Limited Liability.** Notwithstanding any provision or obligation to the contrary hereinbefore set forth, no provision of this Loan Agreement shall be construed so as to give rise to a pecuniary liability of the Issuer or to give rise to a charge upon the general credit of the Issuer; the liability of the Issuer hereunder shall be limited to its interest in the Project, this Loan Agreement, the Note, and all other related documents and collateral and the lien of any judgment shall be restricted thereto. In the performance of the agreements of the Issuer herein contained, any obligation it may incur for the payment of money shall not be a debt of the Issuer, nor shall the Issuer be liable on any obligation so incurred. The Issuer does not assume general liability for the repayment of the Bond or for the costs, fees, penalties, taxes, interest, omissions, charges, insurance or any other payments recited herein, and shall be obligated to pay the same only out of the amounts payable by the Borrower hereunder. The Issuer shall not be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the Borrower if a default shall occur hereunder.

**Section 8.12. Indenture Provisions.** The Indenture provisions concerning the Bond and the other matters therein are an integral part of the terms and conditions of the Loan made by the Issuer to the Borrower pursuant to this Loan Agreement and the execution of this Loan Agreement shall constitute conclusive evidence of approval of the Indenture by the Borrower to the extent it relates to the Borrower. Additionally, the Borrower agrees that, whenever the Indenture by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Indenture, and the Borrower hereby agrees to carry out and perform all of its obligations under the Indenture as fully as if the Borrower were a party to the Indenture.

**Section 8.13. Third Party Beneficiary.** The Issuer and the Borrower hereby agree that the Trustee and, with respect to Sections 4.9 and 7.2 hereof and any other consent right herein given to the Investor Member, the Investor Member are third party beneficiaries to this Loan Agreement.

**Section 8.14. Payment.** At such time as the principal of, premium, if any, and interest on all Bond outstanding under the Indenture shall have been paid, or shall be deemed to be paid in accordance with the Indenture, and all other sums payable by the Borrower under this Loan Agreement and the Indenture shall have been paid, the Loan shall be deemed to be fully paid, and the Borrower upon request is entitled to receive acknowledgment of such payment in full from Trustee.

**Section 8.15. Counterparts.** This Loan Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same agreement, and, in making proof of this Loan Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**Section 8.16. Notice of Changes in Fact.** Promptly after the Borrower becomes aware of the same, the Borrower will notify the Trustee of (a) any change in any material fact or

circumstance represented or warranted by the Borrower in this Loan Agreement or in connection with the issuance of the Bond, and (b) any default or event which, with notice or lapse of time or both, could become a default under this Loan Agreement or the Indenture, specifying in each case the nature thereof and what action the Borrower has taken, is taking and proposes to take with respect thereto.

**Section 8.17. No Agency Relationship.** The Borrower agrees that neither the Issuer nor the Trustee is the agent, representative, joint venturer or partner of the Borrower, and without limitation of the foregoing, neither this Loan Agreement nor any other related document shall make the Issuer or the Trustee liable to material suppliers, contractors, craftsmen, laborers or others for goods delivered to or services performed by them upon the Project, or for debts or claims accruing to such parties against the Borrower, and there is no contractual relationship, either expressed or implied between the Issuer or the Trustee and any material suppliers, subcontractors, craftsmen, laborers or any other person supplying any work, labor or materials for the improvement of the Project.

**Section 8.18. Services to Benefit Issuer Only.** Any inspections or other services rendered by the Issuer or on behalf of the Issuer, whether or not paid for by Borrower, shall be rendered solely for the protection and the benefit of the Issuer, as the case may be, and the Borrower or any Bondholder shall not be entitled to claim any loss or damage against the Issuer, or against any agent or employee of either, for failure properly to discharge their duties with respect to such inspections or other services. The Issuer shall not be responsible to the Borrower or any other party for failure to carry out or cause to be carried out or for negligence in carrying out or causing to be carried out, any inspection permitted or required hereunder, nor for failure to notify or protect the Borrower or any other party from any negligence or malfeasance of the Borrower or any other party, whether or not such negligence or malfeasance is (or should have been) actually discovered by any such inspection.

**Section 8.19. Limitation of Liability.** The parties to the Borrower Documents acknowledge and agree that the Investor Member will not have liability to the other parties or to any third party as a general partner or managing member of the Borrower resulting from any action taken by the Investor Member pursuant to the Operating Agreement, unless and until the Investor Member is admitted to the Borrower entity as a managing member.

*[Remainder of this Page Intentionally Left Blank; Signature Page Follows]*

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

**VILLAGE OF DOWNERS GROVE,  
DUPAGE COUNTY, ILLINOIS**  
as Issuer

By: \_\_\_\_\_  
Martin Tully, Mayor

Approved as to form:

By: \_\_\_\_\_  
April Holden, Village Clerk

[SIGNATURE PAGE TO LOAN AGREEMENT –  
SIGNATURES CONTINUED ON NEXT PAGE]

**DOWNERS GROVE SUPPORTIVE LIVING  
FACILITY, LLC,**  
an Illinois limited liability company

By: DOWNERS GROVE SLF, JV, LLC, its  
managing member

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

**EXHIBIT A**

**PROJECT DESCRIPTION**

The Project will be a 120-unit supportive living multifamily housing facility and certain functionally-related improvements located at 4200 – 4240 Lacey Road in Downers Grove, Illinois in a single, to-be-constructed, \_\_\_-story, designed to LEED Certified standards containing \_\_\_ studio apartments and \_\_\_ one bedroom apartments. The \_\_\_\_\_ square foot building will sit on a \_\_\_\_\_ square foot site (\_\_\_ acres) and contain \_\_\_ on-site parking spaces. Approximately \_\_\_\_\_ square feet of community space serving the social and wellness needs of residents are included throughout the building.



**EXHIBIT B**

**NOTE**

**Not to exceed \$20,114,920** \_\_\_\_\_, 2014 \_\_\_\_\_, Illinois

For Value Received, Downers Grove Supportive Living Facility, LLC, an Illinois limited liability company (the "**Borrower**"), promises to pay to the order of the Village of Downers Grove, DuPage County, Illinois (the "**Issuer**"), the principal sum of not to exceed Twenty Million One Hundred Fourteen Thousand Nine Hundred Twenty and 00/100 Dollars (**\$20,114,920**), together with interest on so much thereof as is from time to time outstanding and unpaid, at the rate stated herein. Capitalized terms not otherwise defined herein shall have the meanings assigned thereto in the Indenture (as defined herein).

This Note (the "**Note**") shall bear interest from time to time, at a rate which is equal to the interest accruing on and payable with respect to the Issuer's Multifamily Housing Revenue Bond (Downers Grove Supportive Living Facility), Series 2014, in the aggregate original principal amount of not to exceed **\$20,114,920** (the "**Bond**"), issued under and pursuant to a Trust Indenture, dated as of August 1, 2014 (the "**Indenture**"), between the Issuer and Heartland Bank and Trust Company, as trustee (the "**Trustee**"), which Indenture and Bond are incorporated herein by reference and made a part hereof. Said interest shall be payable monthly commencing September 1, 2014.

The principal of this Note shall be payable on August 1, 2032 or on such earlier dates and in such amounts as the principal becomes due on the Bond pursuant to the Indenture.

This Note also evidences the obligation of the Borrower to pay the other amounts provided for in the Loan Agreement, dated as of August 1, 2014, between the Borrower and the Issuer (the "**Loan Agreement**") and the Indenture as such amounts become due.

If the date when any of the payments required to be made hereunder is not a Business Day, then such payments may be made on the next Business Day with the same force and effect as if made on the nominal due date, and no interest shall accrue for the period after such date.

The Borrower shall have the option to make advance payments of amounts due hereunder, from time to time, which advance payments shall be deposited with the Trustee in the Bond Fund established by the Indenture and shall be applied as provided in the Loan Agreement and the Indenture.

All payments shall be made in coin or currency of the United States of America in immediately available funds at the principal corporate trust office of the Trustee, or at the principal corporate trust office of any successor Trustee.

If the Borrower fails to pay any installment of principal, redemption premium, if any, and interest when due under this Note, or upon the occurrence of any one or more of the Events of Default specified in the Loan Agreement, the Trustee then, or at any time thereafter, may under certain conditions and subject to certain notice and cure rights specified in Article VIII of the

Indenture and Article VII of the Loan Agreement give notice to the Borrower declaring all unpaid amounts then outstanding hereunder or under the Loan Agreement (including all fees), to be due and payable, and thereupon, without further notice or demand, all such amounts shall become and be immediately due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at any time in the event of any continuing or subsequent default.

Except as specifically set forth in the Loan Agreement, the undersigned waives demand, protest, presentment for payment and notice of nonpayment and agrees to pay all reasonable costs of collection when incurred, including reasonable attorneys' fees and expenses, and to perform and comply with each of the covenants, conditions, provisions and agreements of the undersigned contained in every instrument evidencing or securing the indebtedness evidenced hereby. No extension of the time for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability under this Note, either in whole or in part, of the undersigned if not a party to such agreement.

This Note is issued under and is subject to the terms and conditions of the Indenture and Loan Agreement. All terms, conditions, rights and provisions set forth in the Indenture and Loan Agreement are hereby incorporated herein in their entirety including without limitation the provisions of Section 2.5 of the Indenture and Section 4.5 of the Loan Agreement. This Note is secured by a Mortgage and Assignment of Contracts, and any ancillary documents thereto, all of which are of even date herewith.

THE BORROWER ACKNOWLEDGES THAT THE TRANSACTIONS TO WHICH THIS NOTE RELATES ARE COMMERCIAL TRANSACTIONS. THE BORROWER HEREBY VOLUNTARILY AND KNOWINGLY WAIVES ITS RIGHTS TO NOTICE AND HEARING UNDER ANY STATE OR FEDERAL LAW, IN EFFECT ON THE DATE HEREOF, OR AS OTHERWISE ALLOWED BY ANY STATE OR FEDERAL LAW OR PROCEDURAL RULE WITH RESPECT TO ANY PREJUDGMENT REMEDY OR OTHER RIGHT OR REMEDY THAT THE ISSUER MAY ELECT TO USE OF WHICH IT MAY AVAIL ITSELF. THE BORROWER FURTHER WAIVES, TO THE GREATEST EXTENT PERMITTED BY LAW, THE BENEFITS OF ALL PRESENT AND FUTURE VALUATION, APPRAISEMENT, EXEMPTION, STAY, REDEMPTION AND MORATORIUM LAWS. THE BORROWER FURTHER WAIVES ANY REQUIREMENT THAT THE ISSUER OBTAIN A BOND OR OTHER SIMILAR DEVICE IN CONNECTION WITH THE EXERCISE OF ANY REMEDY OR THE ENFORCEMENT OF ANY RIGHT HEREUNDER.

THE PARTIES HERETO WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS LOAN AGREEMENT OR UNDER ANY AGREEMENT, INSTRUMENT OR OTHER DOCUMENT CONTEMPLATED HEREBY OR RELATED HERETO AND IN ANY ACTION DIRECTLY OR INDIRECTLY RELATED TO OR CONNECTED WITH THE OBLIGATIONS OR THIS LOAN AGREEMENT, OR ANY CONDUCT RELATING TO THE ADMINISTRATION OR ENFORCEMENT OF THE OBLIGATIONS OR ARISING FROM THE DEBTOR/CREDITOR RELATIONSHIP OF THE BORROWER AND THE ISSUER. THE BORROWER ACKNOWLEDGES THAT THIS WAIVER MAY DEPRIVE IT OF AN

IMPORTANT RIGHT AND THAT SUCH WAIVER HAS BEEN KNOWINGLY AND VOLUNTARILY MADE BY THE BORROWER.

**IN WITNESS WHEREOF**, the Borrower has caused this Note to be executed and delivered on its behalf on the date first written above.

**DOWNERS GROVE SUPPORTIVE LIVING FACILITY, LLC,**  
an Illinois limited liability company

By: DOWNERS GROVE SLF, JV, LLC, Its:  
Managing Member

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

**ASSIGNMENT**

**THE VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS** (the "Issuer"), hereby irrevocably assigns, without recourse, the foregoing Note (exclusive of the Unassigned Rights of the Issuer) to **HEARTLAND BANK AND TRUST COMPANY**, as trustee under the within-mentioned Indenture, and its successors, as Trustee (the "Trustee") under a Trust Indenture dated as of August 1, 2014 (the "Indenture"), with the Issuer and hereby directs **DOWNERS GROVE SUPPORTIVE LIVING FACILITY, LLC** to make all payments of principal of, and interest thereon directly to the Trustee at its designated office in Chicago, Illinois, or at such other place as the Trustee may direct in writing. Such assignment is made as security for the payment of the Issuer's not to exceed \$20,114,920 Multifamily Housing Revenue Bond, Series 2014 (Downers Grove Supportive Living Facility), issued pursuant to the Indenture.

**VILLAGE OF DOWNERS GROVE,  
DUPAGE COUNTY, ILLINOIS**

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

**EXHIBIT C**  
**CONSTRUCTION BUDGET**

**EXHIBIT D**

**CONSTRUCTION AND ACQUISITION FUND REQUISITION**

**To:** Heartland Bank and Trust Company

**From:** Downers Grove Supportive Living Facility, LLC

**Re:** Village of Downers Grove, DuPage County, Illinois Multifamily Housing Revenue Bond (Downers Grove Supportive Living Facility), Series 2014

**Requisition No.:** No. \_\_\_\_\_ – Construction and Acquisition Fund

The undersigned, on behalf of Downers Grove Supportive Living Facility, LLC (the "**Borrower**"), hereby requests payment, from the Bond Proceeds Account of the Construction and Acquisition Fund for the Project identified above, the total amount shown below as payment or reimbursement for costs incurred or expenditures made in connection with said Project.

\_\_\_\_\_ paid via wire transfer to escrow account for the project held at [Title Company] according to the following instructions and accompanied by architect's approval certificate:

The payee(s), the purpose and the amount of the disbursement requested are as indicated on the attached Owner's Sworn Statement and Statement detailing the costs or expenditures to be paid under this Construction and Acquisition Fund Requisition.

The Borrower hereby certifies as follows: Each obligation mentioned herein has been properly incurred and is a proper charge against the Construction and Acquisition Fund. None of the items for which payment is requested has been reimbursed previously from the Construction and Acquisition Fund, and none of the payments herein requested will result in a breach of the representations and agreements in the Loan Agreement relating to the Project.

None of the costs requested constitute Costs of Issuance in accordance with the Loan Agreement.

Dated: \_\_\_\_\_, 20\_\_

**DOWNERS GROVE SUPPORTIVE LIVING FACILITY, LLC,**  
an Illinois limited liability company

By: DOWNERS GROVE SLF, JV, LLC, its  
managing member

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

Approved:

\_\_\_\_\_, as Investor Member

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

Approved:

\_\_\_\_\_, as Construction Monitor

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

**EXHIBIT E**

**VIOLATIONS OF ENVIRONMENTAL REGULATIONS**

None



**EXHIBIT F**

**EXCEPTIONS TO QUALIFIED RESIDENTIAL RENTAL PROJECT**

None

**EXHIBIT G**

**COPY OF REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE  
COVENANTS**

See Attached

**EXHIBIT H**

**SCHEDULE A**

**FUNDS OR ACCOUNTS AS ESTABLISHED BY INDENTURE**

Except as set forth herein, on or before the Issuance Date, the Borrower shall cause the following amounts to be deposited into the funds and accounts set forth below:

<b><u>Account</u></b>	<b><u>Amount</u></b>
Bond Fund	\$ _____
Capitalized Interest Account	
Cost of Issuance Fund	\$ _____
Construction and Acquisition Fund	\$ _____
Bond Proceeds Account	
Project Fund	\$ _____
Operating Expense Account	
 <u>[From Borrower Funds:</u>	
Project Costs	\$ _____]
(deposited with Title Company)	

The Borrower also agrees that, following the Issuance Date,

The Initial Lease-Up Reserve Fund shall be funded in whole in the amount of \$250,000 from the second capital contribution to be made by the Investor Member upon receipt of the last certificate of occupancy for the Project, achievement of “placed in service” status for the building in the Project, receipt of all permits and approvals required for the operation of the Project and satisfaction of the other Operating Agreement requirements (but not before July 1, 2015).

The Insurance/Tax Account shall be funded in whole in the amount of \$110,000 from the second capital contribution to be made by the Investor Member from the second capital contribution to be made by the Investor Member upon receipt of the last certificate of occupancy for the Project, achievement of “placed in service” status for the building in the Project, receipt of all permits and approvals required for the operation of the Project and satisfaction of the other Operating Agreement requirements (but not before July 1, 2015).

The Replacement Reserve Account shall be funded in whole in the amount of \$45,000 from the second capital contribution to be made by the Investor Member from the second capital contribution to be made by the Investor Member upon receipt of the last certificate of occupancy for the Project, achievement of “placed in service” status for the building in the Project, receipt of all permits and approvals required for the operation of the Project and satisfaction of the other Operating Agreement requirements (but not before July 1, 2015).

**[The Medicaid Receivables Cash Flow Fund shall be funded in whole in the amount of \$1,185,000 from the second capital contribution to be made by the Investor Member upon receipt of the last certificate of occupancy for the Project, achievement of “placed in service” status for the building in the Project, receipt of all permits and approvals required for the operation of the Project and satisfaction of the other Operating Agreement requirements (but not before July 1, 2015).]**

The Operating Reserve Fund shall be funded in whole in the amount of \$740,000 from the third capital contribution to be made by the Investor Member upon “Rental Achievement” (i.e., a period of four consecutive months of at least 90% economic occupancy of the Project and a debt coverage ratio of 1.35 based on annualized maximum principal and interest requirements on the Bond and a minimum vacancy requirement of 7.0%) and satisfactory completion of all other Operating Agreement requirements (but not before April 1, 2016).

**SCHEDULE B**

**PRO FORMA TITLE POLICY**

See attached Pro Forma Title Policy

Recording Requested By and  
When Recorded Send to:  
Ice Miller LLP  
200 West Madison Street  
Suite 3500  
Chicago, Illinois 60606  
Attention: James Snyder

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**REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

by and among

**DOWNERS GROVE SUPPORTIVE LIVING FACILITY, LLC,**  
an Illinois limited liability company

and

**HEARTLAND BANK AND TRUST COMPANY,**  
as Trustee

and

**VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS**  
a municipal corporation and home rule unit of local government duly organized and existing  
under the laws of the State of Illinois

Relating to:

**not to exceed  
\$20,114,920**

**VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS  
MULTIFAMILY HOUSING REVENUE BOND  
(DOWNERS GROVE SUPPORTIVE LIVING FACILITY), SERIES 2014**

Dated as of August 1, 2014

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**REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

This REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, dated as of August 1, 2014 (this “**Agreement**”), is entered into by and among DOWNERS GROVE SUPPORTIVE LIVING FACILITY, LLC, an Illinois limited liability company, and any approved successor or assignee to its rights and obligations (the “**Borrower**”), HEARTLAND BANK AND TRUST COMPANY, [an Illinois state banking corporation] having its principal corporate trust office in Chicago, Illinois, as trustee (the “**Trustee**”) under the Indenture (as defined in this Agreement), and the VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS, a municipal corporation and a home rule unit of local government duly organized and existing under the laws of the State of Illinois (the “**Issuer**”) under the circumstances summarized in the following recitals.

**W I T N E S S E T H:**

**WHEREAS**, pursuant to the provisions of Section 6 of Article VII of the Illinois Constitution of 1970 and the Downers Grove Revenue Bond Ordinance constituting Chapter 27 of the Downers Grove Municipal Code (the “**Act**”), the Issuer has authorized the issuance of its Multifamily Housing Revenue Bond (Downers Grove Supportive Living Facility), Series 2014, in the aggregate principal amount of not to exceed \$20,114,920 (the “**Bond**”), in order to finance a portion of the costs of acquiring, constructing and equipping the Development (as defined below) and to pay certain costs of issuing the Bond; and

**WHEREAS**, pursuant to a Loan Agreement, dated as of August 1, 2014, between the Issuer and the Borrower (as amended, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), the proceeds of the Bond will be loaned (the “**Loan**”) by the Issuer to the Borrower to (i) fund the Bond Proceeds Account of the Construction and Acquisition Fund to finance all or a portion of the costs of the acquisition of land located at 4200 – 4240 Lacey Road, Downers Grove, Illinois, within the territorial jurisdiction of the Issuer and legally described on *Exhibit A* to this Agreement (the “**Real Estate**”), and all or a portion of the costs of acquisition, renovation and furnishing of a 120-unit supportive living multifamily housing facility and certain functionally-related improvements (the “**Project**”; the Real Estate and the improvements on the Real Estate related to the housing development are referred to in this Agreement as the “**Development**”); (ii) fund the Debt Service Reserve Fund Requirement; (iii) pay capitalized interest; and (iv) pay certain costs of issuance of the Bond; and

**WHEREAS**, in connection with the Loan, the Borrower has agreed to rent or lease at least 40% of the dwelling units in the Development to families or individuals whose income is 60% or less of area median gross income, all for the public purpose of assisting persons of low and moderate income to afford the costs of decent, safe and sanitary housing; and

**WHEREAS**, the Code and the Regulations (as those terms are defined below) prescribe that the use and operation of the Development be restricted in certain respects in order to assure the continuing tax-exempt status of the interest on the Bond, and in order to ensure that

the Development will be acquired, constructed, used and operated in accordance with such requirements of the Code, the Regulations and the Act, the Trustee, the Issuer and the Borrower have determined to enter into this Agreement in order to set forth certain terms and conditions relating to the acquisition, construction, occupancy, use and operation of the Development.

**NOW, THEREFORE**, in consideration of the Loan and the mutual covenants and undertakings set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties covenant, agree and declare as follows:

**Section 1. Definitions and Interpretations.** Except as otherwise defined in this Agreement, the terms used in this Agreement, including its preambles and recitals, shall for all purposes have the meanings specified in the preceding language of this Agreement or Article I of the Trust Indenture, dated as of August 1, 2014, between the Issuer and the Trustee, pursuant to which the Bond is being issued (as amended, restated, supplemented or otherwise modified from time to time, the “**Indenture**”), or Article I of the Loan Agreement, unless the context clearly requires otherwise. In addition, unless the context clearly requires otherwise, the following terms used in this Agreement shall have the following meanings:

“**Borrower**” means the Borrower defined in the first paragraph of this Agreement, or the Person or Persons who shall succeed to the ownership of all or any part of the Development in accordance with the provisions of the Loan Agreement.

“**Certificate of Continuing Program Compliance**” means the certificate from the Borrower in substantially the form and covering the matters set forth in *Exhibit C* to this Agreement.

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

“**Low and Moderate Income Tenants**” means and includes individuals or families with adjusted income, calculated in the manner prescribed in Regulation Section 1.167(k)-3(b)(3) as it shall be in effect on the date on which the Bond is issued (or, if not issued on the same date, the earliest issuance date of the Bond), which does not exceed sixty percent (60%) of the median gross income for the area in which the Development is located, determined in a manner consistent with determinations of median gross income made under the leased housing program established under Section 8 of the United States Housing Act of 1937, as amended, or, if that program is terminated, under that program as in effect immediately before termination. That determination shall include adjustments for family size. In no event, however, will the occupants of a unit of the Development be considered to be Low and Moderate Income Tenants if all the occupants are students, no one of whom is entitled to file a joint return for federal income tax purposes.

“**Person**” means natural persons, firms, partnerships, associations, corporations, limited liability companies, trusts and public bodies.

“**Qualified Development Period**” means the period beginning on the date on which ten percent (10%) of the units in the Development are first occupied and ending on the latest of the date (i) which is fifteen (15) years after the date on which at least fifty percent (50%)

of the residential units in the Development are occupied, (ii) which is the first date on which no tax-exempt private activity bond issued with respect to the Development is outstanding, or (iii) on which any assistance presently provided with respect to the Development under Section 8 of the United States Housing Act of 1937, as amended, terminates.

“**Regulations**” means the United States Treasury Regulations promulgated with respect to the Code.

“**Tenant Income Certificate**” means a sworn and notarized certificate in substantially the form and covering the matters set forth in *Exhibit B* to this Agreement or another form of certificate as may be utilized from time to time by the Illinois Housing Development Authority for the annual income certificate of tenants under Section 142 of the Code.

The rules of interpretation set forth in Section 13.8 of the Indenture shall apply equally to this Agreement. This Agreement and all of its terms and provisions shall be construed to effectuate the purposes set forth in and to sustain the validity of this Agreement.

**Section 2. The Development to be Residential Rental Property.** The Borrower represents, agrees, covenants and warrants as follows:

(a) The Development is being acquired and constructed for the purpose of providing a “qualified residential rental project,” within the meaning of the Code. The Borrower will own, manage and operate the Development as a “residential rental project” comprised of residential units and facilities functionally related and subordinate to them, in accordance with Section 142(d) of the Code and Section 1.103-8(b)(4) of the Regulations, as the same may be amended from time to time, to the extent applicable to the Bond. Upon the completion of the construction, the Development will consist of a 120-unit supportive living multifamily housing facility and certain functionally-related improvements located on the Real Estate. The Development will consist of one building containing residential units and functionally related and subordinate facilities of a size and character commensurate with the size and character of the residential units, as provided in the Regulations. Acquisition, construction and equipping of the residential units and the functionally related and subordinate facilities are being funded in part by the Bond. The building, when completed, will be discrete edifices or other person-made constructions with (i) independent foundations, (ii) independent outer walls, and (iii) independent roofs, containing similarly constructed units.

(b) Each residential unit in the Development does and shall contain separate and complete facilities for living, sleeping, eating, cooking and sanitation.

(c) None of the residential units in the Development are or shall at any time be used on a transient basis and no portion of the Development shall ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer park or court. No part of the Development is or will be used as an airplane, a skybox or other luxury box, a health club facility, a facility primarily used for gambling, or a store the principal business of which is the sale of alcoholic beverages for

consumption off-premises. No part of the Development is or will at any time be owned by a cooperative housing corporation or other form of cooperative ownership.

(d) The Borrower shall not give preference in renting residential units in the Development to any particular class or group of persons, other than as required by the Issuer or to comply with HOME regulations, to Low and Moderate Income Tenants as provided in this Agreement, to comply with eligibility standards in place as a result of the fact that the Development shall operate as required by law.

(e) At no time shall the Borrower occupy a residential unit in the Development, *provided* that a Person employed by the Borrower to assist in the management of the Development who has no ownership or other interest in the Borrower may occupy a residential unit.

(f) Any functionally related and subordinate facilities (*e.g.*, parking garages or other areas, swimming pools, tennis courts, etc.) which are to be included as part of the Development will be made available to all tenants on an equal basis. Fees will only be charged with respect to the use of those facilities if the charging of fees is customary for the use of such facilities and, in any event, any fees charged will not be discriminatory or exclusionary as to the Low and Moderate Income Tenants.

### **Section 3. Continuous Rental.**

(a) The Borrower represents, covenants, agrees and warrants that at all times during the Qualified Development Period, each unit in the Development will be rented or available for rental to members of the general public on a continuous basis, except as allowed by Section 2 above, and that it will not grant any commercial leases or permit commercial uses for any space in the Development, unless the Trustee is provided with an opinion of Bond Counsel, which opinion is acceptable to the Trustee, that the lease or use will not adversely affect the exclusion of interest on the Bond from gross income of its holder for federal income tax purposes.

(b) The Borrower shall not make any change in use of any portion of the Development except upon approval of the Issuer or upon receipt by the Trustee of an opinion of Bond Counsel, acceptable to the Trustee, that the change will not adversely affect the exclusion of interest on any of the Bond from gross income of its holder for federal income tax purposes.

**Section 4. Low and Moderate Income Tenants.** To the end of satisfying the requirements of Section 142(d)(2)(B) of the Code and related Regulations relating to individuals of low and moderate income during the Qualified Development Period, the Borrower represents, covenants, agrees and warrants as follows:

(a) At all times during the Qualified Development Period, at least forty percent (40%) of the completed residential units shall be occupied by Low and Moderate Income Tenants. For purposes of satisfying that requirement, a unit occupied by an individual or family who at the commencement of occupancy is a Low and Moderate Income Tenant shall be treated as occupied by such an individual or family during their tenancy in such unit, even though that

individual or family subsequently ceases to be a Low and Moderate Income Tenant. The preceding sentence shall, however, cease to apply to any resident whose income as of the most recent determination exceeds one hundred forty percent (140%) of the sixty percent (60%) income limitation amount if, after such determination, but before the next determination, any residential unit of comparable or smaller size in the Development is occupied by a new resident whose income exceeds that sixty percent (60%) limitation. A unit treated as occupied by a Low and Moderate Income Tenant shall be treated as occupied after it is vacated until reoccupied (other than for a temporary period not to exceed 31 days), at which time the character of the unit shall be redetermined.

(b) If necessary, the Borrower shall refrain from renting residential units to persons other than Low and Moderate Income Tenants in order to avoid violating the requirement that at all times during the Qualified Development Period at least forty percent (40%) of the occupied residential units in the Development shall be occupied by Low and Moderate Income Tenants.

(c) The Borrower shall determine annually the current income of each tenant treated as a Low and Moderate Income Tenant.

(d) The Borrower shall obtain a Tenant Income Certificate with respect to each occupant in the Development who is intended to be a Low and Moderate Income Tenant signed by the tenant or tenants (*i.e.*, the person or persons whose names appear on the lease). The Borrower shall obtain such a Tenant Income Certificate prior to such tenant or tenants signing a lease with respect to a unit and commencing occupancy in it and also shall obtain such a Tenant Income Certificate for each subsequent year the tenant lives in the Development, signed by such person or persons and obtained at such time or times, all as may be required by applicable rules, rulings, procedures, official statements, regulations or policies now or later promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 142(d) of the Code. The Borrower shall maintain on file all Tenant Income Certificates.

(e) The Borrower shall prepare and submit to the Trustee and the Issuer on or before the first day of each March, June, September and December of each year during the Qualified Development Period, a Certificate of Continuing Program Compliance executed by an Authorized Borrower Representative.

(f) The Borrower shall submit to the Secretary of the Treasury an annual certification as to whether the Development continues to meet the low and moderate income occupancy requirements set forth in the Code. Failure to comply with the requirements set forth in the preceding sentence shall not constitute a default under this Agreement, but may subject the Borrower to a penalty as provided in Section 6652(j) of the Code.

**Section 5. Tenants and Tenant Leases.** In addition to the requirements contained in other Sections of this Agreement, the Borrower represents, covenants, agrees and warrants as follows:

(a) All tenant lists, applications, certificates and waiting lists relating to the Development shall at all times be kept separate and identifiable from any other business of the Borrower which is unrelated to the Development and shall be maintained in a reasonable condition for proper audit and subject to examination during business hours by representatives of the Issuer or Trustee. Failure to keep such lists and applications or to make them available to the Issuer or the Trustee shall be a default under this Agreement.

(b) Each tenant lease for a Low and Moderate Income Tenant shall require the tenant to submit annual Tenant Income Certificates and to provide further information as the Borrower may reasonably require concerning such a Tenant Income Certificate, and shall provide that a failure to comply with these requirements or the filing of a false Tenant Income Certificate shall be a violation of a substantial obligation of his or her tenancy. The provisions of this Section 5 shall apply throughout the Qualified Development Period.

**Section 6. Transfer Restrictions.** During the Qualified Development Period, the Borrower shall not do any of the following: sell, transfer, assign, convey, change title to or otherwise dispose of the Development (a “**Transfer**”), in whole or in part, unless: (1) the purchaser or assignee shall execute any necessary or appropriate document reasonably requested by the Trustee with respect to assuming its obligations under this Agreement and the Loan Agreement (the “**Assumption Agreement**”), which document shall be recorded in the DuPage County Recorder’s Office; (2) the Trustee or the Issuer shall have received an opinion of Bond Counsel, which opinion is acceptable to such recipient, to the effect that such transfer will not adversely affect the exclusion of interest on the Bond from gross income of its holder for purposes of federal income taxation; (3) the Borrower shall deliver to the Trustee and the Issuer an opinion of counsel to the transferee that the transferee has duly assumed the obligations of the Borrower under this Agreement and that such obligations and this Agreement are binding on the transferee; and (4) such other conditions are met as are set forth in or referred to in the Loan Agreement or as the Trustee or the Issuer may reasonably impose (upon advice of Bond Counsel) as part of the Assumption Agreement to protect the exclusion from gross income of interest on the Bond for federal income tax purposes.

**Section 7. Tax-Exempt Status of the Bond.** The Borrower, the Issuer and the Trustee each represent, agree and warrant that to the best of their ability and knowledge:

(a) It will not take or permit, or omit to take or cause to be taken, as is appropriate, any action that would adversely affect the exclusion of the interest on the Bond from the gross income of its holder for federal income tax purposes and, in particular, the Borrower will not permit any Person to obtain an ownership interest in the Borrower unless, upon advice of Bond Counsel, the Trustee or the Issuer concludes that the exclusion of the interest on the Bond from gross income for federal income tax purposes is not adversely affected by such Person obtaining such ownership interest. If it should take or permit, or omit to take or cause to be taken, any such action, it will take all lawful actions necessary to rescind or correct such actions or omissions promptly upon obtaining knowledge of them.

(b) It will take such action or actions as may be necessary, in the written opinion of Bond Counsel filed with the Trustee or the Issuer, to comply fully with all applicable

rules, rulings, policies, procedures, Regulations or other official statements promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service pertaining to obligations the exemption from federal income taxation of interest on which depends upon continuing compliance with Section 142(d) of the Code and the Regulations under that Section.

(c) It will file or record such documents and take such other steps as are necessary, in the written opinion of Bond Counsel filed with the Trustee or the Issuer, in order to ensure that the requirements and restrictions of this Agreement will be binding upon all owners of the Development.

**Section 8. Notice of Noncompliance; Corrective Action.** As soon as is reasonably possible, the Borrower shall notify the Trustee and the Issuer of the existence of any situation or the occurrence of any event of which the Borrower has knowledge, the existence or occurrence of which would violate any of the provisions of this Agreement or cause the interest on the Bond to become includable in gross income of its holder for federal income tax purposes unless promptly corrected. The Trustee shall promptly notify the Issuer of such event or situation upon receipt of notice from the Borrower. The Borrower covenants to commence appropriate corrective action within a reasonable period of time, but in no event later than thirty (30) days after such noncompliance is first discovered or should have been discovered by the exercise of reasonable diligence.

**Section 9. Reliance; Compliance.** The Borrower recognizes and agrees that the representations, warranties, agreements and covenants set forth in this Agreement may be relied upon by all Persons interested in the legality and validity of the Bond and in the exclusion of the interest on the Bond from gross income of their holders for federal income tax purposes. In performing their respective duties and obligations under this Agreement, the Trustee and the Issuer may rely upon statements and certificates of the Borrower and tenants, and upon audits of the books and records of the Borrower pertaining to the Development. In addition, the Trustee may consult with counsel, and the written opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Trustee under this Agreement in good faith and in conformity with such opinion.

**Section 10. Non-discrimination.** The Borrower shall not, in the selection of tenants, in employment, in the provision of services or in any other manner, discriminate against any person on the ground of race, color, national origin, religion, creed, sex, handicap, family status or marital status or by reason of the fact that there are children in a prospective tenant's family.

**Section 11. Term.** This Agreement shall become effective upon its execution and delivery. Unless the Trustee and the Issuer shall have received a written opinion of Bond Counsel addressed to such party to the effect that early termination of this Agreement will not adversely affect the exclusion of the interest on all of the Bond from gross income of its holder for federal income tax purposes, this Agreement shall remain in full force and effect for a term equal to the Qualified Development Period, it being expressly agreed and understood that the provisions of this Agreement are intended to survive the retirement of the Bond and expiration of the Indenture and the Loan Agreement. Notwithstanding the immediately preceding sentence,



this Agreement, and all and several of the terms of it, shall terminate and be of no further force and effect in the event of (x) involuntary noncompliance with the provisions of this Agreement caused by fire, seizure, requisition, foreclosure or delivery of a deed in lieu of foreclosure, change in a federal law or an action of a federal agency after the date of this Agreement which prevents the Trustee or the Issuer from enforcing the requirements of this Agreement, condemnation or other similar event and (y) the payment in full and retirement of the Bond within a reasonable period after that event. However, the preceding sentence shall cease to apply and the restrictions contained in this Section shall be automatically reinstated if, at any time subsequent to the foreclosure or the delivery of a deed in lieu of foreclosure or similar event, the Borrower or any “related person” (within the meaning of Section 147 of the Code), obtains an ownership interest in the Development for federal income tax purposes. Upon the termination of all and several of the terms of this Agreement, the parties agree to execute, deliver and record appropriate instruments of release and discharge of the terms of this Agreement. However, the execution and delivery of such instruments shall not be a necessary prerequisite to the termination of this Agreement in accordance with its terms.

**Section 12. Covenants to Run With the Development.** The Borrower subjects the Development to the covenants, reservations and restrictions set forth in this Agreement. The Borrower declares its express intent that the covenants, reservations and restrictions set forth in this Agreement shall be deemed covenants running with the Real Estate and the Development to the extent permitted by law and shall pass to and be binding upon the successors in title to the Development throughout the term of this Agreement. Each and every contract, deed, mortgage, assignment, sub-lease or other instrument executed covering or conveying the Development or any portion of it shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

**Section 13. Enforcement.** If the Borrower defaults in the performance or observation of any covenant, agreement or obligation of the Borrower set forth in this Agreement, and if such default remains uncured for a period of thirty (30) days after written notice of the default shall have been given to the Borrower and the Investor Member by the Issuer or the Trustee, then the Issuer, or the Trustee, acting on behalf of the Bondholders or on behalf of the Issuer, shall declare an “Event of Default” to have occurred, and, at its option, may take any one or more of the following steps:

(a) by mandamus or other suit, action or proceeding at law or in equity, including injunctive relief, require the Borrower to perform its obligations and covenants under this Agreement or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee under this Agreement;

(b) have access to and inspect, examine and make copies of all the books and records of the Borrower pertaining to the Development; or

(c) take such other action at law or in equity as may appear necessary or desirable to specifically enforce, or prohibit violations of, the obligations, covenants and agreements of the Borrower under this Agreement.

The Trustee shall have the right, in accordance with this Section and the provisions of the Indenture, without the consent, approval or knowledge of the Issuer or any Person to exercise any or all of the rights or remedies under this Agreement. All reasonable fees, costs and expenses of the Trustee incurred in taking any action pursuant to this Section shall be the sole responsibility of the Borrower.

Notwithstanding the preceding paragraph, if the failure stated in the written notice cannot be corrected within such thirty (30) day period, the Trustee may consent in writing to an extension of such time period, which consent shall not be unreasonably withheld, if corrective action is instituted within such thirty (30) day period and diligently pursued to completion and if such extension does not, in the Trustee's judgment, in reliance on an Opinion of Bond Counsel, adversely affect the interests of the Bondholders.

The Investor Member shall have all of the same cure rights with respect to a default under this Agreement as it has under the terms of the Loan Agreement.

**Section 14. Bankruptcy.** In the case of an involuntary petition, action or proceeding for an adjudication in bankruptcy, or for the appointment of a receiver or trustee of the property of the Borrower or any other owner of the Development, not initiated by the Borrower or any other owner of the Development, the Borrower or such other owner of the Development shall have ninety (90) days after the service of such petition or the commencement of such action or proceeding, as the case may be, within which to obtain a dismissal of such petition, action or proceeding.

**Section 15. Recording and Filing.** The Borrower shall cause this Agreement and all amendments and supplements to it to be recorded and filed in the conveyance and real property records of DuPage County, Illinois. The Borrower shall pay all fees and charges incurred in connection with any such recording.

**Section 16. Indemnification.** The Borrower shall be required and agrees to pay, indemnify and hold the Trustee, the Issuer and its respective officers, officials and employees (except for claims arising out of acts or omissions of the Trustee or the Issuer, as applicable, resulting from its gross negligence or willful misconduct) harmless from, any and all loss, damage, cost, expense, suit, judgment, action, injury or liability which they, or any of them, may suffer or incur (including, without limitation, any costs, fees and expenses, including attorneys' fees, costs and expenses) by reason of any violation of the restrictions or provisions of this Agreement.

**Section 17. Agent of the Trustee.** The Trustee shall have the right to appoint an agent or administrator to carry out any of its duties and obligations under this Agreement, and shall inform the other parties to this Agreement of any such agency appointment by written notice.

**Section 18. No Conflict With Other Documents.** The Borrower warrants that it has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions of this Agreement, and that, in any event and except to the extent expressly provided in this Agreement, the requirements of this Agreement are paramount and controlling as to the rights and obligations in this Agreement set forth and supersede any other requirements in conflict with this Agreement.

**Section 19. Interpretation.** Any terms not defined in this Agreement, or defined as provided in this Agreement, shall have the same meaning as terms defined for purposes of Section 142(d) of the Code and in the Regulations.

**Section 20. Amendments.** This Agreement shall be amended only by a written instrument executed by the parties to it or their successors in title, and duly recorded in the real property records of DuPage County, Illinois, the county in which the Development is located. The Borrower shall pay all fees and charges incurred in connection with any such recording.

No amendment to this Agreement concerning matters governed by the Code or the Regulations shall be effective unless there shall have been filed with the Issuer and the Trustee a written opinion of Bond Counsel to the effect that (a) such amendment will not cause or result in interest on the Bond becoming includable in gross income of its holder for federal income tax purposes, and (b) compliance with the terms and provisions of the Agreement, as so amended, will be sufficient to ensure full compliance with the requirements of Section 142(d) of the Code and all then-applicable rules, rulings, policies, procedures, portions of the Regulations, or other statements promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service pertaining to obligations the exclusion of interest from gross income on which depends on continuing compliance with Section 142(d) of the Code.

**Section 21. Notices.** Any notice, demand or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been given if and when personally delivered and receipted for, or, if sent by private courier service or sent by overnight mail service, shall be deemed to have been given if and when received (unless the addressee refuses to accept delivery, in which case it shall be deemed to have been given when first presented to the addressee for acceptance), or on the first day after being sent by telegram, or on the third day after being deposited in United States registered or certified mail, return receipt requested, postage prepaid. Any such notice, demand or other communication shall be addressed to a party at its address set forth below or to such other address as the party to receive such notice may have designated to all other parties by notice in accordance with this Agreement:

If to the Issuer: Village of Downers Grove  
801 Burlington Ave  
Downers Grove, Illinois 60515  
Attention: Village Manager

With a copy to: []

If to the Borrower: LLC	Downers Grove Supportive Living Facility,  8 South Michigan Ave, 31st Floor Chicago, IL 60603 Attention: Greg Stec
With a copy to:	Michael Fiandaca Law Office 6756 N Harlem Avenue Chicago, IL 60631 Attention: Michael Fiandaca
If to the Trustee:	Heartland Bank and Trust Company  _____ _____ Attention: _____
If to the Investor Member:	[IF ANY] c/o _____ [Address] Attention:
With a copy to:	[Investment Member Counsel] [Address] Attention: [Contact]

**Section 22. Binding Successors.** This Agreement shall bind, and the benefits shall inure to, the respective parties to this Agreement, their legal representatives, executors, administrators, successors in office or interest, and assigns, *provided* that the Borrower may not assign this Agreement or any of its obligations under it without the prior written approval of the Issuer.

**Section 23. Captions.** The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of this Agreement.

**Section 24. Severability.** If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**Section 25. Governing Law.** This Agreement shall be construed in accordance with and governed by the internal laws of the State of Illinois, other than the choice of law rules of the State of Illinois and, where applicable, the laws of the United States of America.

**Section 26. Limited Recourse.** Notwithstanding any provisions of this Agreement to the contrary, enforcement of the provisions of this Agreement shall not result in any claim against the Development, the Loan or Loan proceeds in connection with the Loan, or the rents or other income from the Development. Notwithstanding any other provision of this Agreement, any monetary obligation created under this Agreement shall not be enforceable personally against the Borrower or any partner or member of the Borrower, their successors and assigns, or against the assets of the Borrower, its successors or assigns.

*[Remainder of this Page Intentionally Left Blank; Signature Page Follows]*

IN WITNESS WHEREOF, the Trustee, the Borrower and the Issuer have each caused this Regulatory Agreement and Declaration of Restrictive Covenants to be duly executed and attested in their respective names by their duly authorized representatives, all as of the day and year first above written.

**VILLAGE OF DOWNERS GROVE,  
DUPAGE COUNTY, ILLINOIS, as Issuer**

By: \_\_\_\_\_  
Its: Mayor

[SEAL]

Attest:

By: \_\_\_\_\_  
Its: Village Clerk

**HEARTLAND BANK AND TRUST COMPANY,  
as Trustee**

By: \_\_\_\_\_  
Authorized Officer

[SEAL]

Attest:

By: \_\_\_\_\_  
Authorized Officer

**DOWNERS GROVE SUPPORTIVE LIVING  
FACILITY, LLC,**

an Illinois limited liability company

By: DOWNERS GROVE SLF, JV, LLC, its  
managing member

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

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

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

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF DUPAGE    )

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, CERTIFY that \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of **DOWNERS GROVE SUPPORTIVE LIVING FACILITY, LLC**, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument as her or his own free and voluntary act and as the free and voluntary act of the limited liability company for the uses and purposes set forth in such instrument.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public  
in and for DuPage County, Illinois

(SEAL)  
My Commission Expires:

\_\_\_\_\_



**STATE OF ILLINOIS     )**  
**) SS.**  
**COUNTY OF DUPAGE     )**

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, CERTIFY that \_\_\_\_\_, personally known to me to be the Mayor of the **VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS**, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument as his own free and voluntary act and as the free and voluntary act of the Authority for the uses and purposes set forth in such instrument.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public  
in and for DuPage County, Illinois

(SEAL)  
My Commission Expires:

\_\_\_\_\_

**STATE OF ILLINOIS     )**  
**) SS.**  
**COUNTY OF DUPAGE     )**

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, CERTIFY that \_\_\_\_\_, personally known to me to be a \_\_\_\_\_ of Heartland Bank and Trust Company, as Trustee, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered the foregoing instrument as her or his own free and voluntary act and as the free and voluntary act of the Trustee for the uses and purposes set forth in such instrument.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public  
in and for DuPage County, Illinois

(SEAL)  
My Commission Expires:

\_\_\_\_\_

**Legal Description**

[INSERT LEGAL DESCRIPTION]

P.I.Ns: [INSERT PINS]

**FORM OF TENANT INCOME CERTIFICATE**

**ANNUAL INCOME CERTIFICATION/RECERTIFICATION  
(TO BE COMPLETED BY OWNER/MANAGEMENT)**

**TENANT INCOME CERTIFICATION**  
 Initial Certification     Recertification     Other \_\_\_\_\_

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

Move-in Date: \_\_\_\_\_  
(MM/DD/YYYY)

**PART I - DEVELOPMENT DATA**

Property Name: \_\_\_\_\_ TC #: \_\_\_\_\_  
 BIN #: \_\_\_\_\_ County : \_\_\_\_\_ Unit Number: \_\_\_\_\_ # Bedrooms: \_\_\_\_\_

**PART II. HOUSEHOLD COMPOSITION**

	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	F/T Student (Y or N)	Social Security or Alien Reg. No.
			HEAD			

**PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)**

	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
	\$	\$	\$	\$
Add totals from (A) through (D), above				TOTAL INCOME (E):
				\$

**PART IV. INCOME FROM ASSETS**

	(F) Type of Asset	(H) Cash Value of Asset	(I) Annual Income from Asset

TOTALS:			\$	\$
Enter Column (H) Total		Passbook Rate		
2.00%		If over \$5000	\$ _____ X	
Enter the greater of the total of column I, or J: imputed income		= (J) Imputed Income		\$
<b>(K)</b>		<b>TOTAL INCOME FROM ASSETS</b>		\$
(L) Total Annual Household Income from all Sources [Add (E) + (K)]				\$

**PART V. DETERMINATION OF INCOME ELIGIBILITY**

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES: From item (L) on page 1 \$ <span style="border: 1px solid black; display: inline-block; width: 100px; height: 20px; vertical-align: middle;"></span>	Household Meets Income Restriction at: <input type="checkbox"/> 60% <input type="checkbox"/> 50% <input type="checkbox"/> 40% <input type="checkbox"/> 30% <input type="checkbox"/> Other ____%	<b>RECERTIFICATION ONLY:</b> Current Income Limit x 140%: \$ _____ Household Income exceeds 140% at recertification: <input type="checkbox"/> Yes <input type="checkbox"/> No
Current Income Limit per Family Size: \$ _____	Household Income At Move-in: \$ _____	Household Size at Move-in: _____

**PART VI. RENT**

Tenant Paid Rent \$ _____ Utility Allowance \$ _____	Rent Assistance: \$ _____ Other non-optional charges: \$ _____	
\$ <span style="border: 1px solid black; display: inline-block; width: 100px; height: 20px; vertical-align: middle;"></span> GROSS RENT FOR UNIT: plus Utility Allowance & other non-optional charges)	Unit Meets Rent Restriction at: <input type="checkbox"/> 60% <input type="checkbox"/> 50% <input type="checkbox"/> 40% <input type="checkbox"/> 30% <input type="checkbox"/> __%	
Maximum Rent Limit for this unit: \$ _____ (as of recertification effective date)		

**PART VII. STATUS**

ARE ALL OCCUPANTS FULL TIME STUDENTS?    If yes, Enter student explanation\* (also attach documentation)

yes                       no

\*Student Explanation:  
 1 TANF assistance  
 2 Job Training Program  
 3 Single parent/dependent child  
 4 Married/joint return

Enter 1-4

**PART VIII. PROGRAM TYPE**

Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification.

a. Tax Credit <input type="checkbox"/> See Part V above.	b. HOME <input type="checkbox"/> <i>Income Status</i> <input type="checkbox"/> ≤ 50% AMGI <input type="checkbox"/> ≤ 60% AMGI <input type="checkbox"/> ≤ 80% AMGI <input type="checkbox"/> OI**	c. Tax Exempt <input type="checkbox"/> <i>Income Status</i> <input type="checkbox"/> 50% AMGI <input type="checkbox"/> 60% AMGI <input type="checkbox"/> 80% AMGI <input type="checkbox"/> OI**	d. AHDP <input type="checkbox"/> <i>Income Status</i> <input type="checkbox"/> 50% AMGI <input type="checkbox"/> 80% AMGI <input type="checkbox"/> OI**	e. Other _____ <input type="checkbox"/> (Name of Program) <i>Income Status</i> <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> OI**
---	--	--	---	---

\*\* Upon recertification, household was determined over-income (OI) according to eligibility requirements of the program(s) marked above.



**FORM OF CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

The undersigned, the \_\_\_\_\_ of Downers Grove Supportive Living Facility, LLC, an Illinois limited liability company (the “**Borrower**”), has read and is thoroughly familiar with the provisions of the various Bond Documents associated with the Borrower’s participation in the financing by the Village of Downers Grove, DuPage County, Illinois (the “**Issuer**”) of the acquisition of land and construction thereon, and equipping of the Downers Grove Supportive Living Facility, such documents including:

1. the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of \_\_\_\_\_ 1, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the “**Regulatory Agreement**”), by and among the Borrower, the Issuer and Heartland Bank and Trust Company, as Trustee (the “**Trustee**”);
2. the Loan Agreement, dated as of \_\_\_\_\_ 1, 2014, between the Issuer and the Borrower;

As of the date of this Certificate of Continuing Program Compliance (the “**Certificate**”), the following number of residential units in the Development (i) are occupied by Low and Moderate Income Tenants (as such term is defined in the Regulatory Agreement) or (ii) were previously occupied by Low and Moderate Income Tenants and have been vacant and not reoccupied except for a temporary period of no more than 31 days, as indicated:

Number of units occupied by Low and Moderate Income Tenants	_____
Number of units previously occupied by Low and Moderate Income Tenants (vacated and not reoccupied except for a temporary period of no more than 31 days)	_____
Total Number of Low and Moderate Income Tenant Units	_____
The total number of occupied residential units in the Development is	_____

Except as otherwise defined in this Certificate, the terms used in this Certificate shall for all purposes have the meanings specified in the Trust Indenture dated as of \_\_\_\_\_ 1, 2014 between the Issuer and the Trustee.

\_\_\_\_\_  
\* The number of Low and Moderate Income Tenants shown above is \_\_\_% of the total number of occupied units.



The undersigned certifies that the Borrower is not in default under any of the terms and provisions of the above documents.

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

	<p><b>DOWNERS GROVE SUPPORTIVE LIVING FACILITY, LLC,</b> an Illinois limited liability company</p> <p>By: _____, an _____ corporation, its managing member</p> <p>By: _____ _____, President</p>

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**TRUST INDENTURE**

By and Between

**VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS**  
as Issuer

and

**HEARTLAND BANK AND TRUST COMPANY,**  
as Trustee

Relating to:

**Not to exceed**

**\$20,114,920**

**VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS**  
**MULTIFAMILY HOUSING REVENUE BOND**  
**(DOWNERS GROVE SUPPORTIVE LIVING FACILITY), SERIES 2014**

Dated as of August 1, 2014

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## TRUST INDENTURE

THIS TRUST INDENTURE, dated as of August 1, 2014 (this "**Indenture**"), by and between the VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS (the "**Issuer**"), a municipal corporation and a home rule unit of local government duly organized and existing under the laws of the State of Illinois (the "**State**"), and HEARTLAND BANK AND TRUST COMPANY, an [Illinois state banking corporation] having its principal corporate trust office in Chicago, Illinois, as Trustee (together with its successors and assigns, the "**Trustee**").

### RECITALS

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

WHEREAS, the Issuer is authorized by the provisions of Section 6 of Article VII of the Illinois Constitution of 1970 and the Downers Grove Revenue Bond Ordinance constituting Chapter 27 of the Downers Grove Municipal Code (the "**Act**") to issue its revenue Bond to finance or refinance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any economic development project in order to encourage economic development of the Issuer; and

WHEREAS, Downers Grove Supportive Living Facility, LLC, an Illinois limited liability company (the "**Borrower**"), has now requested the Issuer to make a loan to the Borrower to (i) finance all or a portion of the costs of acquisition, construction and furnishing of a 120-unit supportive living multifamily housing facility located at 4200 – 4240 Lacey Road in Downers Grove, Illinois (the "**Project**"), as more fully described in Exhibit A to the Loan Agreement (as hereinafter defined), (ii) pay capitalized interest on the Bond (as hereinafter defined), and (iii) pay certain costs of issuance of the Bond; and

WHEREAS, the Issuer is authorized by the Act to finance the Project for the Borrower by issuing its bond and loaning the proceeds thereof to the Borrower, and, to that end, the Issuer has adopted an ordinance on August 12, 2014 (the "**Ordinance**") duly authorizing and directing the issuance, sale and delivery of its bond to be known generally as the Village of Downers Grove, DuPage County, Illinois Multifamily Housing Revenue Bond (Downers Grove Supportive Living Facility), Series 2014, in the aggregate principal amount of not to exceed \$20,114,920 (the "**Bond**"), to secure payment of the principal thereof and of the interest and premium, if any, thereon and the performance and observance of the covenants and conditions herein contained, the Issuer has authorized the execution and delivery of this Indenture; and

WHEREAS, [the Bond will be sold to Heartland Bank and Trust Company (the "**Purchaser**") pursuant to that certain Bond Purchase Contract, dated as of August 1, 2014, among the Issuer, the Borrower and the Purchaser and] the Issuer will loan the proceeds of the Bond to the Borrower by entering into a Loan Agreement dated as of August 1, 2013 (the "Loan Agreement" or "Agreement"), between the Issuer and the Borrower, and Bond shall be payable solely from the revenues received by the Issuer from the repayment of the loan of the proceeds of the Bond to the Borrower (the "Loan") and from other revenues derived from the Loan and the

Bond, and to evidence its payment obligations thereunder, the Borrower will deliver to the Issuer a Promissory Note in the amount of not to exceed \$20,114,920 (the "Note"); and

WHEREAS, the Bond issued under this Indenture will be secured by a pledge and assignment of certain rights of the Issuer under the Loan Agreement; and

WHEREAS, the execution and delivery of this Indenture and the issuance and sale of the Bond has been in all respects duly and validly authorized by the Ordinance duly adopted by the Issuer and all things necessary to make the Bond, when authenticated by the Trustee and issued as provided in this Indenture, the valid, binding and legal obligations of the Issuer according to the import thereof, and to constitute this Indenture as a valid assignment and pledge of the amounts pledged to the payment of the principal of, redemption premium, if any, and interest on the Bond, and to constitute this Indenture a valid assignment of certain of the rights of the Issuer under the Loan Agreement, have been done and performed, and the creation, execution and issuance of the Bond, subject to the terms thereof, have in all respects been duly authorized. All initially capitalized terms used herein which are not otherwise defined shall have the meanings set forth in Article I below.

#### GRANTING CLAUSES

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

(a) All right, title and interest of the Issuer in and to any monies held under this Indenture by the Trustee, including the proceeds of the Bond and the interest, profits and other income derived from the investment thereof;

(b) All right, title and interest of the Issuer in and to the Loan Agreement (except for the Unassigned Rights) and any successor thereto, and the Note, including but without limiting the generality of the foregoing, the right to receive, collect or make claim for any of the amounts payable or receivable thereunder, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Issuer is or may become entitled to do under the Loan Agreement (other than Unassigned Rights) and the Note;

(c) All Revenues, including the SLF Payments, and other amounts pledged pursuant to Section 4.6 of the Loan Agreement; and

(d) All moneys, securities and earnings thereon held from time to time by the Trustee under the terms of this Indenture, including the funds and accounts held by the Trustee, except the Rebate Account.

PROVIDED, HOWEVER, that there shall be excluded from the granting clauses of this Indenture all the Unassigned Rights of the Issuer, including all amounts paid or collected by the Issuer in connection therewith and all amounts on deposit in the Rebate Account, which shall be held for the sole benefit of the United States of America;

TO HAVE AND TO HOLD all and singular the Trust Estate, whether now owned or hereafter acquired, unto the Trustee and its respective successors in said trusts and assigns forever.

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all present and future owners of the Bond without privilege, priority or distinction as to the lien or otherwise of the Bond over any of the other Bond (except as may be otherwise provided herein).

## ARTICLE I

### DEFINITIONS

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

"**Act**" means the act as set forth in the preambles of this Indenture.

"**Act of Bankruptcy**" means the filing of a voluntary or involuntary petition under the Bankruptcy Code or the other commencement of bankruptcy or similar proceedings by or against the Issuer or the Borrower and/or a member of the Borrower under any applicable bankruptcy, insolvency, reorganization or similar law, as now or hereafter in effect, unless such petition or proceeding shall have been dismissed and such dismissal shall be final and not subject to appeal.

"**Additional Bonds**" means the issuance of additional bonds pursuant to Section 12.1 of this Indenture.

"**Advance**" shall mean an advance of proceeds of the Bond requested by the Borrower and made by the Purchaser under the [Disbursement Agreement] [Bond Purchase Contract]. In no event may the total amount of all Advances exceed the Stated Principal Amount.

"**Arbitrage Rebate Consultant**" means a firm of recognized expertise in the area of arbitrage rebate calculations and its requirements engaged by Borrower after prior notice to the authority and Trustee and which is acceptable to the Issuer and the Trustee.



**"Assignment of Contracts"** means the Assignment of Contracts and Interest in Licenses, Permits and Agreements, dated even date herewith, from the Borrower to the Trustee.

**"Authorized Borrower Representative"** means such person or persons duly designated by the Borrower to act on behalf of the Borrower in a writing delivered to the Trustee.

**"Authorized Denominations"** means the then outstanding principal amount of the Bond.

**"Authorized Issuer Representative"** means such person or persons duly designated by the Issuer to act on its behalf.

**"Bankruptcy Code"** means Title 11 of the United States Code, as amended.

**"Bond"** means the Issuer's not to exceed \$20,114,920 Multifamily Housing Revenue Bond (Downers Grove Supportive Living Facility), Series 2014, authorized to be issued by and outstanding under this Indenture and, to the extent provided in Section 12.1 hereof, any Additional Bonds issued hereunder.

**"Bond Counsel"** means the firm of Ice Miller LLP, or any designated firm of attorneys of nationally recognized expertise with respect to the tax-exempt obligations of political subdivisions, selected by the Issuer.

**"Bond Documents"** mean collectively, the Issuer Documents and the Borrower Documents.

**"Bond Fund"** means the Bond Fund established and created by Section 5.2 of this Indenture.

**"Bond Ordinance"** means the bond ordinance adopted by the Issuer on August 12, 2014, authorizing and approving the issuance and sale of the Bond and authorizing and approving the execution and delivery of this Indenture, the Loan Agreement, the Regulatory Agreement, the Bond Purchase Contract and certain other documents, making certain appointments and determining certain details with respect to the Bond.

**"Bond Proceeds Account"** means the Bond Proceeds Account established in the Construction and Acquisition Fund by Section 5.4 of this Indenture.

**"Bond Purchase Contract"** shall have the meaning set forth in the Loan Agreement.

**"Bond Registrar"** means the Trustee or any successor or successors to such position under this Indenture.

**"Bond Service Charges"** means during any period of time, principal of and interest and any redemption premium due on the Bond for that period or payable at that time, as the case may be.

**"Bond Year"** means, during the period while the Bond is outstanding, the annual period commencing on August 2 in any year and ending on the next succeeding August 1; *provided that*

the first Bond Year shall be a short year commencing on the Issuance Date and ending on August 1, 2015 unless another date is selected by the Borrower.

**"Bondholder"** or **"Holder"** or **"Owner of the Bond"** or **"Registered Owner"** when used with respect to any Bond, initially means the Purchaser and thereafter means any other registered owner of the Bond.

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

**"Borrower"** means Downers Grove Supportive Living Facility, LLC, an Illinois limited liability company, its successors and/or assigns.

**"Borrower Account"** means the Borrower Account in the Project Fund created and established pursuant to Section 5.7 of this Indenture.

**"Borrower Documents"** when used with respect to the Borrower, means all documents and agreements executed and delivered by the Borrower as security for or in connection with the issuance of the Bond including, but not limited to the Loan Agreement, the Note, the Mortgage, the Assignment of Contracts, [the Bond Purchase Contract,] the Regulatory Agreement, the Tax Agreement, the Forward Rate Swap Agreement, [the Continuing Disclosure Agreement] and the SLF Agreement. The Borrower Documents do not include any documents or agreements to which the Borrower is not a direct party, including the Bond or this Indenture.

**"Business Day"** means any day other than a Saturday or Sunday or a day on which banking institutions in the State of Illinois or the State of New York, or in the city in which the principal corporate trust office of the Trustee is located, are required or authorized by law or executive order to remain closed.

**"Capitalized Interest Account"** means the Capitalized Interest Account established in the Bond Fund by Section 5.2 of this Indenture.

**"Code"** means, as applicable, the Internal Revenue Code of 1986, as amended from time to time, and with respect to a specific section of such Code, such reference shall be deemed to include the Regulations promulgated under such section.

**"Completion Bond"** means those Bond issued in connection with the completion of the Project as set forth in Section 12.1 of this Indenture.

**"Construction and Acquisition Fund"** means the Construction and Acquisition Fund established and created by Section 5.4 of this Indenture.

**"Construction Letter of Credit"** means a letter of credit issued by \_\_\_\_\_ or another bank, which can be used to pay costs of the Project pursuant to Section 5.4(f) of this Indenture.

**"Construction Monitor"** shall have the meaning set forth in the Loan Agreement.

**"Construction Term Date"** means \_\_\_\_\_.

**"Continuing Disclosure Agreement"** means the Continuing Disclosure Agreement dated the Issuance Date between the Borrower and the Trustee, as dissemination agent, as supplemented and amended from time to time.

**"Costs of Issuance"** means (a) the fees, costs and expenses of (1) the Issuer, the Issuer's counsel and the Issuer's financial advisor, if any, (2) the Purchaser of the Bond incurred in the issuance and sale of the Bond) and the Purchaser's counsel, (3) Bond Counsel, (4) the Trustee, the Trustee's counsel and paying agent and certifying and authenticating agent fees related to issuance of the Bond, (5) the Borrower's counsel and the Borrower's financial advisor, if any, (6) any other specialized counsel fees, if any, (7) accountant fees, (8) rating agency fees, (b) the costs of preparing the cash flow projections, (c) costs of engineering, feasibility and market studies necessary to the issuance of the Bond, (d) costs incurred in connection with the required public approval process (e.g. publication costs for public notices generally and costs of the public hearing), (e) costs of printing the Bond; and (f) all other fees, costs and expenses directly associated with the authorization, issuance, sale and delivery of the Bond, including, without limitation, printing costs, costs of reproducing documents and filing and recording fees.

**"Cost of Issuance Fund"** means the Cost of Issuance Fund established and created by Section 5.3 of this Indenture.

**"Debt Service Coverage Ratio"** shall have the meaning set forth in the Loan Agreement.

**"Debt Service Reserve Fund"** means that Debt Service Reserve Fund established and created by Section 5.1 of this Indenture.

**"Debt Service Reserve Fund Requirement"** means on the Issuance Date the amount of \$400,000, and with respect to any Additional Bonds issued under Article XII hereunder, an amount that does not exceed the lesser of (i) the maximum annual debt service on such Additional Bonds, (ii) 125% of the average annual debt service on such Additional Bonds; or (iii) ten percent of the proceeds from the sale of such Additional Bonds. Notwithstanding the foregoing, no calculations of the Debt Service Reserve Fund Requirement shall take into account the final maturity of the Additional Bonds issued hereunder with a back loaded principal payment on such final maturity date.

**"Department"** means the Illinois Department of Healthcare and Family Services.

**"Depository"** means any bank, trust company, savings and loan association or other financial institution selected by the Trustee as a depository of monies and securities held under the provisions of this Indenture, and may include the Trustee.

**"Determination of Taxability"** means either (a) the entry by a court of a judgment or order or the promulgation by the Internal Revenue Service of a ruling or decision, in either such case to the effect that the interest on the Bond (other than interest on any Bond for any period during which such Bond is held by a "substantial user" of any facility financed with the proceeds

of the Bond or a "related person," as such terms are used in Section 147(a) of the Code) is includable for federal income tax purposes in the gross income of all recipients thereof subject to federal income taxes or (b) receipt by the Trustee and the Borrower of a certificate of the Issuer stating that a violation of the Tax Agreement has occurred (specifying the same) and is continuing, that not less than 60 days has elapsed since written notice has been given to the Borrower specifying such violation and demanding that it be cured, and that such violation has not been cured, accompanied by an opinion of Bond Counsel to the effect that, under the circumstances described in such certificate, interest on the Bond (other than interest on any Bond for any period during which such Bond is held by a "substantial user" of any facility financed with the proceeds of the Bond or a "related person," as such terms are used in Section 147(a) of the Code) is or will no longer be excludable from the gross income of the owners thereof for federal income tax purposes. For purposes of this definition, in the event of a good faith appeal, contest or the filing with the Internal Revenue Service of a request for ruling or other advice initiated by the Borrower within 60 days after the date referred to in clause (a) hereof, no Determination of Taxability shall be deemed to have occurred until the date upon which all such appeals, contests, or requests pursued with due diligence by the Borrower have been exhausted.

**"DSRF Credit Enhancement"** shall have the meaning given to such term in Section 5.6 hereof.

**"DTC"** means The Depository Trust Company.

**"DTC Participant"** means those broker-dealers, banks and other financial institutions reflected on the books of DTC.

**"EMMA"** means the Electronic Municipal Market Access system of the Municipal Securities Rulemaking Board.

**"Event of Default"** means any occurrence or event specified and defined in, or pursuant to, Section 8.1 of this Indenture.

**"Federal Obligations"** means (i) any direct and general obligations of, or any obligations guaranteed by, the United States of America, (ii) any obligations of any state or political subdivision of a state (collectively, "**Municipal Bonds**"), which Municipal Bonds are fully secured as to principal and interest by an irrevocable pledge of moneys or direct and general obligations of, or obligations guaranteed by, the United States of America, which moneys or obligations are segregated in trust and pledged for the benefit of the holders of the Municipal Bonds, and (iii) certificates of ownership of the principal or interest of direct and general obligations of, or obligations guaranteed by, the United States of America, which obligations are held in trust by a commercial bank which is a member of the Federal Reserve System.

**"Fiduciary"** means the Trustee and any Paying Agent for the Bond.

**"Fixed Rate"** means the fixed rate or respective fixed interest rates per annum applicable until August 1, 2017 as provided in Section 2.3 of this Indenture.

**"Floating Rate"** means the interest rate per annum applicable until the maturity or earlier redemption of the Bond as provided in Section 2.3 of this Indenture.

**"Forward Rate Swap Agreement"** means \_\_\_\_\_.

**"Freeburg Guaranty"** means \_\_\_\_\_.

**"Guaranties"** means the Martell Guaranty and the Freeburg Guaranty.

The terms **"herein"**, **"hereunder"**, **"hereby"**, **"hereto"**, **"hereof"** and any similar terms refer to this Indenture; the term **"heretofore"** means before the date of execution of this Indenture; and the term **"hereafter"** means after the date of execution of this Indenture.

**"Indenture"** means this Trust Indenture and any amendments hereof and supplements hereto.

**"Independent Counsel"** means an attorney duly admitted to practice law before the highest court of the State who is not a full-time employee of the Issuer, the Borrower, or the Trustee.

**"Initial Lease-Up Reserve Fund"** means the Initial Lease-Up Reserve Fund established and created by Section 5.8 of this Indenture.

**"Initial Lease-Up Reserve Fund Deposit"** means \$250,000.

**"Insurance/Tax Account"** means the account established in the Project Fund under Section 5.7 of this Indenture.

**"Interest Payment Date"** means the first [Business] day of each month commencing \_\_\_\_\_ 1, 2014.

**"Interested Beneficial Holder"** shall mean the Purchaser of the Bond and any subsequent beneficial owners each owning \$1,000,000 or more in aggregate principal amount of the Bond who have given written notice to the Trustee that they are an Interested Beneficial Holder, and have provided the Trustee with their address for notice purposes.

**"Investment Agreement"** means any investment agreement as consented to by Borrower that may be entered into for the investment of moneys on deposit in the Construction and Acquisition Fund, the Bond Fund, the Debt Service Reserve Fund or the Project Fund between the Trustee and a provider providing for the investment of moneys; provided that any Investment Agreement shall be approved by the Purchaser.

**"Investment Obligations"** or **"Permitted Investments"** means any of the following which at the time are legal investments for the Issuer under applicable State laws, for the monies held hereunder then proposed to be invested therein:

- (a) Federal Obligations;
- (b) Obligations of, or obligations guaranteed as to principal and interest by, agencies or instrumentalities of the United States of America which are backed by the full

faith and credit of the United States of America or interests in money market or mutual funds comprised solely of such obligations;

(c) Federal Funds, certificates of deposit, time deposits and bankers' acceptances (in each case having maturities of not more than 365 days) of any bank the debt obligations of which (or, in the case of the principal bank in a bank holding company, debt obligations of the bank holding company) have been rated at the time of purchase A-1+ by S&P or MIG-1 or VMIG-1 by Moody's;

(d) Deposits or money market accounts which are fully insured by the Federal Deposit Insurance Corporation ("**FDIC**") or a fund administered by the FDIC;

(e) Investments in money market funds which are rated at the time of purchase AAAm or AAAm-G; which may be money market funds administered by the Trustee;

(f) Any Investment Agreement;

(g) Interest-bearing time deposits, repurchase agreements, rate guarantee agreements or similar banking arrangements with a bank or trust company having capital and surplus aggregating at least \$50 million or with a government bond dealer reporting to, trading with or recognized as a primary dealer by, the Federal Reserve Bank of New York having capital aggregating at least \$50 million or with any corporation which is subject to registration with the Board of Governors of the Federal Reserve System pursuant to the requirements of the Bank Holding Act of 1956 and whose unsecured or uncollateralized long-term debt obligations are assigned a rating by S&P's or Moody's of "AA-/A3" or better for agreements of more than three years, and "AA-1/A-1+" or better for agreements of more than one year but less than three years or whose unsecured and uncollateralized short-term debt obligations are assigned a rating by S&P's or Moody's of "A-1+" or better for agreements of one year or less, provided that each interest-bearing deposit, repurchase agreement, guarantee agreement or other similar banking arrangement shall permit moneys so placed to be available for use of the time provided with respect to investment or reinvestment of such moneys;

(h) interest bearing obligations of any county, township, city, village, incorporated town, municipal corporation or school district organized and existing under the laws of the United States of America, which obligations are registered in the name of the Trustee or held under a custodial agreement at a bank, if such obligations at the time of purchase are in one of the three highest general classifications established by a rating service of nationally recognized expertise in rating Bond of states and their political subdivisions; or

(i) Any other investments permitted by the Illinois Statutes, provided that the Trustee may rely conclusively on the Borrower's determination that an investment is permitted by this clause (i).

**"Investor Member"** means [AHP Housing Fund 77, LLC], a Delaware limited liability company, and its successors, affiliates and assigns.

**"Issuance Date"** shall mean August \_\_, 2014, the date of initial issuance and delivery of the Bond against the initial Advance, if applicable.

**"Issuer"** means the Village of Downers Grove, DuPage County, Illinois.

**"Issuer Documents"** shall have the meaning set forth in the Loan Agreement.

**"Issuer Indemnified Party"** or **"Issuer Indemnified Parties"** means the Issuer, the past, present and future officers and commissioners of the Issuer, executives, employees and agents, individually and collectively.

**"Issuer's Obligations"** means the obligations of the Issuer under the Bond, this Indenture, and the other Issuer Documents to (a) pay the principal of and interest on the Bond (including supplemental interest), when and as the same shall become due and payable (whether at the stated maturity thereof, or by acceleration of maturity or after notice of prepayment or otherwise) solely from the sources identified herein and, (b) timely perform, observe and comply with all of the terms, covenants, conditions, stipulations, and agreements, express or implied, which the Issuer is required, by the Bond, this Indenture, or any of the other Issuer Documents, to perform and observe.

**"LIBOR"** means [the rate per annum equal to the one month London Interbank Offered Rate as published in the Wall Street Journal on the first business date of each month. In the event the LIBOR rate is no longer published, the Purchaser will select a new Variable Rate substantially similar to the LIBOR rate.]

**"Loan"** means the first mortgage loan being made to the Borrower with the proceeds of the Bond pursuant to the Loan Agreement.

**"Loan Agreement"** or **"Agreement"** means the Loan Agreement dated as of the date of this Indenture with respect to the Bond by and between the Issuer and the Borrower, as amended in accordance with the terms hereof and thereof, pursuant to which the Loan is being made to the Borrower.

**"Marketing Reserve Fund"** means the Marketing Reserve Fund established and created by Section 5.11 of this Indenture.

**"Martell Guaranty"** means \_\_\_\_\_.

**"Maturity Date"** means the date or dates specified in Section 2.3 of this Indenture as the maturity date or dates of the Bond or any earlier redemption date.

**"Medicaid Receivables Cash Flow Fund"** means the Medicaid Receivables Cash Flow Fund established and created under Section 5.6 of this Indenture.

**"Moody's"** means Moody's Investors Service, Inc., and its successors

**"Mortgage"** means the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Financing Statement, executed by Borrower in favor of the Trustee, encumbering the

Project and securing the Borrower's obligations under the Note, as amended, restated, supplemented or otherwise modified from time to time.

**"MRCFF Requirement"** means \$1,185,000 (commencing with its funding from the Investor Member's second capital contribution).

**"Note"** means the promissory note of the Borrower dated the Issuance Date evidencing and securing its obligations under the Loan Agreement in the form attached to the Loan Agreement as Exhibit B, and any amendments, Supplements or modifications thereto, which Note has been assigned by the Issuer to the Trustee.

**"Notice by Mail"** or **"notice"** of any action or condition "by Mail" (except as otherwise expressly provided herein) shall mean a written notice meeting the requirements of this Indenture mailed by first-class mail to the Registered Owners at the addresses shown in the registration books maintained pursuant to this Indenture; *provided, however*, that if, because of temporary or permanent suspension of mail service, it is impossible or impracticable to mail notices in the manner herein described, then such notification in lieu thereof as shall be made with the approval of the Trustee (or, if there be no trustee hereunder, the Issuer) shall constitute a sufficient giving of such notice.

**"Operating Expense Account"** shall mean the Operating Expense Account in the Project Fund created and established pursuant to Section 5.7 of this Indenture.

**"Operating Expenses"** shall mean customary operating expenses of the Project for the relevant period on a cash basis, including, without limitation, amounts required to be deposited pursuant to subsections (ii), (v), (vi) and (vii) of Section 5.7(b) of this Indenture (but excluding for purposes of this definition the amounts required to be deposited pursuant to subsections (i), (iii), (iv) and (viii) of Section 5.7(b)) for such period.

**"Operating Reserve Fund"** means the Operating Reserve Fund established and created under Section 5.9 of this Indenture.

**"Operating Reserve Requirement"** means \$740,000.

**"Outstanding"** or **"Bond outstanding"** means the Bond which has been authenticated and delivered by the Trustee under this Indenture, except:

(a) Bond canceled after purchase in the open market or because of payment at or redemption prior to maturity;

(b) Bond for the payment of which cash or Federal Obligations shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or redemption date of any such Bond) and which are deemed paid within the meaning of Article VII hereof; and

(c) Bond which have been authenticated under Sections 2.9, 2.10 or 2.11 hereof.



**"Outstanding Medicaid Receivables"** means, for any date, the amount, based on application of generally accepted accounting principles, of accrued accounts receivable due to the Borrower for Medicaid services provided under the SLF Agreement through the last day of the preceding month.

**"Paying Agent"** means those institutions designated as such in or pursuant to Section 9.10 hereof.

**"Principal Amount"** means the sum of all Advances, minus any prepayments or redemptions or other principal payments made on the Bond, all as shown on the Table of Advances and the Amortization Schedule attached to the form of Bond, which sum shall not to exceed Twenty Million One Hundred Fourteen Thousand Nine Hundred Twenty Dollars (\$20,114,920).

**"Principal Office"** when used with respect to a Fiduciary, means the principal corporate trust, or head or principal trust, office of such Fiduciary.

**"Project"** means the project described in Exhibit A-1 to the Loan Agreement.

**"Project Fund"** means the Project Fund established and created pursuant to Section 5.7 of this Indenture, consisting of the Rebate Account, the Revenues Account, the Trustee/Issuer Expense Account, the Insurance/Tax Account, the Replacement Reserve Account, the Operating Expense Account, and the Borrower Account.

**"Project Site"** means the project site described in Exhibit A-1 to the Loan Agreement.

**"Rebate Account"** means the Rebate Account in the Project Fund established pursuant to Section 5.7 of this Indenture.

**"Record Date"** or **"Regular Record Date"** means with respect to any Interest Payment Date the fifteenth day of the month which precedes the next succeeding Interest Payment Date or, if such date is not a Business Day, then the next Business Day.

**"Redemption Price"** shall mean the redemption price for Bond to be redeemed as specified in Article III of this Indenture.

**"Refunding Bonds"** shall have the meaning specified in Section 12.1 of this Indenture.

**"Regulatory Agreement"** means the Regulatory Agreement and Declaration of Restrictive Covenants dated as of the same date as this Indenture by and among the Issuer, the Trustee and the Borrower relating to the Bond and containing certain occupancy and income restrictions on the Project required by the Code, and any and all modifications thereof, amendments and Supplements thereto and substitutions therefor.

**"Replacement Reserve Account"** means the Replacement Reserve Account in the Project Fund established and created by Section 3.4 of the Loan Agreement and Section 5.7 of this Indenture.

**"Representation Letter"** shall mean the Blanket Issuer Letter of Representations by and between the Issuer and DTC.

**"Revenues"** means all gross income, interest income (including interest income received by the Trustee and deposited into the Revenues Account pursuant to Section 5.7 of this Indenture) and revenue received by the Borrower from the ownership or operation of the Project, including, but not limited to, all residential rents and income from the Project and all commercial rents and income, if any, from the Project (except in each instance deposits held as security) received in connection with leases or occupancy or services or otherwise received from or in regard to tenants of the Project, and any additional money deposited by the Borrower from time to time into the Project Fund created under this Indenture and not required or mandated by the Bond documents or law for other purposes and the payments (the **"SLF Payments"**) to be made after certification of the Project by the Illinois Department of Healthcare and Family Services (the **"Department"**), to or at the direction of the Borrower pursuant to the Long Term Care Provider Agreement – Supportive Living Facility between the Borrower and the Department (the **"SLF Agreement"**), any casualty or business interruption insurance proceeds and condemnation awards, and all rights to receive the same whether in the form of accounts, accounts receivable, general intangibles, contract rights, chattel paper, instruments or other rights and the proceeds thereof, whether now existing or hereafter coming into existence and whether now owned or held or hereafter acquired by the Borrower and any other moneys, revenues or receipts which are specifically included in such definition by the terms of any supplemental indenture.

**"Revenues Account"** means the account established under the Project Fund pursuant to Section 5.7 of this Indenture.

**"SLF Agreement"** means the Long Term Care Provider Agreement, Supportive Living Facility to be entered into between the Borrower and the Department upon completion and final approval of the Project.

**"SLF Payments"** means payments made to or at the direction of the Borrower by the Department pursuant to the SLF Agreement.

**"S&P"** means Standard & Poor's Financial Services LLC, and its successors.

**"Special Record Date"** means at least 10 days prior to the special interest payment date established by the Trustee for determination of which Registered Owners shall be entitled to receive overdue interest on the Bond pursuant to Section 2.4(b)(iii) hereof.

**"State"** means the State of Illinois.

**"Supplemental Indenture"** and **"Supplemental Loan Agreement"** shall mean those documents executed in connection with the issuance of Additional Bonds pursuant to Sections 12.3 and 12.5, respectively, of this Indenture.

**"Table of Advances"** means the schedule by that name attached to the Bond showing the history of Advances and prepayments of the Bond.

"**Tax Agreement**" means the Tax Agreement executed by the Borrower, the Issuer and the Trustee in connection with the issuance of the Bond and dated as of the Issuance Date, and any exhibits, schedules, amendments and supplements to the foregoing.

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

"**Trustee**" means Heartland Bank and Trust Company, Chicago, Illinois, and any qualified entity at the time serving as successor trustee hereunder.

"**Trustee/Issuer Expense Account**" means the account established under the Project Fund pursuant to Section 5.7 of this Indenture.

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

## ARTICLE II

### THE BOND

**Section 2.1 Authorized Amount of Bond.** No Bond may be issued under the provisions of this Indenture except in accordance with this Article II. The total principal amount of Bond other than Additional Bonds that may be issued is expressly limited to \$20,114,920 (the "Stated Principal Amount"), subject to multiple Advances [pursuant to the Bond Purchase Contract and subject to the conditions set forth in the Construction Disbursement Agreement] and draw provisions as set forth in the Bond.

**Section 2.2 Issuance of Bond.** The Bond shall be designated "Village of Downers Grove, DuPage County, Illinois Multifamily Housing Revenue Bond (Downers Grove Supportive Living Facility), Series 2014." The Maturity Date of the Bond shall be as set forth in Section 2.3 below.

Each Bond shall be dated as of the Issuance Date, shall be subject to prior redemption, and shall be numbered consecutively from R-1 upward.

Each Bond shall bear interest as provided in Section 2.3 of this Indenture. [ If interest on the Bond shall be in default, Additional Bonds issued in exchange for Bond surrendered for transfer or exchange shall bear interest from the last date to which interest has been paid in full.]

The principal of, redemption premium, if any, and interest on the Bond shall be payable in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of public and private debts, and such principal, redemption premium, if any, and interest shall be payable at the Principal Office of the Paying Agent.

**Section 2.3 Principal of and Interest on Bond.** The Bond shall be issued on the Issuance Date and shall bear interest as provided below and in Section 2.4(b) hereof. The Bond shall bear interest, until August 1, 2017, at the interest rate per annum of 4.0% (the "**Fixed Rate**"). After August 1, 2017, the Bond shall bear interest, until paid, at a floating rate equal to LIBOR plus 2.50%. (the "**Floating Rate**"). Interest on the Bond shall be computed on the basis of a 360-day year, consisting of twelve 30-day months.

The Bond shall mature on August 1, 2032 (subject to prior redemption as provided in Section 3.1 hereof).

Interest on the Bond shall be payable monthly on the first Business Day of each month commencing \_\_\_\_\_ 1, 2014, on the then outstanding and unpaid principal balance of the Bond. Principal of the Bond shall be payable in monthly installments on the first Business Day of each month commencing \_\_\_\_\_ 1, 2017, through and including a final payment of principal on August 1, 2032 in the amounts set forth in Schedule I hereto as amended from time to time.

[Upon purchase of the Bond and making the Initial Advance thereunder, the Trustee shall affix Schedule I to this Indenture based upon the full funding of the Bond, and including an amortization schedule based on such assumption to final maturity for the Bond. As promptly as possible after the date of the final Advance, the Purchaser shall amend Schedule I hereto, showing the actual amounts advanced and the actual amortization schedule].

#### **Section 2.4 Manner of Paying for Bond.**

(a) The principal or redemption price of each Bond shall be payable upon surrender of such Bond at the Principal Office of the Trustee. Payments of principal or redemption price of the Bond shall be payable in immediately available funds in the city where the Principal Office of the Trustee is located. Such payments shall be made to the Registered Owner of the Bond so surrendered, as shown on the registration books maintained by the Registrar on the date of payment. Any Holder of the Bond in an aggregate principal amount of \$1,000,000 or more shall also have the right to have payment of the principal of and redemption premium on its Bond to be made by wire transfer in accordance with, and by the procedures set forth in Section 2.4(b)(iv) of this Indenture, except that such Holder shall not be required to present and surrender its Bond in connection with a regular, scheduled sinking fund redemption that does not represent the final maturity of the Bond.

(b) Subject to the further provisions of this Section 2.4, each Bond shall bear interest and be payable as to interest as follows:

(i) Interest on the outstanding principal amount of the Bond shall accrue from the date of each Advance; provided that the Bond shall bear interest (A) from the date of authentication, if authenticated on the Issuance Date or an Interest Payment Date to which interest has been paid or provided for, or (B) from the last preceding Interest Payment Date to which interest has been paid or provided for (or the date of original issuance of the Bond if no interest thereon has been paid) in all other cases.

(ii) Subject to the provisions of subparagraph (iii) below, the interest due on any Bond on any Interest Payment Date shall be paid to the Registered Owner of such Bond as shown on the registration books kept by the Bond Registrar on the Regular Record Date.

(iii) If the available funds under this Indenture are insufficient on any Interest Payment Date to pay the interest then due, the Regular Record Date shall no longer be applicable with respect to the Bond. If sufficient funds for the payment of such overdue interest thereafter become available, consistent with Section 8.1 of this Indenture the Trustee shall promptly establish a special interest payment date for the payment of the overdue interest and a Special Record Date (which shall be a Business Day) for determining the Registered Owners entitled to such payments. Notice of each date so established shall be mailed by the Trustee to each Registered Owner at least ten days prior to the Special Record Date, but not more than thirty days prior to the special interest payment date. The overdue interest shall be paid on the special interest payment date to the Registered Owners, as shown on the registration books kept by the Bond Registrar as of the close of business on the Special Record Date.

(iv) All payments of interest on the Bond shall be paid to the Registered Owners entitled thereto pursuant to Section 2.4(b)(ii) or (iii) above by the Trustee on the Interest Payment Date or special interest payment date, as applicable, by check or draft mailed by first class mail on the Interest Payment Date to the Registered Owners entitled thereto at such address appearing in the registration books of the Bond Registrar or at such other address as has been furnished to the Trustee in writing by such Registered Owners, but only from the Revenues and any other monies made available to the Issuer for such purpose. The foregoing notwithstanding, if a Holder of Bond in an aggregate principal amount of \$1,000,000 or more shall have given the Trustee notice of the wire transfer address in the continental United States of such Holder at least one day prior to a Record Date, then, for all Interest Payment Dates thereafter until such notice is revoked or modified in writing given to the Trustee, payment of the interest on the Bond of that Holder shall be made by the Trustee by wire transfer to the wire transfer address set forth in such notice. Such notice is hereby provided with respect to the Purchaser as the initial Bondholder.

**Section 2.5 Execution; Limited Obligation.** The Bond may be signed on behalf of the Issuer by such persons who, at the time of the execution of such Bond, are duly authorized or

hold the appropriate office of the Issuer, although on the date of the Bond such persons were not so authorized or did not hold such offices. The Bond shall be executed on behalf of the Issuer by the manual or facsimile signature of the Mayor of the Issuer, and the seal of the Issuer or a facsimile thereof shall be impressed or otherwise reproduced thereon and attested by the manual or facsimile signature of the Village Clerk of the Issuer. In case any authorized officer of the Issuer whose signature or a facsimile of whose signature shall appear on the Bond shall cease to be an authorized officer of the Issuer before the delivery of such Bond, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such authorized officer of the Issuer had remained in office until delivery. Furthermore, it shall not be necessary that the same authorized officer of the Issuer sign all of the Bond that may be issued hereunder at any one time or from time to time.

The Bond, together with all principal and interest thereon and premium, if any, with respect thereto, is a special, limited obligation of the Issuer secured by the Loan Agreement and the Note and shall be payable solely from the Revenues and income derived from the Loan Agreement and the Note (except to the extent paid out of moneys attributable to proceeds of the Bond, the income from the temporary investment thereof or payments made pursuant to or derived from the other Borrower Documents), are and shall always be a valid claim of the owners thereof only against the Revenues and income derived from the Loan Agreement and the Note, which Revenues and income shall be used for no other purpose than to pay the principal installments of, premium, if any, and interest on the Bond, except as may be expressly authorized otherwise in this Indenture or the Bond Ordinance and in the Loan Agreement.

The Bond and the obligation to pay premium, if any, and interest thereon do not now and shall never constitute an indebtedness or an obligation of the Issuer, the State of Illinois or any political subdivision thereof, within the purview of any constitutional limitation or provision, or a charge against the general credit or taxing powers, if any, of any of them, but shall be secured as aforesaid, and shall be payable solely from the revenues and income derived from the Loan Agreement, and the Note. No owner of the Bond shall have the right to compel the exercise of the taxing power, if any, of the Issuer, the State of Illinois or any political subdivision thereof to pay any principal installment of, premium, if any, or interest on the Bond.

No recourse shall be had for the payment of the principal of, redemption premium, if any, and interest on the Bond or for any claim based thereon or any obligation, covenant or agreement contained in this Indenture, the Loan Agreement or the Bond Purchase Contract against any past, present or future officer, agent or employee of the Issuer, or any officer, employee or trustee of any successor, as such, either directly or through the Issuer or any successor, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officer, employee, agent or trustee as such is expressly waived and released as a condition of and consideration for the execution of this Indenture and the Loan Agreement and the issuance of the Bond.

**Section 2.6 Authentication.** No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless and until a certificate of authentication of such Bond shall have been duly executed by the Trustee and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The certificate of authentication on any

Bond shall be deemed to have been executed by it if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the certificate of authentication on all the Bond.

**Section 2.7 Form of Bond.** The Bond issued under this Indenture shall be substantially in the form set forth in Exhibit A hereto with such variations, omissions and insertions as are permitted or required by this Indenture.

**Section 2.8 Delivery of Bond.** Prior to the release by the Trustee of the Bond, there shall be filed with the Trustee:

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

(b) A request and authorization signed by an authorized officer of the Issuer authorizing the Trustee to authenticate and to deliver the Bond to the Purchaser therein identified 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;

(c) An opinion of counsel to the Issuer to the effect that, in the opinion of such counsel, the Bond Purchase Contract, the Loan Agreement, the Regulatory Agreement, the Bond and this Indenture and other documents to which it is a party, have been duly authorized and lawfully executed and delivered on behalf of the Issuer;

(d) Original duly executed counterparts of the Loan Agreement, the Note, the Regulatory Agreement, this Indenture, the Mortgage, the Assignment of Contracts and all other Borrower Documents;

(e) An opinion of counsel for the Borrower stating in the opinion of such counsel, subject to the exceptions set forth therein acceptable to counsel for the Purchaser and Bond Counsel, that the Bond Purchase Contract, the Note, the Regulatory Agreement and the Loan Agreement and any other documents to which the Borrower is a party, are valid and binding obligations of the Borrower enforceable against the Borrower in accordance with the respective terms thereof and that the Mortgage grants to the Trustee a valid security interest in the Project, except as the enforcement thereof may be affected or limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting or limiting the rights of creditors generally, or general equitable principles, whether considered in a proceeding at law or in equity;

(f) An opinion of Bond Counsel substantially to the effect that the Bond constitute legal, valid and binding special obligations of the Issuer, and that, assuming continuing compliance with the applicable provisions of the Code by the Borrower and the Issuer, the interest on the Bond is not included in gross income for federal income tax purposes under existing law, except for interest on any Bond for a period during which such Bond is held by a "substantial user" of the Project or a "related person" as such terms are defined in Section 147(a) of the Code;

(g) Such other certificates, documents, instruments, and opinions relating to the issuance of the Bond or the security therefor as the Issuer, the Purchaser or the Trustee may reasonably request.

(h) Proceeds of the Bond in the amount of the initial Advance (\$\_\_\_\_\_).

When the documents required above shall have been filed with the Trustee and when such Bond shall have been executed and authenticated as required by this Indenture, the Trustee shall deliver such Bond at one time to or upon the order of the Purchaser, but only upon payment to the Trustee of the purchase price of such Bond. The Trustee shall be entitled to rely upon such documents without investigation as to all matters stated therein.

**Section 2.9 Mutilated, Lost, Stolen or Destroyed Bond.** In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate a new Bond of like date, interest rate, maturity and denomination to that mutilated, lost, stolen or destroyed Bond, *provided* that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with an indemnity for the benefit of the Issuer, the Borrower and the Trustee, satisfactory to the Trustee. In the event any such Bond shall have matured, instead of issuing a duplicate Bond, the Issuer may pay the same without surrender thereof making such requirements as it deems fit for its protection including a lost instrument bond. The Trustee may charge the owner of such Bond with its reasonable fees and expenses in this connection.

**Section 2.10 Registration and Exchange of Bond Persons Treated as Owners.** The Issuer shall cause books for the registration and for the transfer of the Bond as provided in this Indenture to be kept by the Trustee, which is constituted and appointed the Bond Registrar of the Issuer. Bond shall not be registered to bearer. Upon surrender for transfer of any Bond at the Principal Office of the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Registered Owner or his attorney duly authorized in writing, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond for a like aggregate principal amount.

Fully registered Bond may be exchanged at the Principal Office of the Trustee for a like aggregate principal amount of fully registered Bond of other Authorized Denominations. The Issuer shall execute and the Trustee shall authenticate and deliver Bond which the Bondholder making the exchange is entitled to receive, bearing numbers not contemporaneously then outstanding. The execution by the Issuer of any fully registered Bond in an Authorized Denomination shall constitute full and due authorization of such denomination and the Trustee shall be authorized to authenticate and deliver such registered Bond.

The Bond may be transferred in whole, but not in part (and then only in conjunction with a transfer in whole of the Bond and only to a Qualified Transferee (as defined below)). Notwithstanding the foregoing, the Owner may sell participations in the Bond in accordance with applicable law and the Loan Agreement. For purposes of this paragraph, the term "Qualified



Transferee” shall mean a “qualified institutional buyer” as defined in Rule 144A promulgated under the United States Securities Act of 1933, as amended. .

The Issuer or the Trustee shall not be required to issue, register, transfer or exchange any Bond during the period beginning with the Record Date and ending on the next Interest Payment Date, nor during the period beginning fifteen days before the mailing of notice of redemption of Bond and ending on the redemption date.

In each case of a transfer or exchange of Bond, the Trustee shall require the payment by the Bondholder requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer and any reasonable fee of the Trustee with respect to such exchange or transfer.

**Section 2.11 Temporary Bond.** Until the definitive Bond is prepared, the Issuer may execute and deliver, in lieu of definitive Bond, but subject to the same provisions, limitations and conditions as the definitive Bond, except as to exchangeability for Bond, one or more temporary fully registered Bond substantially of the tenor of the definitive Bond in lieu of which such temporary Bond or Bond is issued in Authorized Denominations and with such omissions, insertions and variations as may be appropriate to temporary Bond. The Issuer shall promptly prepare and execute for exchange for surrender temporary Bond, and deliver in exchange therefor, at the Principal Office of the Trustee, definitive Bond of the same aggregate principal amount and maturity as the temporary Bond surrendered. Until so exchanged, the temporary Bond shall in all respects be entitled to the same benefits and security as definitive Bond issued pursuant to this Indenture. All temporary Bond surrendered in exchange for a definitive Bond or Bond shall be forthwith canceled by the Trustee.

**Section 2.12 Book-Entry Only System.** In connection with the initial issuance of the Bond, it is not intended that the Bond be registered so as to participate in a securities depository system with DTC (the "DTC System"). The Bond shall be initially issued in the form of a separate single fully registered Bond. Upon initial issuance, the ownership of the Bond shall be registered in the bond register in the name of the Purchaser. The Bond shall be initially issued in the form of a separate single fully registered Bond. Subsequent to the initial issuance, the Bond may be registered so as to participate in the DTC System, in which case, the ownership of each such Bond shall be registered in the bond register in the name of Cede & Co., as nominee of DTC. The Issuer and the Trustee are authorized to execute and deliver such letters to or agreements with DTC as shall be necessary to effectuate the DTC System, including the Representation Letter. DTC may exercise the rights of a Bondholder only in accordance with the terms hereof applicable to the exercise of such rights.

With respect to Bond registered in the bond register in the name of Cede & Co., as nominee of DTC, the Issuer, the Trustee and the Borrower shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which DTC holds Bond from time to time as securities depository (each such broker-dealer, bank or other financial institution being referred to herein as a "**DTC Participant**") or to any person on behalf of whom such a DTC Participant directly or indirectly holds an interest in the Bond (each such person being herein referred to as an "**Indirect Participant**"). Without limiting the immediately preceding sentence, the Issuer, the Trustee and the Borrower shall have no responsibility or

obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bond, (ii) the delivery to any DTC Participant or any Indirect Participant or any other person, other than a Bondholder or Interested Beneficial Holder, as shown in the bond register, of any notice with respect to the Bond, including any notice of redemption, (iii) the payment to any DTC Participant or indirect participant or any other Person, other than a Bondholder, as shown in the register, of any amount with respect to principal of, redemption premium, if any, or interest on, the Bond or (iv) any consent given by DTC as registered owner. So long as certificates for the Bond is not issued pursuant to this section, the Issuer, the Borrower and the Trustee may treat DTC or any successor securities depository as, and deem DTC or any successor securities depository to be, the absolute owner of the Bond for all purposes whatsoever, including without limitation (i) the payment of principal and interest on the Bond, (ii) giving notice of redemption and other matters with respect to the Bond, (iii) registering transfers with respect to the Bond and (iv) the selection of Bond for redemption. While in the DTC System, no person other than Cede & Co., or any successor thereto, as nominee for DTC, shall receive a Bond certificate with respect to any Bond. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Indenture with respect to interest checks or drafts being mailed to the registered owner at the close of business on the Record Date applicable to any interest payment date, the name "Cede & Co." in this Indenture shall refer to such new nominee of DTC.

**Section 2.13 Successor Securities Depository; Transfers Outside Book-Entry Only System.** In the event that (a) the Issuer or the Borrower determines that DTC is incapable of discharging its responsibilities described herein and in the Representation Letter, (b) the Representation Letter shall be terminated for any reason or (c) the Issuer or the Borrower determines that it is in the best interest of the beneficial owners of the Bond that they be able to obtain certificated Bond, the Issuer shall notify DTC of the availability through DTC of Bond certificates and the Bond shall no longer be restricted to being registered on the bond register in the name of Cede & Co., as nominee of DTC. At that time, the Issuer may determine that the Bond shall be registered in the name of and deposited with a successor depository operating a securities depository system, as may be acceptable to the Issuer, or such depository's agent or designee, and if the Issuer does not select such an alternate securities depository system then the Bond may be registered in whatever name or names registered owners of Bond transferring or exchanging Bond shall designate, in accordance with the provisions hereof.

**Section 2.14 Payments and Notices to Cede & Co.** Notwithstanding any other provision of this Indenture to the contrary, if the Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, redemption premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the manner provided in the Representation Letter.

## ARTICLE III

### REDEMPTION OF BOND

**Section 3.1 Redemption.** The Bond shall be subject to redemption prior to maturity as follows:

(a) Optional Redemption. The Bond shall be subject to redemption at the option of the Borrower prior to their stated maturity date, in whole or in part, after the required notice of redemption is given, at par, plus accrued interest to the redemption date.

(b) Mandatory Sinking Fund Redemption. The Bond is subject to mandatory sinking fund redemption on the Interest Payment Dates and in the principal amounts set forth below at a redemption price equal to 100% of the principal amount of the Bond to be redeemed plus accrued interest to the redemption date, and without redemption premium, subject to reduction, pro rata among all sinking fund maturities to the extent that Bond is redeemed prior to maturity otherwise than pursuant to such scheduled mandatory redemption:

Payment Date (June 1)	Principal Amount Redeemed	Payment Date (June 1)	Principal Amount Redeemed
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†Final Maturity

(c) Mandatory Redemption Upon Determination of Taxability. The Bond is subject to mandatory redemption in whole on the earliest date after the required notice of redemption can be given following a Determination of Taxability but not less than thirty-five days following the Trustee's receipt of notice of the occurrence of such Determination of Taxability (the "Tax Call Redemption Date") at a redemption price equal to 103% of the principal amount of the Bond so redeemed, plus accrued interest to the Tax Call Redemption Date. Notwithstanding anything in this Indenture to the contrary, the Trustee shall give prompt written notice of the occurrence of a Determination of Taxability to the Bondholders and the Borrower. All of the Bond outstanding on the Tax Call Redemption Date shall be redeemed on that date. No other redemption premium is required to be payable in the event of a Determination of Taxability.

(d) Extraordinary Mandatory Redemption. The Bond is subject to redemption in whole (or as provided in (v) below, in whole or in part, but only to the extent that funds are available for such purpose in the Borrower Account) prior to maturity, at a redemption price of 100% of the principal amount of the Bond to be redeemed plus accrued interest to the date fixed for redemption, upon the receipt by the Trustee of a written certification of the Borrower fixing a redemption date (which date shall be at least

forty-five days but not more than sixty days after the date of the certification and must be an Interest Payment Date in the case of (v) below), and stating that one of the following events has occurred:

(i) any insurance proceeds received by the Trustee as a result of damage to the Project or defective title are required to be applied to the prepayment of the Note;

(ii) condemnation proceeds received by the Trustee are required to be applied to the prepayment of the Note;

(iii) the Borrower becomes subject to the Bankruptcy Code, which is not dismissed within 180 days of filing, and the trustee in bankruptcy causes or directs prepayment of the Mortgage;

(iv) upon an Event of Default under the Loan Agreement and an acceleration of the Note after the expiration of any applicable cure period available thereunder; or

(v) On the first day of the month in each year (commencing in 2019) following the release of the Borrower's audited financial statements for the previous fiscal year, if the Debt Service Coverage Ratio, as defined in Loan Agreement, was less than 1.10 for the immediately preceding two consecutive fiscal years, to the extent that amounts are then available in the Borrower Account of the Project Fund, moneys shall be transferred from the Borrower Account to redeem Bond; provided that (a) there shall be no such redemption unless the Purchaser has directed in writing that the Bond be so redeemed, and (b) the principal amount of Bond to be redeemed shall be the lesser of (1) the amount then on deposit in the Borrower Account, and (2) the minimum amount which, when the Debt Service Coverage Ratio for both of the immediately preceding two consecutive annual periods is recalculated to take into account the redemption of Bond pursuant to this subsection (v), would have been at least 1.10, in each case rounded down to the nearest \$5,000.

(e) Mandatory Redemption to the Extent of Excess Moneys in the Construction and Acquisition Fund. The Bond is subject to mandatory redemption, to the extent of excess moneys in the Bond Proceeds Account of the Construction and Acquisition Fund, at a redemption price equal to 100% of the principal amount of the Bond to be redeemed plus accrued interest to the redemption date, in the maximum principal amount of Authorized Denominations permitted by the balance of moneys transferred to the Bond Fund as described in (ii) below and not otherwise necessary for the payment of principal of, redemption premium, if any, or interest on the Bond within the next twelve months. Such redemption shall occur on the first date upon which proper notice of redemption can be given following (i) delivery by the Borrower of the certificate of completion of the Project pursuant to Section 3.3(e) of the Loan Agreement and (ii) the transfer of excess moneys, if any, from the Bond Proceeds Account of the Construction and Acquisition Fund to the Bond Fund pursuant to Section 3.3(e) of the Loan Agreement.

**Section 3.2 Selection of Bond to Be Redeemed.** A redemption of Bond shall be a redemption of the whole or of any part of the Bond from any funds available for that purpose in accordance with the provisions of this Indenture, *provided*, that there shall be no partial redemption of any Bond which would result in the unredeemed portion not being of an Authorized Denomination. If less than all the Bond is called for redemption under any provision of this Indenture permitting such partial redemption, the particular Bond to be redeemed shall be selected by the Trustee, pro rata amongst all Bondholders (except when the Bond is held in a book-entry only system, in which case the selection of Bond to be redeemed will be made in accordance with the procedures established by DTC [by lot] or any other applicable book-entry depository), in the principal amount designated to the Trustee by the Borrower or otherwise as required by this Indenture; *provided, however*, that the portion of any Bond to be redeemed shall be in an Authorized Denomination. Partial redemptions of any Bond subject to mandatory sinking fund redemption shall be applied pro rata among all mandatory sinking fund payment maturities (i.e., from the amounts coming due at maturity of such Bond first and then from amounts coming due on each preceding sinking fund payment date). If it is determined that a portion, but not all, of the principal amount represented by any such Bond is to be called for redemption, then upon notice of intention to redeem such portion, the Registered Owner of such Bond upon surrender of such Bond to the Trustee for payment to such Registered Owner of the redemption price of the portion called for redemption shall be entitled to receive a new Bond or Bond in the aggregate principal amount of the unredeemed balance of the principal amount of such Bond. New Bond representing the unredeemed balance of the principal amount of such Bond shall be issued to the Registered Owner, without charge. If the Registered Owner of any such Bond of a denomination greater than the principal amount to be redeemed shall fail to present such Bond to the Trustee for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the date fixed for redemption to the extent of the portion of the principal amount called for redemption (and to that extent only).

**Section 3.3 Procedure for Redemption.**

(a) If any of the Bond is called for redemption, the Trustee shall give notice, in the name of the Issuer, of the redemption of such Bond, by mailing a copy of such notice to the Registered Owners of the Bond to be redeemed at their addresses appearing in the registration books of the Trustee, as Bond Registrar, by certified mail or registered mail, postage prepaid not less than thirty (30) nor more than sixty (60) days prior to the redemption date which notice shall (i) specify the Bond to be redeemed, the redemption date, the redemption price, and the place or places where amounts due upon such redemption will be payable (which shall be the Principal Office of the Trustee) and, if less than all of the Bond is to be redeemed, the numbers of the Bond, and the portion of the Bond, so to be redeemed, (ii) state any condition to such redemption, and (iii) state that on the redemption date, and upon the satisfaction of any such condition, the Bond to be redeemed shall cease to bear interest, provided that funds are available for such purpose on that date, and if funds are not available on such date, the redemption shall be deferred until funds are available. Notwithstanding the foregoing, if, because of temporary or permanent suspension of mail service, it is impossible or impractical to mail notices in the manner described above, then notice of redemption to the Bondholders in lieu thereof will be given as approved by the Trustee (or the Issuer if there is no Trustee at the time) and such notice shall be considered sufficient. Such notice may set forth any additional information relating to

such redemption. No defect in any such notice shall in any manner defeat the effectiveness of the call for redemption. The Trustee shall also file the notice of redemption on EMMA.

(b) Any Bond and portions of Bond which have been duly selected for redemption and which are deemed to be paid in accordance with Article VII of this Indenture shall cease to bear interest on the specified redemption date.

(c) Official notice of redemption having been given as aforesaid, the Bond or portions of Bond so to be redeemed shall, on the redemption date, become due and payable at the redemption price specified in the notice, and from and after such date (unless there is a default in the payment of the redemption price) such Bond or portions of Bond shall cease to bear interest. Upon surrender of such Bond for redemption in accordance with said notice, such Bond shall be paid by the Trustee at the redemption price. Upon surrender for any partial redemption of any Bond, there shall be issued to the Registered Owner a new Bond or Bond in the amount of the unredeemed principal in an Authorized Denomination. All Bond which have been redeemed shall be canceled and destroyed by the Trustee and shall not be reissued.

(d) In addition to the official notice of redemption described in (a) above, if the Bond is not then held under a book-entry only system, further notice shall be given by the Trustee in the name of the Issuer as set out below; provided, however, that neither the failure to give any such notice nor any defect in any notice so given shall affect the sufficiency or validity of any proceedings for the redemption of the Bond. Each further notice of redemption given hereunder shall contain the information required for an official notice of redemption plus: (i) the CUSIP numbers of all Bond being redeemed; (ii) the Issuance Date; (iii) the rate of interest borne by each Bond being redeemed; (iv) the maturity date of each Bond being redeemed; and (v) any other descriptive information needed to identify accurately the Bond being redeemed.

(e) The Trustee shall at all reasonable times make available to any interested party complete information as to Bond which have been redeemed or called for redemption.

**Section 3.4 No Partial Redemption After Event of Default.** Anything in this Indenture to the contrary notwithstanding, if there shall have occurred and be continuing any Event of Default under this Indenture, there shall be no redemption of less than all of the Bond at the time Outstanding.

**Section 3.5 Payment of Redemption Price.** Subject to other provisions of this Agreement, for the redemption of any of the Bond, the Issuer shall cause to be deposited in the Bond Fund an amount sufficient to pay the principal of, redemption premium, if any, and interest to become due on such Bond on the date fixed for such redemption. Any amount in the Bond Fund available on such redemption date for payment of the principal of and accrued interest and redemption premium, if any, on the Bond to be redeemed shall be credited against any amount required to be caused to be so deposited in the Bond Fund.

**Section 3.6 Cancellation.** All Bond which have been redeemed shall be canceled and destroyed by the Trustee as provided in Section 3.3(c) of this Indenture.

**Section 3.7 Bond Redeemed in Part.** Any Bond which is to be redeemed only in part shall be surrendered (with due endorsement by, or a written instrument of transfer in form

satisfactory to the Issuer and the Trustee duly executed in blank by, the Holder thereof or his attorney duly authorized in writing) and the Issuer shall execute and the Trustee shall authenticate and deliver to the Holder of such Bond, without service charge to the Holder a new Bond or Bond, of any Authorized Denomination or Denominations as requested by such Holder, and in an aggregate principal amount equal to the unredeemed portion of the principal of the Bond surrendered.

**Section 3.8 Purchase in Lieu of Redemption.** In lieu of any redemption as provided in this Article III, moneys available for such purpose under this Indenture may be used and withdrawn as directed by the Borrower for the purchase of outstanding Bond, at public or private sale as and when, and at such prices (including brokerage and other charges) as the Borrower may provide, but in no event may Bond be purchased at a price in excess of the principal amount of such Bond, plus interest accrued to the date of purchase and any premium which would otherwise be due if such Bond were to be redeemed in accordance with this Indenture.

**Section 3.9 [Reserved]**

## ARTICLE IV

### GENERAL COVENANTS

**Section 4.1 Payment of Principal and Interest.** The Issuer covenants that it will promptly pay the principal of, redemption premium, if any, and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in each said Bond according to the true intent and meaning thereof, but solely from the payments and other amounts pledged for payment of the Bond which are from time to time held by the Trustee in the Bond Fund. The principal of and interest and redemption premium if any, on the Bond is payable solely from payments and other amounts due pursuant to the Loan Agreement (except to the extent paid out of monies attributable to the proceeds derived from the sale of the Bond or to income from the temporary investment thereof) and nothing in the Bond or in this Indenture shall be construed as pledging any other funds or assets of the Issuer or the Borrower except to the extent as set forth in any of the Bond Documents.

The Bond is limited obligations of the Issuer, payable solely from amounts to be paid by the Borrower under the Loan Agreement and the Note and amounts credited to such payment under the terms of this Indenture and are secured under this Indenture by an assignment to the Trustee of the Loan Agreement and the Note and all amounts paid by the Borrower thereunder.

**Section 4.2 Performance of Issuer Covenants.** The Issuer covenants that it will faithfully perform on its part at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all of its proceedings pertaining thereto; *provided, however*, that except for the matters set forth in any documents hereof relating to payment of the principal of, premium, if any, and interest on outstanding Bond prior to any Event of Default, the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof until it shall have been requested to do so by the Borrower or by Trustee, or shall have received

the instrument to be executed and at the option of the Issuer shall have received from the party requesting such action or execution assurance satisfactory to the Issuer that the Issuer will be paid or reimbursed for its reasonable expenses, including legal counsel fees, incurred or to be incurred in connection with taking such action or executing such instrument. The Issuer covenants that it is duly authorized under the Constitution and the laws of the State, including particularly the Act and the Bond Ordinance, to issue the Bond authorized by this Indenture and to execute this Indenture, to grant the security interest provided in this Indenture, to assign and pledge the Loan Agreement and the Note (except as otherwise provided in this Indenture) and to assign and pledge the amounts assigned and pledged by this Indenture in the manner and to the extent set forth in this Indenture, that all action on its part for the issuance of the Bond and the execution and delivery of this Indenture has been duly and effectively taken, and that the Bond in the hands of their owners are and will be valid and enforceable obligations of the Issuer according to the terms thereof and hereof. Anything contained in this Indenture to the contrary notwithstanding, it is understood that none of the covenants of the Issuer contained in this Indenture are intended to create a general or primary obligation of the Issuer.

**Section 4.3 Instruments of Further Assurance.** The Issuer agrees that the Trustee may defend its rights to the payments and other amounts due under the Loan Agreement and the Note for the benefit of the owners of the Bond against the claims and demands of all persons whomsoever. The Issuer covenants that it will do, execute, acknowledge and deliver such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, pledging, assigning and confirming unto the Trustee all and singular the rights assigned and the amounts pledged to the payment of the principal of, redemption premium, if any, and interest on the Bond. The Issuer covenants and agrees that, except as herein provided, it will not sell, convey, assign, pledge, encumber or otherwise dispose of any part of the revenues and receipts payable under the Loan Agreement, or its rights thereunder.

**Section 4.4 Recording and Filing.** In order to perfect the security interest of the Trustee in the Trust Estate and to perfect the security interest in the Note, the Issuer, to the extent permitted by law, will execute such security agreements or financing statements, naming the Trustee as assignee and pledgee of the Trust Estate assigned and pledged under this Indenture for the payment of the principal of, premium, if any, and interest on the Bond and as otherwise provided herein, and the Trustee or the Borrower, as the case may be, will cause the same to be duly filed and recorded, as the case may be, in the appropriate State and county offices as required by the provisions of the Uniform Commercial Code or other similar law as adopted in the State, as from time to time amended. To continue the security interest evidenced by such security agreements or financing statements, the Trustee or the Borrower, as the case may be, shall, at the expense of the Borrower, file and record or cause to be filed and recorded such necessary continuation statements or supplements thereto and other instruments from time to time as may be required pursuant to the provisions of the said Uniform Commercial Code or other similar law to fully preserve and protect the security interest of the Trustee in the Trust Estate and to perfect the security interest in the Note. The Issuer, to the extent permitted by law, at the expense of the Borrower, shall execute and cause to be executed any and all further instruments as shall be reasonably required by the Trustee for such protection and perfection of the interests of the Trustee and the registered owners and the Trustee, the Borrower or its agent, as the case may be, shall, at the expense of the Borrower, file and refile or cause to be filed and refiled such instruments which shall be necessary to preserve and perfect the lien of this



Indenture upon the Trust Estate until the principal of, premium, if any, and interest on the Bond issued hereunder shall have been paid or provision for their payment shall be made as herein provided.

**Section 4.5 Inspection of Project Books.** Any books and records which may be in Issuer's possession relating to the Project and the payments and other amounts due pursuant to the Loan Agreement shall at all reasonable times be open to inspection by such accountants or other agencies as the Trustee or any Interested Beneficial Holder may from time to time designate.

**Section 4.6 List of Bondholders.** The Trustee will keep on file a list of names and addresses of the owners of all Bond as from time to time registered on the registration books of the Issuer maintained by the Trustee as Bond Registrar, together with the principal amount and numbers of such Bond. The Trustee shall be under no responsibility with regard to the accuracy of said lists other than to accurately record the information furnished it. At reasonable times and under reasonable requirements established by the Trustee, said list may be inspected and copied by the Borrower or by owners (or a designated representative thereof) of fifteen percent or more in principal amount of Bond, such ownership and the authority of such designated representative to be evidenced to the satisfaction of the Trustee.

**Section 4.7 Performance of Covenants.** The Issuer covenants, and the Trustee by executing this Indenture covenants, that each will faithfully observe and perform at all times any and all covenants, undertakings, stipulations and provisions on its part to be observed or performed contained (i) in this Indenture, and (ii) in any Bond executed, authenticated and delivered hereunder. The Issuer shall not be obligated to execute any documents or take any other action under or pursuant to this Indenture, the Loan Agreement, the Note or any other document in connection with the Bond unless and until provision for the payment of expenses of the Issuer, including legal counsel fees, shall have been made. Provisions for expenses shall be deemed to have been made upon arrangements reasonably satisfactory to the Issuer for the provision of expenses being agreed upon by the Issuer and the party requesting such execution.

**Section 4.8 Covenants Respecting Arbitrage.**

(a) Based upon the representations of the Borrower, the Issuer covenants and certifies to and for the benefit of the Owners that so long as the Bond remain Outstanding, moneys on deposit in the Funds created hereunder, whether or not such moneys were derived from the proceeds of the sale of the Bond or from any other source, will not be used in a manner which would cause the Bond to be an arbitrage bond within the meaning of Section 148 of the Code. Pursuant to such covenants, based upon the representations of the Borrower, the Issuer obligates itself to comply throughout the term of the Bond with the requirements of Section 148 of the Code, and any regulations promulgated thereunder.

(b) The Borrower is responsible for all arbitrage rebate calculations pursuant to Section 4.11 of the Loan Agreement.

**Section 4.9 Regulatory Agreement Covenant.** The Issuer covenants, and the Trustee by executing this Indenture covenants, that each will faithfully observe and perform at all times

any and all covenants, undertakings, stipulations and provisions on its part to be observed or performed contained in the Regulatory Agreement executed even date herewith.

**Section 4.10 Tax Agreement Covenant.** The Issuer covenants, and the Trustee by executing this Indenture covenants, that each will faithfully observe and perform at all times any and all covenants, undertakings, stipulations and provisions on its part to be observed or performed that are contained in the Tax Agreement.

**Section 4.11 Effect of Covenants on Issuer.** Nothing in this Article is intended to impose any pecuniary liability on the Issuer or obligate the Issuer to make or incur any expenditure, except from the amounts provided and available therefor pursuant to this Indenture.

**Section 4.12 Tax Exemption of Interest on the Bond.** Subject to the limitations on its liability as stated herein and to the extent permitted by law, the Issuer covenants and agrees that it has not knowingly engaged and will not knowingly engage in any activities, and that it has not knowingly taken and will not knowingly take any action, which might result in any interest on the Bond becoming includable in the gross income of their owners for purposes of Federal income taxation.

**Section 4.13 Fees, Charges and Expenses of the Trustee, the Bond Registrar and the Issuer.** The Trustee, the Bond Registrar and the Issuer shall be entitled to payment and reimbursement for reasonable fees for their respective services rendered hereunder and all advances, counsel fees and other expenses reasonably made or incurred by the Trustee, the Bond Registrar and the Issuer in connection with such services and in connection with entering into this Indenture, including any such fees and expenses incurred in connection with action taken hereunder.

## ARTICLE V

### FUNDS AND APPLICATION OF REVENUES AND OTHER MATTERS

#### **Section 5.1 Establishment of Funds and Accounts; Application of Moneys.**

(a) The following special funds and accounts shall be established and maintained pursuant to the provisions of this Indenture:

Bond Fund

(a) Capitalized Interest Account

Cost of Issuance Fund

Construction and Acquisition Fund

(a) Bond Proceeds Account

Debt Service Reserve Fund

Medicaid Receivables Cash Flow Fund

Operating Reserve Fund

Project Fund

(a) Revenues Account

(b) Rebate Account

(c) Operating Expense Account

- (d) Trustee/Issuer Expense Account
- (e) Insurance/Tax Account
- (f) Replacement Reserve Account
- (g) Borrower Account

Initial Lease-Up Reserve Fund

Marketing Reserve Fund

(b) [Pursuant to Section \_\_\_\_ of the Bond Purchase Contract, and subject to the satisfaction of the conditions set forth in the Construction Disbursement Agreement], the Purchaser will make Advances against the Stated Principal Amount of the Bond on a Business Day not more than 5 Business Days following the submission of a request for an Advance for proceeds of the Bond (except with respect to the initial Advance to be made on the Issuance Date). The Trustee is authorized to receive the proceeds of the Bond for and on behalf of the Issuer and to give receipt therefor along with certain other moneys of the Borrower. The net proceeds received by the Issuer from the sale of the Bond and the other funds deposited by the Borrower with the Trustee shall be applied as follows:

(i) The net proceeds of the sale of the Bond shall be applied as follows: \$\_\_\_\_\_ to be deposited in the Bond Proceeds Account of the Construction and Acquisition Fund, \$[1,206,480] to be deposited in the Capitalized Interest Account of the Bond Fund, and \$\_\_\_\_\_ to be deposited in the Cost of Issuance Fund.

(ii) On the Issuance Date, other monies of the Borrower shall be applied as follows: up to \$\_\_\_\_\_ of Borrower's equity or \_\_\_\_\_ funds to be deposited in escrow with the title company to pay costs of issuance and up to \$\_\_\_\_\_ of other Borrower funds to be deposited with the title company to pay other costs of the Project.

(iii) Subsequent to the Issuance Date, other monies of the Borrower are required, pursuant to the Loan Agreement, to be applied as follows:

(a) a portion of the [second] installment of the tax credit equity contribution by the Investor Member in the amount of \$250,000 is required to be deposited in the Initial Lease-Up Reserve Fund.

(b) a portion of the second installment of the tax equity capital contributions in the amount of \$\_\_\_\_\_ is required to be deposited in the Insurance/Tax Account;

(c) a portion of the [second] installment of the tax credit equity contribution by the Investor Member in the amount of \$1,185,000 is required to be deposited in the Medicaid Receivables Cash Flow Fund; and

(d) a portion of the \_\_\_\_\_ installment of the tax credit equity contribution by the Investor Member in the amount of \$150,000 is required to be deposited in the Marketing Reserve Fund; and

(e) a portion of the [third] installment of the tax credit equity contribution by the Investor Member in the amount of \$740,000 is required to be deposited in the Operating Reserve Fund.

## **Section 5.2 Bond Fund.**

(a) There is created and established a "Bond Fund", and within the Bond Fund a "Capitalized Interest Account", which shall be held by the Trustee and which shall be used for the purpose of paying the principal, redemption premium, if any, and interest on the Bond at the times set forth in the Bond and of retiring such Bond at or prior to maturity at the times and in the manner provided herein. At the Issuance Date there shall be deposited in the Capitalized Interest Account of the Bond Fund the amount of \$\_\_\_\_\_ of Bond Proceeds for the purpose of paying interest on the Bond for the period beginning on the Issuance Date and ending on \_\_\_\_\_, 20\_\_\_. All monies deposited in the Bond Fund shall be disbursed and applied by the Trustee at the times and in the manner provided in this Indenture.

(b) The Trustee shall separately account for each deposit in the Bond Fund so that the Trustee may at all times ascertain the date and source of deposit of all funds (including any investment income on deposits in the Bond Fund). Except as provided in subsections (c) and (d) of this Section, neither the Issuer nor the Borrower shall have any interest in the Bond Fund or the monies and Investment Obligations therein, all of which shall be held in trust by the Trustee for the sole benefit of the Holders of the Bond.

(c) The Bond Fund shall be drawn upon for the purpose of paying the principal, redemption premium, if any, and interest on the Bond; *provided* that moneys on deposit in the Capitalized Interest Account shall be drawn upon to pay interest on the Bond before any other moneys on deposit in the Bond Fund are applied to that purpose. Monies set aside from time to time with the Trustee and Paying Agent for the payment of such principal, redemption premium and interest shall be held in trust for the Holders of the Bond in respect of which the same shall have been so set aside. Until so set aside for the payment of principal, redemption premium, if any, or interest as aforesaid, all monies in the Bond Fund shall be held in trust for the benefit of the Holders of all Bond at the time outstanding equally and ratably and without any preference or distinction as between Bond.

(d) In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if funds sufficient to pay such Bond shall have been deposited in the Bond Fund, all liability of the Issuer to the owner thereof for the payment of such Bond shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such monies, without liability for interest thereon, for the benefit of the owner of such Bond who shall thereafter be restricted exclusively to such monies, for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Bond. Such monies shall be held in a separate and segregated fund and shall not be invested.

(e) In the event that, after all transfers have occurred pursuant to Section 5.7(b) hereof, there are insufficient moneys in the Bond Fund on any date that principal of or interest on the Bond is due and payable, there shall be transferred by the Trustee without further direction

from the other funds and accounts created hereunder to the Bond Fund up to the amount necessary to cure such insufficiency in the order set forth below: [WHERE PUT THE MARKETING RESERVE FUND?]

- (i) the Revenues Account;
- (ii) the Borrower Account;
- (iii) the Initial Lease-Up Reserve Fund;
- (iv) the Medicaid Receivables Cash Flow Fund;
- (v) the Operating Reserve Fund;
- (vi) the Replacement Reserve Account; and
- (vii) the Debt Service Reserve Fund.

Any monies so deposited with and held by the Trustee not so applied to the payment of Bond for at least two years after the date on which the same shall have become due shall then be paid by the Trustee to the Borrower upon the written direction of the Authorized Borrower Representative. Thereafter, Bondholders shall be entitled to look only to the Borrower for payment, the Borrower shall not be liable for any interest thereon and shall not be regarded as a trustee of such monies, and the Trustee shall have no further responsibilities with respect to such monies. The obligation of the Trustee under this Section to pay any such funds to the Borrower shall be subject, however, to any provisions of law applicable to the Trustee or to such funds providing other requirements for disposition of such funds.

**Section 5.3 Cost of Issuance Fund.** There is created and established a "Cost of Issuance Fund," which shall be held by the Trustee. This Fund is to be funded at the Issuance Date by the Borrower from Bond proceeds. Any Bond proceeds in the Cost of Issuance Fund shall be expended to pay issuance costs before any other moneys in the Fund are applied to the purpose. None of the Proceeds of the Bond, other than an amount not exceeding 2% of the aggregate amount of Advances either deposited into the Cost of Issuance Fund or, to the extent permitted by the Code, on deposit in the Bond Proceeds Account, may be used to pay the Costs of Issuance of the Bond. Amounts in the Cost of Issuance Fund shall be used to pay issuance costs upon filing with the Trustee a written requisition of the Authorized Borrower Representative. Any monies remaining in the Cost of Issuance Fund three months after the Issuance Date shall be transferred to the Construction and Acquisition Fund. The Cost of Issuance Fund shall be closed subsequent to such transfer.

**Section 5.4 Construction and Acquisition Fund.**

(a) There is created and established a "Construction and Acquisition Fund", and within the Construction and Acquisition Fund a "Bond Proceeds Account" which shall be held by the Trustee. Advances of proceeds of the Bond shall be deposited in the Construction and Acquisition Fund and disbursed by the Trustee at the written request of the Borrower and with the approval of the Purchaser to pay, or reimburse the Borrower for payment of, costs of the

acquisition, equipping and construction of the Project. Moneys in the Construction and Acquisition Fund shall be withdrawn and so applied when the Borrower files with the Trustee a written requisition of the Authorized Borrower Representative approved by the Investor Member and by the Construction Monitor in substantially the form attached to the Loan Agreement as Exhibit D. Moneys so disbursed shall be paid into an escrow maintained by the title company for the Project and disbursed, along with other funds available for the acquisition, construction and equipping of the Project, under the conditions set forth therein.

(b) If an Event of Default occurs under this Indenture, and the Trustee declares the principal of all Bond and the interest accrued thereon to be due and payable, no moneys may be paid out of the Construction and Acquisition Fund by the Trustee during the continuance of such an Event of Default, except that moneys on deposit in the Construction and Acquisition Fund may be transferred into the Bond Fund as and when necessary for the purpose of paying the Bond as due as a result of such Event of Default; provided, however, that if such an Event of Default shall be waived and such declaration shall be rescinded by the Trustee or the owners of the Bond pursuant to the terms of this Indenture, the full amount of any such moneys in the Construction and Acquisition Fund may again be disbursed by the Trustee in accordance with the provisions of the Loan Agreement.

(c) The Trustee shall keep and maintain adequate records pertaining to the Construction and Acquisition Fund and all disbursements therefrom.

(d) The Trustee's sole obligation shall be to make disbursements pursuant to properly completed requisitions. Trustee shall have no responsibility for the Borrower's compliance with its obligations regarding the use of the proceeds of the Construction and Acquisition Fund.

(e) After the completion of the acquisition and construction of the Project, the Trustee shall transfer funds remaining on deposit in the accounts in the Construction and Acquisition Fund as provided by Section 3.3(e) of the Loan Agreement.

(f) The Trustee shall draw upon the Construction Letter of Credit to pay any costs of the Project to the extent that moneys in the Construction and Acquisition Fund are insufficient.

#### **Section 5.5 Debt Service Reserve Fund.**

(a) There is created and established a "Debt Service Reserve Fund" in which funds are required to be maintained in the amount of the Debt Service Reserve Fund Requirement, which shall be held by the Trustee and which may be transferred by the Trustee to the Bond Fund on any Interest Payment Date, with the consent of the Purchaser, to the extent that the funds in the Bond Fund, after all transfers into the Bond Fund as provided in Section 5.2(e) hereof, on such Interest Payment Date are insufficient to pay the interest and principal then due on the Bond including, without limitation, any sinking fund redemptions provided for in Section 3.1(b).

(b) At the written direction of the Borrower, whenever the amount held in the Debt Service Reserve Fund, together with any other funds then held under this Indenture, is sufficient to provide for the redemption in whole of all outstanding Bond, including any interest accrued to the date of redemption and any applicable redemption premium, such amount shall be transferred

to the Bond Fund and applied to such redemption. On the final maturity of the Bond or upon acceleration of the Bond, any amount remaining in the Debt Service Reserve Fund shall be used to pay the amount, including any accrued interest, due on final maturity and any balance remaining after the Bond is fully paid shall be disbursed to the Borrower.

The Trustee shall determine the market value of the investment securities in the Debt Service Reserve Fund semiannually on each Interest Payment Date. Interest earnings on cash and investment securities in the Debt Service Reserve Fund shall be retained in the Debt Service Reserve Fund, until withdrawn or transferred; provided, however, that if the amount of cash and securities in the Debt Service Reserve Fund is greater than the Debt Service Reserve Fund Requirement, such excess shall be transferred to the Revenues Account of the Project Fund.

The Debt Service Reserve Fund Requirement may be met in whole or in part by the deposit with the Trustee of a DSRF Credit Enhancement (or by the deposit of a combination of cash and a DSRF Credit Enhancement). A "Debt Service Reserve Credit Enhancement" or "DSRF Credit Enhancement" shall consist of a letter of credit or surety bond which (a) permits the Trustee to draw on such instrument in an amount in order to pay principal of and interest on the Bond in the event moneys in the Bond Fund are insufficient therefor or pay expenses pursuant to Section 9.2 of this Indenture up to \$500,000, and (b) is issued by a provider with a financial strength rating of at least "A" or its equivalent by Moody's or S&P. The Borrower may at any time deposit cash with the Trustee for deposit into the Debt Service Reserve Fund in substitution for a DSRF Credit Enhancement, provided that the cash so deposited with the Trustee is in at least the amount of the undrawn amount remaining available to be drawn on the DSRF Credit Enhancement. In the event that the financial strength rating of the provider of the DSRF Credit Enhancement by Moody's or S&P shall at any time fall below "A" or its equivalent, the Borrower shall be obligated to replace such DSRF Credit Enhancement and meet the Debt Service Reserve Fund Requirement with cash to be deposited in the Debt Service Reserve Fund within 30 days following such rating reduction. If the Borrower meets the Debt Service Reserve Fund Requirement by depositing a combination of cash and a DSRF Credit Enhancement, draws on the Debt Service Reserve Fund shall first be made from cash and then from the DSRF Credit Enhancement.

#### **Section 5.6 Medicaid Receivables Cash Flow Fund.**

(a) There is created and established a "Medicaid Receivables Cash Flow Fund" which, pursuant to Section 4.2(f) of the Loan Agreement, will be funded by Borrower Equity in accordance with Schedule A of the Loan Agreement and subsequently from Revenues as provided in Section 5.7(b)(viii) hereof. If the Trustee determines on the 20th day of each month (or, if such date is not a Business Day, then the next Business Day), or sooner at direction of Borrower, that Revenues in the Revenues Account, when combined with available Revenues, are insufficient to fully fund the amounts required to be paid in the flow of funds, and such shortfall is directly related to a delay in payment of Medicaid receivables, the Trustee will disburse funds from the Medicaid Receivables Cash Flow Fund into the Revenues Account of the Project Fund in an amount sufficient to make such payments. In addition, on the 20th day of each month (or, if such date is not a Business Day, then the next Business Day) commencing with the month following Project completion, the Trustee shall calculate whether the sum of net Outstanding Medicaid Receivables plus funds on deposit in the Medicaid Receivables Cash Flow Fund

exceed the MRCFF Requirement and shall transfer, to the extent of any such surplus, money on deposit in the Medicaid Receivables Cash Flow Fund to the Revenues Account of the Project Fund. Also, amounts in this fund will be transferred to the Bond Fund, whenever such amounts together with any other funds held by the Trustee are sufficient to redeem all of the outstanding Bond then subject to redemption, including any interest accrued to the date of redemption and any applicable redemption premium.

(b) Moneys in the Medicaid Receivables Cash Flow Fund shall also be applied as provided in Section 5.7(b) hereof and otherwise as provided in this Indenture.

(c) At the written direction of the Borrower, whenever the amount held in the Medicaid Receivables Cash Flow Fund, together with any other funds then held under this Indenture, is sufficient to provide for the redemption in whole of all outstanding Bond, including any interest accrued to the date of redemption and any applicable redemption premium, such amount shall be transferred to the Bond Fund and applied to such redemption. Upon acceleration of the principal amount of the Bond, any amount in the Medicaid Receivables Cash Flow Fund shall be transferred to the Bond Fund and applied to such payment. Any amount remaining in the Medicaid Receivables Cash Flow Fund after the Bond is fully paid shall be disbursed to the Borrower.

#### **Section 5.7 Project Fund.**

(a) There is established a "Project Fund" which shall be held by the Trustee and which shall have the following accounts:

- (i) Revenues Account;
- (ii) Rebate Account;
- (iii) Operating Expense Account;
- (iv) Trustee/Issuer Expense Account;
- (v) Insurance/Tax Account;
- (vi) Replacement Reserve Account; and
- (vii) Borrower Account.

(b) Section 4.2 of the Loan Agreement requires that all Revenues shall be deposited when received from the Borrower in a Collection Account (as therein defined). All Revenues in the Collection Account shall be transferred weekly (and on the 20th day of each month or, if such date is not a Business Day, then the next Business Day) to the Trustee for deposit into the Revenues Account, except to the extent that the Department has paid SLF Payments to the Trustee. The Trustee shall transfer or disburse all funds in the Revenues Account on the 20th day of each month or, if such date is not a Business Day, then the next Business Day (except as otherwise provided below) in the following amounts and order of priority:



(i) Transfer to the Rebate Account, amounts necessary in each year so as to meet the Rebate Amount (as defined in the Tax Agreement), as set forth in writing by the Borrower to the Trustee.

(ii) Transfer to the Operating Expense Account the budgeted expenditures for the operations of the Project, as certified to the Trustee by the Borrower pursuant to Section 2.5(e) of the Loan Agreement;

(iii) to the extent that amounts from the initial deposit of Bond proceeds into the Capitalized Interest Account of the Bond Fund are insufficient, transfer to the Bond Fund the sum of (A) one-sixth of the interest due on the next Interest Payment Date plus (B) one-twelfth of the principal amount required to pay Bond at maturity thereof or to redeem the Bond scheduled for mandatory sinking fund redemption during the current Bond Year pursuant to Section 3.1(b), *provided, however*, that, notwithstanding the foregoing, the deposit made to the Bond Fund by the 20<sup>th</sup> of the month immediately preceding an Interest Payment Date shall be at least the amount equal to the difference between the amount already on deposit in the Bond Fund and the Bond Service Charges payable on the Bond on such Interest Payment Date.

(iv) In the event the amount available to be drawn under any DSRF Credit Enhancement, together with funds on deposit in the Debt Service Reserve Fund, are less than the Debt Service Reserve Fund Requirement, transfer to the Debt Service Reserve Fund an amount equal to the shortfall between the amount of the funds on deposit in the Debt Service Reserve Fund, together with the undrawn amount of any DSRF Credit Enhancement therein, and the Debt Service Reserve Fund Requirement, in order to bring the balance of the Debt Service Reserve Fund up to the Debt Service Reserve Fund Requirement by the next succeeding Interest Payment Date.

(v) Commencing \_\_\_\_\_, \_\_\_\_\_ or earlier to the extent that amounts from the deposit of Borrower's equity are insufficient, transfer to the Insurance/Tax Account the sum of (A) one twelfth (or such greater amount as necessary to pay when due) of the sum of all real estate taxes and assessments to be due in the next 12 months as certified to the Trustee by the Borrower plus (B) one-twelfth (or such greater amount as necessary to pay when due) of the amount necessary to maintain all required insurance coverage during the next 12 months as certified to the Trustee by the Borrower [with the consent of the Purchaser].

(vi) Transfer to the Trustee/Issuer Expense Account the amount required (A) to pay any amount coming due to the Trustee or the Issuer pursuant to this Indenture prior to the fifteenth of the following month plus any unpaid amounts previously due to the Trustee and the Issuer, and (B) to pay any and all consultants or experts retained pursuant to the terms of the Borrower Documents, as certified to the Trustee by the Borrower.

(vii) Commencing on the 20th day of the month immediately following completion of the Project, transfer to the Replacement Reserve Account a monthly amount equal to \$\_\_\_\_\_ or such other higher amount as may be specified by the Borrower or as established from time to time pursuant to Section 6.14 of the Loan

Agreement.

(viii) Commencing \_\_\_\_\_, \_\_\_\_ if the sum of the Outstanding Medicaid Receivables and funds on deposit in the Medicaid Receivables Cash Flow Fund is less than the MRCFF Requirement, transfer to the Medicaid Receivables Cash Flow Fund an amount equal to the shortfall between (a) the sum of Outstanding Medicaid Receivables plus funds on deposit in the Medicaid Receivables Cash Flow Fund and (b) the MRCFF Requirement.

(ix) [Commencing on the 20th day of the month immediately following the initial deposit of funds into the Operating Reserve Fund, transfer to the Operating Reserve Fund an amount equal to any shortfall between the amount then on deposit in such Fund and the Operating Reserve Requirement.]

(x) Transfer the balance, if any, to the Borrower Account.

Notwithstanding the foregoing, to the extent that amounts in the Medicaid Receivables Cash Flow Fund have been disbursed to fund shortfalls in other funds hereunder because such shortfalls were directly related to a delay in State payment of Medicaid receivables, payments by the State to the Borrower (or the Trustee) of such delinquent Medicaid Receivables, shall be deposited directly into the Medicaid Receivables Cash Flow Fund to the extent necessary to replenish such disbursement and, thereafter, to the Revenues Account to be disbursed as provided above.

To the extent that the amount available in the Revenues Account is insufficient on the 20<sup>th</sup> day of any month to transfer the amounts for such month required pursuant to (i) through (vii) above, except for any amounts required to be transferred to the Bond Fund pursuant to (iii) above which are instead transferred to the Bond Fund from the Debt Service Reserve Fund pursuant to Section 5.5(a), such amounts shall next be transferred from the following accounts in the following order of priority: (1) the Medicaid Receivables Cash Flow Fund, to the extent the deficiency is caused by a delay in the payment of Outstanding Medicaid Receivables in the preceding month (as the Borrower shall certify to the Trustee); (2) the Borrower Account; (3) the Initial Lease-Up Reserve Fund; (4) the Medicaid Receivables Cash Flow Fund, regardless of the cause of the deficiency; and (5) and the Operating Reserve Fund. [Notwithstanding anything herein to the contrary contained, no such transfers shall be made pursuant to this Section 5.7(b) from the Medicaid Receivables Cash Flow Fund or the Initial Lease-Up Reserve Fund, without the prior written consent of the Purchaser.]

(c) The Trustee shall apply monies on deposit in the Trustee/Issuer Expense Account to pay the fees of the Trustee and of the Issuer pursuant to the Loan Agreement as such fees are due. Any deficiency shall be paid by the Borrower upon notice and demand pursuant to the Loan Agreement.

(d) The Trustee shall apply monies on deposit in the Insurance/Tax Account to pay real estate taxes and insurance premiums in regard to the Project as such amounts become due, provided that the Trustee receives a written request from an Authorized Borrower

Representative. Any deficiency shall be paid by the Borrower upon notice and demand from the Trustee.

(e) The Trustee shall apply monies in the Replacement Reserve Account to pay amounts requisitioned by the Borrower pursuant to Section 3.4 of the Loan Agreement to pay for repairs and restoration of the Project in accordance with the Loan Agreement. At such time as no Bond is outstanding, the balance of the Replacement Reserve Account shall be disbursed by the Trustee to the Borrower.

(f) Commencing on the first day of the month following delivery of the audited financial statements of the Borrower relating to the first full Fiscal Year that the Project has been in operation, the Trustee is required to distribute, on an annual basis, funds in the Borrower Account of the Project Fund to the Borrower, if the following conditions are met: (i) [notice is provided to, and the written consent of the Purchaser is obtained; (ii) the Debt Service Coverage Ratio for the preceding Fiscal Year of the Borrower equals or exceeds 1.10, (iii) the amount of any funds in the Debt Service Reserve Fund are equal to the Debt Service Reserve Fund Requirement, (iv) the amounts on deposit in the Bond Fund, the Rebate Account, the Operating Expense Account, the Insurance/Tax Account, the Trustee/Issuer Expense Account and the Replacement Reserve Account are at least equal to the amounts then required to be on deposit therein, and (v) the sum of Outstanding Medicaid Receivables as most recently provided by Borrower under Section 2.5(b)(ii)(C) of the Loan Agreement plus funds on deposit in the Medicaid Receivables Cash Flow Fund, is equal to the MRCFF Requirement.

(g) The Trustee shall cause all amounts to be deposited into the Rebate Account and all amounts on deposit in the Rebate Account to be paid to the United States Department of the Treasury at the times and in the amounts required by written directions provided to the Trustee by the Borrower pursuant to the Tax Agreement.

**Section 5.8 Initial Lease-Up Reserve Fund.** Monies in the Initial Lease-Up Reserve Fund shall be held by the Trustee and transferred by the Trustee to the Revenues Account of the Project Fund on any date and to the extent that the funds in the Revenues Account, together with any funds transferred from the Borrower Account, are insufficient to make deposits as provided for in Section 5.7(b)(i) through (vii). Pursuant to Section 4.2(f) of the Loan Agreement, the Borrower is required to deposit \$250,000 to the Initial Lease-Up Reserve Fund from the [second] capital contribution to be made by the Investor Member after the receipt of the last certificate of occupancy for the Project, achievement of “placed in service” status for the building in the Project, receipt of all permits and approvals required for the operation of the Project and satisfaction of the other Operating Agreement requirements.

Any monies remaining on deposit in the Initial Lease-Up Reserve Fund after the date which the Project has a Debt Service Coverage Ratio equal to or exceeding 1.10 for four consecutive calendar quarters [as determined by the Purchaser] shall be transferred to the Borrower Account after written certification and direction by the Borrower.

[Except as expressly provided in this Section 5.8, the Trustee shall make no transfers or distributions from the Initial Lease-Up Reserve Fund without the prior written consent of the Purchaser.]

**Section 5.9 Operating Reserve Fund.**

(a) There is created and established a "Operating Reserve Fund" which, pursuant to Section 4.2(f) of the Loan Agreement, will be funded up to the Operating Reserve Requirement of \$740,000 from Revenues or from advances by the Investor Member against receipt of the Investor Member's [third] capital contribution as described under the Operating Agreement. Amounts in the Operating Reserve Fund shall be used, at the direction of the Borrower and with the consent of the Investor Member, to make up for any deficiency in the amount required to be on deposit in, or disbursed from, the Operating Expense Account of the Project Fund.

(b) At the written direction of the Borrower, whenever the amount held in the Operating Reserve Fund, together with any other funds then held under this Indenture, is sufficient to provide for the redemption in whole of all outstanding Bond, including any interest accrued to the date of redemption and any applicable redemption premium, such amount shall be transferred to the Bond Fund and applied to such redemption. Upon acceleration of the principal amount of the Bond, any amount in the Operating Reserve Fund shall be transferred to the Bond Fund and applied to such payment. Any amount remaining in the Operating Reserve Fund after the Bond is fully paid shall be disbursed to the Borrower.

**Section 5.10 Replacement Reserve Account.** The Replacement Reserve Account of the Project Fund shall be held by the Trustee and shall be governed by the provisions of Section 3.4 of the Loan Agreement as if they were set forth herein.

**Section 5.11 Marketing Reserve Fund.** Monies in the Marketing Reserve Fund shall be held by the Trustee and transferred by the Trustee to \_\_\_\_\_. Except as expressly provided in this Section 5.11, the Trustee shall make no transfers or distributions from the Marketing Reserve Fund without the prior written consent of the Purchaser.

**Section 5.12 Disposition of Bond Upon Payment.** All Bond paid and redeemed by the Trustee under the provisions of this Indenture, either at or before maturity, shall be canceled when such payment or redemption is made, and such Bond, unless then held by the Trustee, shall be delivered to the Trustee. All canceled Bond shall from time to time be cremated or otherwise destroyed by the Trustee.

**ARTICLE VI**

**INVESTMENT OF FUNDS**

**Section 6.1 Investment of Funds and Accounts Held by the Trustee.** All monies held in the funds provided for in Section 5.1 shall be invested by the Trustee at the written direction of the Borrower in Investment Obligations; *provided* that monies deposited in the Bond Fund to pay interest or principal on an Interest Payment Date must be invested in Investment Obligations maturing on or before the relevant Interest Payment Date. In the event the Trustee does not receive such written instruction from the Borrower, monies shall be invested in money market funds as set forth in (e) of the definition of "Investment Obligations." The Trustee may make any and all investments through itself or any bank or trustee company under common control with the Trustee.

**Section 6.2 Valuation.** In computing the amount in any fund or account held by the Trustee under the provisions of this Indenture, obligations purchased as an investment of monies therein shall be valued at the cost or market price thereof, whichever is lower, exclusive of accrued interest.

**Section 6.3 Sale of Investments.** The Trustee shall sell at market price, or present for redemption, any obligation purchased by it as an investment whenever it shall be necessary in order to provide monies to meet any payment or transfer from the fund or account for which such investment was made. The Trustee shall provide the Borrower with a monthly written statement, listing all of the Investment Obligations, if any, held for the credit of each fund or account in its custody under the provisions of this Indenture and supplements hereto.

**Section 6.4 Liability of the Trustee and Issuer for Investments.** The Borrower shall authorize and direct in writing all investments by the Trustee. The Trustee shall not be liable or responsible for the making of, or failure to make, any investment authorized by the provisions of this Article, in the manner provided in this Article, or for any loss resulting from any such investment so made, nor shall the Issuer have any liability in connection therewith.

**Section 6.5 Earnings on Investments.** Earnings on the investments of all accounts and funds, other than the Bond Proceeds Account of the Construction and Acquisition Fund and the Rebate Account, invested by the Trustee shall be deposited in the Revenues Account; *provided* that earnings on the investment of the Debt Service Reserve Fund and the Capitalized Interest Account of the Bond Fund shall be deposited in the Bond Proceeds Account of the Construction and Acquisition Fund through the date of completion of the Project. Earnings on the investment of amounts in the Bond Proceeds Account of the Construction and Acquisition Fund shall be retained in the Bond Proceeds Account and used as other moneys in that Account are used. Earnings on the investment of amounts in the Rebate Account shall be retained in that account and applied as other moneys in that account are applied.

**Section 6.6 Arbitrage.** No investment shall be made which would cause the Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code, and the Trustee shall be entitled to obtain, at the expense of the Borrower, an opinion from Bond Counsel that the making of any investment will not have such results. The Trustee shall not, however, be liable or responsible for failure to request such an opinion or for any investment the results thereof cause the Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code, whether or not the Trustee has requested such an opinion.

## ARTICLE VII

### DISCHARGE OF LIEN

**Section 7.1 Defeasance.** If the Issuer shall pay or cause to be paid, or there shall otherwise be paid or provision for payment made, to the owners of the Bond, the principal and interest due or to become due thereon at the times and in the manner stipulated therein, and if the Issuer shall pay or cause to be paid to the Trustee all sums of money due or to become due according to the provisions hereof, then the estate and rights granted by this Indenture shall cease, determine and be void, whereupon the Trustee shall cancel and discharge the lien of this

Indenture, and execute and deliver to the Issuer such instruments in writing as shall be requisite to release such lien, and reconvey, release, assign and deliver unto the Issuer any and all the estate, right, title and interest in and to any and all rights or property conveyed, assigned or pledged to the Trustee by this Indenture or otherwise subject to the lien of this Indenture, except cash or Federal Obligations held by the Trustee for the payment of the principal of, and redemption premium, if any, and interest on the Bond.

Any Bond shall be deemed to be paid within the meaning of this Article and for all purposes of this Indenture when (a) payment of the principal of and redemption premium, if any, on such Bond, plus interest thereon to the due date thereof, either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee, or held by a Depository on behalf of the Trustee pursuant to an investment agreement, in trust and irrevocably set aside exclusively for such payment, (1) funds in regard to which an opinion of nationally recognized counsel, selected by the Borrower and reasonably acceptable to the Trustee, experienced in federal bankruptcy matters has been obtained to the effect that payment of Bond Service Charges with such funds will not constitute a voidable preference under Section 547 of the Bankruptcy Code in a case commenced by or against the Borrower or the Issuer or any insider of the Borrower or Issuer sufficient to make such payment without investment and/or (2) Federal Obligations, not subject to redemption prior to maturity, purchased with funds in regard to which an opinion of nationally recognized counsel, selected by the Borrower and reasonably acceptable to the Trustee, experienced in federal bankruptcy matters has been obtained to the effect that payment of Bond Service Charges with such funds will not constitute a voidable preference under Section 547 of the Bankruptcy Code in a case commenced by or against the Borrower or the Issuer or any insider of the Borrower or Issuer, which Federal Obligations, maturing in such amount and at such times as will ensure the availability of sufficient monies to make such payment to the owners of the Bond, without reinvestment, and (b) all necessary and proper fees, compensation, expenses and indemnities of the Trustee and the Issuer pertaining to the Bond with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee. At such times as a Bond shall be deemed to be paid hereunder, as aforesaid, it shall no longer be secured by or entitled to the benefits of this Indenture and the supplements hereto, except for the purposes of any such payment from such monies or Federal Obligations. The Issuer covenants that it will make no deposit hereunder and make no use of any such deposit which would cause the Bond to be treated as an arbitrage bond within the meaning of the Code.

Notwithstanding any provision of any other Article of this Indenture which may be contrary to the provisions of this Article, all monies or Federal Obligations set aside and held in trust pursuant to the provisions of this Article for the payment of Bond (including interest thereon) shall be applied to and used solely for the payment of the particular Bond (including interest thereon) with respect to which such monies and Federal Obligations have been so set aside in trust.

The above notwithstanding, prior to any defeasance becoming effective under this Article, there shall have been delivered to the Issuer and to the Trustee (i) an opinion of Bond Counsel, addressed to the Issuer and the Trustee, to the effect that interest on any Bond being discharged by such defeasance will not become subject to federal income taxation by reason of

such defeasance, and (ii) an opinion, report or certification from a nationally recognized firm of certified public accountants stating that any deposit made pursuant to this Section is sufficient to defease the Bond in accordance with the terms hereof.

## ARTICLE VIII

### REMEDIES OF TRUSTEE AND BONDHOLDERS UPON EVENT OF DEFAULT

**Section 8.1 Events of Default.** Each of the following events is defined as and shall constitute an "Event of Default" with respect to the Bond issued under this Indenture:

- (a) Default in the due and punctual payment of the interest on the Bond;
- (b) Default in the due and punctual payment of the principal of or redemption premium on the Bond, whether at maturity or otherwise;
- (c) The Issuer shall fail to observe or perform any material covenant, condition, agreement or provision contained in the Bond or this on the part of the Issuer to be performed (except a failure that results in an Event of Default under (a) or (b)), and such failure shall continue for thirty (30) days after written notice specifying such failure and requiring the same to be remedied shall have been given to the Issuer and the Borrower by the Trustee, which notice may be given by the Trustee in its discretion and shall be given by the Trustee at the written request of the Holders of not less than twenty five (25%) in aggregate principal amount of all Bond Outstanding; provided, however, that if said default be such that it cannot be corrected within the applicable period but is capable of being cured, it shall not constitute an Event of Default if corrective action is instituted by the Issuer (or the Borrower on behalf of the Issuer) within the applicable period and diligently pursued until the default is corrected; but in any event such default is cured within ninety (90) days, unless a longer cure period is consented to in writing by the Purchaser;
- (d) The Trustee shall have received notice from the Department, the Purchaser or the Investor Member that the Borrower is in material default under the SLF Agreement; and
- (e) The occurrence of an Event of Default under the Loan Agreement, the Mortgage, [the Construction Disbursement Agreement,] the Assignment of Contracts or the Note.

If an Event of Default with respect to any of the Bond at the time outstanding occurs and is continuing, then and in each and every such case, unless the principal of all the Bond shall have already become due and payable, either the Trustee or the Purchaser, by notice in writing to the Issuer and the Borrower (and to the Trustee and the Issuer and the Borrower if given by Holders), may declare, the principal amount of all the Bond to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture, a supplemental indenture or in the Bond contained to the contrary notwithstanding. Anything to the contrary herein notwithstanding without the prior consent of any other party, the Trustee shall immediately declare the principal amount of all the Bond to be due and payable if the Event of Default occurs under (a) or (b) above. The foregoing provisions are, however, subject to the condition that if, at any time after the principal amount of the Bond shall have been so declared due and payable, and before any judgment or decree for the payment

of the monies due shall have been obtained or entered as hereinafter provided, the Issuer shall pay or shall deposit or cause to be paid or deposited with the Trustee, but only from the sources herein described, a sum sufficient to pay all matured installments of interest upon the Bond and the principal of and redemption premium, if any, on any and all Bond which shall have become due otherwise than by acceleration (with interest on overdue installments of interest, to the extent that payment of such interest is enforceable under applicable law, and on such principal and redemption premium, if any, at the rate of interest borne by the Bond, to the date of such payment or deposit) and the reasonable expenses of the Trustee (including reasonable attorneys' fees), and any and all Events of Default under this Indenture or the appropriate supplemental indenture, other than the nonpayment of principal of or redemption premium, if any, or accrued interest on Bond which shall have become due by acceleration, shall have been remedied, then and in every such case the Purchaser, by written notice to the Issuer and to the Trustee, may waive all Events of Default with respect to the Bond and rescind and annul such declaration and its consequences, but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Event of Default, or shall impair any right consequent thereon.

**Section 8.2 Enforcement of Remedies.** Upon the happening and continuance of any Event of Default with respect to the Bond, the Trustee, in its own name and as trustee of an express trust, on behalf of and for the benefit and protection of the Holders of all Bond, may proceed with indemnification satisfactory to it to protect and enforce its rights and any rights of Issuer by such suits, actions or proceedings in equity or at law, either for the specific performance of any covenant or contract contained herein, in the Loan Agreement or in the Bond Documents or in aid or execution of any power herein granted or for the foreclosure on the security held for the benefit of the Bond under this Indenture, or for any proper, legal or equitable remedy as the Trustee shall deem most effectual to protect and enforce the rights aforesaid.

If an Event of Default shall have occurred with respect to the Bond, and if requested in writing so to do by the Purchaser, the Trustee, subject to Section 9.1(l) of this Indenture, shall be obligated to exercise one or more of the rights and powers conferred by this Article, as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Holders of the Bond.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Holders of the Bond) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Holders of the Bond hereunder or now or hereafter existing at law or in equity or by statute.

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

No waiver of any Event of Default hereunder, whether by the Trustee or by the Holders of the Bond to which such Event of Default relates shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.



**Section 8.3 Right of Bondholders to Direct Proceedings.** Anything in this Indenture to the contrary notwithstanding, the Purchaser shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, together with indemnity satisfactory to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture with respect to an Event of Default, or for the appointment of a receiver or any other proceedings hereunder, *provided* that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

**Section 8.4 Priority of Payments.** All monies received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall be applied by the Trustee after payment of the costs and expenses of the proceedings resulting in the collection of such monies (including reasonable attorneys' fees) and of the charges, expenses and liabilities incurred and advances made by the Trustee, if any, as follows:

(a) Unless the principal of all the Bond shall have become or been declared due and payable:

FIRST: To the payment of any and all amounts owed to the Issuer pursuant to the terms of the Borrower Documents and amounts owed to the Trustee as stated above.

SECOND: To the payment of the persons entitled thereto of all installments of interest then due on the Bond in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment, then to the payment thereof, ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference;

THIRD: To the payment to the persons entitled thereto of the unpaid principal of the Bond which shall have become due (other than Bond matured for the payment of which monies are held pursuant to the provisions of this Indenture), and in the order of their due dates, if the amount available shall not be sufficient to pay in full Bond due on any particular date, then to the payment thereof ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege;

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

FIFTH: Any balance remaining, to the Borrower.

(b) If the principal of all the Bond shall have become or been declared due and payable then to the payment of the principal and interest then due and unpaid upon the Bond without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment, or any such Bond over any other such Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference, and with any balance remaining to the Borrower.

(c) If the principal of all the Bond shall have been declared due and payable, and if such declarations shall thereafter have been rescinded and annulled under the provisions of this Article then, subject to the provisions of (a) above, in the event that the principal of all the Bond shall later become due or be declared due and payable, the monies shall be applied in accordance with the provisions of (b) above.

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

**Section 8.5 Remedies Vested in the Trustee.** All rights of action (including the right to file proof of claims) under this Indenture or under the Bond may be enforced by the Trustee without the possession of the Bond or the production thereof in any trial or other proceeding relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as the Trustee without the necessity of joining as plaintiffs or defendants any owner of the Bond, and any recovery of judgment shall be for the equal and ratable benefit of the Holders of the outstanding Bond.

**Section 8.6 Rights and Remedies of Bondholders.** No owner of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless (i) an Event of Default with respect to the Bond held by such owner has occurred of which the Trustee has been notified as provided in Section 9.1(h) hereof, or of which by said subsection it is deemed to have notice, (ii) the Purchaser shall have made written notice to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in their own name or names, (iii) such owners of Bond have offered to the Trustee indemnity as provided in Section 9.1(1) hereof, and (iv) the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name, and such notification, request and offer of indemnity are declared in every case, at the option of the Trustee, to be a condition precedent to the execution of the powers under this Indenture or for

any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more owners of the Bond shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal and ratable benefit of the owners of all Bond then outstanding. However, nothing contained in this Indenture shall affect or impair the right of any Bondholders to enforce the payment of the principal of and interest on each of the Bond issued hereunder to the respective owners thereof at the time and place, from the source and in the manner expressed in the Bond.

**Section 8.7 Termination of Proceedings.** In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceeding shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Trustee and the Holders of the Bond to which such proceeding related shall be restored to their former positions and rights hereunder, respectively, with regard to the property subject to this Indenture, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

**Section 8.8 Waivers of Events of Default.** The Trustee shall waive any Event of Default hereunder and its consequences upon the written request of (i) the Purchaser or more owners than two-thirds in aggregate principal amount of all the Bond then outstanding in respect to which default in the payment of principal or interest, or both, exists, or (ii) the Purchaser in the case of any other Event of Default, *provided, however*, that there shall not be waived (i) any Event of Default in the payment of the principal of any outstanding Bond at the date of maturity, or (ii) any default in the payment when due of the interest on any such Bond unless, prior to such waiver or rescission, all arrears of interest or all arrears of payments of principal or both, when due, as the case may be, with interest on overdue principal at the rate borne by the Bond, and all expenses of the Trustee in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceedings taken by the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee, and the owners of the Bond shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

## ARTICLE IX

### TRUSTEE

**Section 9.1 Acceptance of the Trusts.** The Trustee accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee, prior to the occurrence of an Event of Default and after all Events of Default which may have occurred have been cured, undertakes to perform such duties and only such duties as are expressly set forth in this Indenture. In case an Event of Default has occurred

(which has not been cured or waived), subject to subsection (1) hereof, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) The Trustee 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 not be answerable for the conduct of the same, and shall be entitled to advice of counsel concerning all matters of trusts hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may consult with counsel and may act and rely without investigation upon the opinion or advice of any attorneys (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 or nonaction in good faith in reliance upon such opinion or advice.

(c) The Trustee shall not be responsible for any recital herein, or in the Bond, or for the validity of the execution by the Issuer of the Bond or this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bond issued hereunder or intended to be secured by this Indenture and by indentures supplemental to this Indenture.

(d) The Trustee shall not be accountable for the use of any Bond authenticated or delivered hereunder. The Trustee may become the owner of Bond secured by this Indenture with the same rights which it would have if not the Trustee.

(e) The Trustee shall be protected in acting upon and may rely upon without independent investigation any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed by it in good faith 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 or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bond shall be conclusive and binding upon all future owners of the same Bond and upon Bond issued in exchange therefor or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon without investigation a certificate signed by an Authorized Issuer Representative or Authorized Borrower Representative as sufficient evidence of the facts therein contained and prior to the occurrence of an Event of Default of which the Trustee has been notified as provided in subsection (h) of this section, or of which by said subsection it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient. A certificate of the Issuer to the effect that a resolution in the form therein set forth has been adopted by Issuer is conclusive evidence that such resolution has been duly adopted and is in full force and effect.

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

(h) The Trustee shall not be required to take notice or be deemed to have notice of any Event of Default hereunder except failure by the Issuer to cause to be made any of the payments to the Trustee required to be made by Article IV hereof for payment when due of principal, redemption premium or interest on any Bond, unless the Trustee shall be specifically notified in writing of such Event of Default by the Issuer or by the owners of at least twenty-five percent in aggregate principal amount of the Bond then outstanding and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the Principal Office of the Trustee, and in the absence of such notice so delivered, the Trustee may conclusively assume there is no Event of Default except as aforesaid.

(i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right fully to inspect any and all of the property herein or in indentures supplemental hereto conveyed, including all books, papers and records of Issuer pertaining to the revenues and receipts under the Loan Agreement and the Note, any arrangements for the servicing of the Loan and the Bond, and to take such memoranda from and make copies thereof and in regard thereto as may be desired.

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

(k) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bond, the withdrawal of any cash, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bond, the withdrawal of any cash, or the taking of any other action by the Trustee. 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 of powers.

(l) Before taking the action referred to in Section 8.2 hereof or any action following an Event of Default, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its gross negligence or willful default by reason of any action so taken.

(m) All monies received by the Trustee or any Paying Agent shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required herein or by law. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any monies received hereunder.

(n) The Trustee shall have the right and power to disclaim any interest which, in the Trustee's sole discretion, will or may cause the Trustee to be considered an "owner" or "operator" of property held subject to this Indenture, under the provisions of any environmental law as amended from time to time, or which shall otherwise cause the Trustee to incur liability under any environmental law, or any other federal, State or local law, rule or regulation. In the event of an Event of Default, the Trustee may, in its reasonable discretion, after being indemnified by the Bondholders, inspect, review and monitor, or require the inspection, review and monitoring of any and all property subject to this Indenture for the purpose of determining compliance with any law, rule or regulation affecting such property. All expenses of such inspection, review and monitoring shall be paid by the Bondholders.

(o) [In the event the Trustee shall receive inconsistent or conflicting requests and indemnity from two or more groups of Bondowners, each representing less than majority of the aggregate principal amount of the Bond then Outstanding, the Trustee, in its sole discretion and with advice of counsel, may determine what action, if any, shall be taken.]

**Section 9.2 Fees, Charges, Expenses and Indemnification of the Trustee.** The Trustee shall be entitled to its reasonable fees, charges and expenses for serving hereunder including those of its agents, counsel, servicer, Paying Agent and co-trustee. Such fees, charges and expenses shall be paid in accordance with this Indenture and the Loan Agreement. None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financing liability in the performance of any of its duties or in the exercise of any of its rights or powers. The obligations of the Issuer under this Section to compensate the Trustee, to pay or reimburse the Trustee for expenses, disbursements, charges and counsel fees and to indemnify and hold harmless the Trustee shall survive the satisfaction and discharge of this Indenture, *provided* that the Issuer shall only be required to pay obligations pursuant to this Section from monies received from the Borrower. If the monies from the Borrower are not adequate to pay such obligations, the Trustee may, upon written notice to the Issuer, reimburse itself from any moneys in its possession under the provisions of this Indenture (other than any irrevocable trust or escrow fund established with respect to defeased Bond) and shall be entitled to a preference therefor over the Bond Outstanding hereunder. Upon an Event of Default, but only upon an Event of Default, the Trustee shall have a first lien with right of payment prior to payment on account of principal of and interest on any Bond upon the Trust Estate (other than monies held pursuant to Section 7.1 hereof) for the charges and expenses incurred by it as described in Section 8.4 hereof.

Following the occurrence of an Event of Default, the Trustee shall be entitled to payment or reimbursement for all advances, counsel fees and other expenses reasonably made or incurred by the Trustee in and about the execution of the trusts created by this Indenture in connection with the Event of Default and in and about the exercise and performance of the powers and duties of the Trustee hereunder in connection with the Event of Default and for the reasonable and necessary costs and expenses incurred in defending any liability in the premises of any character whatsoever (unless such liability is adjudicated to have resulted from the gross negligence or willful misconduct of the Trustee) in connection with the Event of Default. In this regard the Issuer has made provisions in the Loan Agreement for the payment of said fees, advances, counsel fees, costs and expenses, and reference is made to the Loan Agreement for the provisions so made; and the Issuer shall not otherwise be liable for the payment of such sums.

The compensation of the Trustee shall not be limited by any provision of law which limits the compensation of a trustee of an express trust.

**Section 9.3 Notice to Bondholders if Event of Default Occurs.** If an Event of Default occurs of which the Trustee is by Section 9.1(h) hereof required to take notice or if notice of an Event of Default be given as in Section 9.1(h) hereof provided, then the Trustee shall immediately give written notice thereof by registered, certified mail or overnight delivery to the Borrower and the Investor Member, pursuant to Section 13.4 hereof, and by first-class mail to the owners of all Bond then outstanding, shown by the list required by Section 4.6 hereof to be kept at the Principal Office of the Trustee, and to Interested Beneficial Holders.

**Section 9.4 Intervention by the Trustee.** In any judicial proceeding concerning the issuance or the payment of the Bond 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 owners of the Bond, the Trustee may, to the extent permitted by the court, intervene on behalf of owners of the Bond and shall do so, to the extent permitted by the court, if provided with indemnity satisfactory to the Trustee and requested in writing by the owners of at least twenty-five percent of the aggregate principal amount of the Bond then outstanding.

**Section 9.5 Successor to the Trustee.** Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto shall be and become successor to the Trustee hereunder and vested with all of the title to the Trust Estate and all the trusts, powers, discretion, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding. Any such successor trustee shall give notice thereof to the Issuer and the Borrower.

**Section 9.6 Resignation by the Trustee.** The Trustee and any successor Trustee may at any time resign from the trusts created by this Indenture by giving thirty days' written notice by registered or certified mail to the Issuer and the Borrower and by first-class mail (postage prepaid) to the owner of each Bond shown by the list required by the terms of Section 4.6 hereof to be kept at the office of the Trustee, and such resignation shall not take effect until the appointment of a successor Trustee by the Borrower, the owners of the Bond or by the Issuer as provided in Section 9.8.

**Section 9.7 Removal of the Trustee.** The Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Trustee, the Issuer, and the Borrower, and signed by the Purchaser. The Issuer or Borrower may remove the Trustee at any time with the consent of the owners of the Purchaser, except as set forth under the provisions herein, for such cause as shall be determined in the sole discretion of the Borrower by filing with the Trustee and the Issuer an instrument signed by an Authorized Borrower Representative. Any removal shall not take effect until the appointment of a successor Trustee by the Borrower, the owners of the Bond or by the Issuer as provided in Section 9.8 hereof.

**Section 9.8 Appointment of Successor Trustee by the Bondholders; Temporary Trustee.** In the event that the Trustee or Bond Registrar hereunder shall give notice of resignation or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public office or offices, or of a receiver appointed by a court, a successor may with the prior written consent of the Borrower (to the extent that no "Event of Default" shall have occurred and be continuing under the Loan Agreement) be appointed by the Purchaser, by an instrument or concurrent instruments in writing signed by such owners, or by their duly authorized attorneys in fact, a copy of which shall be delivered personally or sent by first class mail, postage prepaid, to the Issuer, retiring Trustee, successor Trustee, Bond Registrar or successor Bond Registrar and Borrower. Pending such appointment by the Bondholders, the Issuer may, with the consent of the Borrower (to the extent that no "Event of Default" shall have occurred and be continuing under the Agreement) appoint a temporary successor Trustee or Bond Registrar by an instrument in writing signed by an authorized officer of the Issuer, a copy of which shall be delivered personally or sent by first class mail, postage prepaid, to the retiring Trustee, successor Trustee, Bond Registrar or successor Bond Registrar and Borrower. If the registered owners and the Issuer fail to so appoint a successor Trustee or Bond Registrar hereunder within forty-five (45) days after the Trustee or Bond Registrar has given notice of its resignation, has been removed, has been dissolved, has otherwise become incapable of acting hereunder or has been taken under control by a public officer or receiver, the Trustee or Bond Registrar shall have the right to petition a court of competent jurisdiction to appoint a successor hereunder. Every such Trustee or Bond Registrar appointed pursuant to the provisions of this Section 9.8 shall be a trust company or bank organized and in good standing under the laws of Illinois or any State or the District of Columbia and have a combined capital and surplus of not less than \$40,000,000 as set forth in its most recent published annual report of condition.

**Section 9.9 Concerning Any Successor Trustee.** Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its or his predecessor and also to the Issuer and the Borrower an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyances shall become fully vested with all the estate, properties, rights, powers, trusts, duties and obligations of its predecessor, but such predecessor shall, nevertheless, execute and deliver an instrument transferring to such successor Trustee all the estate, properties, rights, powers and trusts of such predecessor hereunder, except any rights to payment due or indemnification rights, and every predecessor Trustee shall deliver all securities and monies held by it as the Trustee hereunder to its successor upon payment of all amounts due to the predecessor Trustee. Should any instrument in writing from Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties vested or intended to be vested by this Indenture in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed or recorded by the successor Trustee in each recording office where this Indenture shall have been filed or recorded.

**Section 9.10 Designation and Succession of Paying Agents.** Heartland Bank and Trust Company, Chicago, Illinois, is appointed as Paying Agent hereunder. Any bank or trust company with or into which any Paying Agent may be merged or consolidated, or to which the



assets and business of such Paying Agent may be sold, shall be deemed the successor of such Paying Agent for the purposes of this Indenture. If the position of Paying Agent shall become vacant for any reason, the Borrower shall with the consent of Issuer, within thirty days thereafter, appoint a bank or trust company located in the same city as such Paying Agent to fill such vacancy, *provided, however*, that if the Borrower shall fail to appoint such Paying Agent within said period, the Trustee shall make such appointment. The Paying Agent may resign upon notice to the Trustee and the Issuer and the Borrower. Other Paying Agents or fiscal agents may be appointed pursuant to Article IX hereof by the Borrower or the Issuer and approved by the Trustee if in its discretion additional Paying Agents or fiscal agents are deemed advisable. The Trustee covenants and agrees to cause the necessary arrangements to be made for the making available of funds hereunder by the Trustee or the Paying Agent for the payment of the Bond from the Bond Fund.

The Paying Agent shall enjoy the same protective provisions in the performance of its duties hereunder as are specified in Section 9.1 hereof with respect to the Trustee insofar as such provisions may be applicable.

Notice of the appointment of additional Paying Agents or fiscal agents shall be given in the same manner as provided by Section 9.8 hereof with respect to the appointment of a successor Trustee.

**Section 9.11 Appointment of Co-Trustee.** It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of the State) denying or restricting the right of banking corporations or associations to transact business as the Trustee in such jurisdiction. It is recognized that, in case of litigation under this Indenture, the Loan Agreement, and, in particular, in case of the enforcement thereof on an Event of Default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties in trust as herein or in indentures supplemental hereto granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate or Co-Trustee. The following provisions of this Section are adapted to these ends. The Trustee may appoint a separate or Co-Trustee only if one of the aforesaid reasons exists. In each case, each separate or Co-Trustee must be approved by the Issuer and the Borrower.

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

Should any instrument in writing from the Issuer be required by the separate or Co-Trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. In case any

separate or Co-Trustee, or a successor to either, shall become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate or Co-Trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such separate or Co-Trustee.

**Section 9.12 Representations, Warranties and Covenants of the Trustee.** All Federal, State and local governmental, public, and regulatory authority approvals, consents, notices, authorizations, registrations, licenses, exemptions, and filings that are required to have been obtained or made by the Trustee with respect to the authorization, execution, delivery, and performance by, or the enforcement against or by, the Trustee of this Indenture have been obtained and are in full force and effect and all conditions of such approvals, consents, notices, authorizations, registrations, licenses, exemptions, and filings have been fully complied with. The Trustee has a combined capital and surplus of at least \$40,000,000 or, alternatively, a liability policy having the type of coverage and in an amount acceptable to the Issuer and the Borrower. The Trustee has an operations group of at least four (4) experienced trust officers, with primary responsibility for municipal bond issues. The Trustee administers at least 25 municipal bond indentures aggregating at least \$25,000,000 under its administration.

**Section 9.13 Reporting Requirements.** The Trustee shall submit to the Municipal Securities Rulemaking Board (the “MSRB”) through its Electronic Municipal Market Access system (“EMMA”) on or before thirty (30) days after receipt, all information submitted to the Trustee pursuant to Section 2.5(b) and (c) of the Loan Agreement and the Continuing Disclosure Agreement.

## ARTICLE X

### SUPPLEMENTAL INDENTURES

**Section 10.1 Supplemental Indentures.** (a) The Issuer and Trustee may, without consent of, or notice to, any of the Bondholders, enter into an indenture or indentures supplemental to, or amending, this Indenture for any one or more of the following purposes: (i) to cure any ambiguity or formal defect or omission in this Indenture; (ii) to grant to or confer upon Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authorities that may lawfully be granted to or conferred upon the Bondholders or Trustee; (iii) to subject to this Indenture additional revenues, properties or collateral; (iv) to modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect or to permit the qualification of the Bond for sale under the securities laws of any of the states of the United States of America; (v) to modify, alter, amend, supplement or restate this Indenture in any and all respects necessary, desirable or appropriate in connection with the delivery to Trustee of a letter of credit or other security arrangement obtained or provided by Borrower but only to the extent such supplement does not adversely affect any then current rating from any rating agency then providing the rating on the Bond; (vi) to modify, alter, amend, supplement or restate this Indenture in any and all respects necessary, desirable or appropriate in order to satisfy the requirements of any rating agency which may from time to time provide a rating on the Bond, or in order to obtain or retain such rating on the Bond as is deemed necessary by the Borrower; (vii) to evidence the appointment of

a separate or Co-Trustee or the succession of a new Trustee hereunder; (viii) to permit the issuance of additional Bonds in accordance with Article XII of this Indenture; or (ix) to make any other change which, in the judgment of Trustee (with reliance on an Opinion of Bond Counsel), does not materially adversely affect the interests of the Bondholders.

(b) Subject to the terms and provisions contained in this Section and not otherwise, the Purchaser shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer, and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; *provided, however*, that nothing in this Section shall permit, or be construed as permitting, without the consent of the owners of at least two thirds of the aggregate principal amount of all outstanding Bond, (i) a reduction in the principal amount of any Bond or the rate of interest thereon, or (ii) a privilege or priority of any Bond or Bond over any other Bond or Bond, or (iii) a reduction in the aggregate principal amount of the Bond required for consent to such supplemental indentures, or (iv) the creation of any lien ranking prior to or on a parity with the lien of this Indenture on the Trust Estate or any part thereof, or (v) deprivation of the owner of any Bond then outstanding of the lien created on the Trust Estate, or (vi) an extension of the maturity of the Bond.

(c) If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be given at least 60 days prior to the execution of the supplemental indenture by first-class mail to the owner of each Bond affected shown by the lists required by the terms of Section 4.6 hereof to be kept at the office of the Trustee. Such notices shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the Principal Office of the Trustee for inspection by all Bondholders. If, within sixty days or such longer period as shall be prescribed by the Issuer following such notices, the Purchaser have consented to and approved the execution thereof as herein provided, no owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this Section permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

(d) Prior to executing any supplemental indentures, Trustee shall be entitled to receive and may rely upon an opinion of counsel to the effect that such supplemental indenture is authorized or permitted in accordance with the terms of this Indenture.

(e) Anything in this Indenture or in any supplemental indenture to the contrary notwithstanding, so long as the Borrower is not in default under the Loan Agreement, a supplemental indenture under this Article shall not become effective unless and until the Borrower and the Investor Member shall have consented to the execution and delivery of such supplemental indenture. In this regard, the Trustee shall cause notice of the proposed execution

of any such supplemental indenture together with a copy of the proposed supplemental indenture to be mailed by certified or registered mail to the Borrower and the Investor Member at least thirty days prior to the proposed date of execution and delivery of any such supplemental indenture. The Borrower and the Investor Member shall be deemed to have consented to the execution and delivery of any such supplemental indenture if the Trustee does not receive a letter of protest or objection thereto signed by or on behalf of the Borrower or the Investor Member on or before 4:30 p.m., local time, on the thirtieth day after the mailing of said notice.

## ARTICLE XI

### AMENDMENT OF DOCUMENTS

**Section 11.1 Amendments, Etc., Requiring Bondholder Consent.** None of the Issuer, the Borrower or the Trustee shall consent to any amendment, change or modification of the Loan Agreement or Borrower Documents (other than the Bond Purchase Contract and the Tax Agreement to which this Section shall not apply) without mailing of notice to all Bondholders at least 60 days prior to the proposed effective date of such amendment and the Purchaser shall have consented to such amendment as provided in this Section; *provided, however,* that if such amendment, change, or modification shall be to reduce the amount due from the Borrower with respect to the Bond Service Charges or delaying any payment thereof, such consent shall be given by not less than the owners of at least two thirds of the aggregate principal amount of the Bond. If at any time the Issuer and the Borrower shall request the consent of the Trustee to any such proposed amendment, change or modification of the Loan Agreement or Borrower Documents, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change or modification to be given in the same manner as provided by Section 10.1 hereof with respect to supplemental indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the Principal Office of the Trustee for inspection by all Registered Owners of Bond affected by such amendment, change or modification.

**Section 11.2 Amendments Without Bondholders' Consent; Waivers.** Notwithstanding the provisions of Section 11.1 of this Indenture, the Issuer and the Borrower may, with the prior written consent of the Trustee, amend or modify the Loan Agreement or the Borrower Documents, or any provision thereof, or may consent to the amendment or modification thereof, in any manner, for any one or more of the following purposes: (a) to cure any ambiguity or formal defect in the Loan Agreement or the Borrower Documents; (b) to grant to or confer upon the Issuer or Trustee, for the benefit of the Bond Owners, any additional rights, remedies, powers or authorities that lawfully may be granted to or conferred upon the Issuer or the Trustee; (c) to amend or modify the Loan Agreement or the Borrower Documents, or any part thereof, subject to Section 2.6 of the Loan Agreement, in any manner specifically required or permitted by the terms thereof, including, without limitation, as may be necessary to maintain the exclusion from gross income for purposes of federal income taxation of the interest on the Bond; (d) to provide that the Bond may be secured by a credit facility or other additional security not otherwise provided for in this Indenture or the Loan Agreement; (e) to modify, amend or supplement the Loan Agreement or the Borrower Documents, or any part thereof, or any supplement thereto, in such manner as the Borrower deems necessary in order to comply with

any statute, regulation, judicial decision or other law relating to secondary market disclosure requirements with respect to tax-exempt obligations of the type that includes the Bond; (f) to provide for the appointment of a successor securities depository; (g) to provide for the availability of certificated Bond; or (h) to provide for changes in the components of the Project, to the extent permitted by this Indenture and the Loan Agreement.

**Section 11.3 Opinion of Counsel.** Prior to executing or consenting to any amendment, change or modification of the Loan Agreement, the Borrower Documents or this Indenture, the Trustee shall be entitled to receive and may rely upon an opinion of counsel to the effect that the same is authorized or permitted by this Indenture.

## ARTICLE XII

### ADDITIONAL BONDS

**Section 12.1 Authorization of Additional Bonds.** In addition to the Bond initially issued, the Issuer may, at the direction of the Borrower and with the written consent of the Purchaser, issue Additional Bonds on a parity with all Outstanding Bond and secured by an equal charge and lien on and payable equally from the Revenues and the Trust Estate (i) to provide moneys for any funds or accounts held under this Indenture; (ii) to provide for completion of the Project ("**Completion Bond**"); and (iii) to refund in whole or in part a previously issued series of Bond ("**Refunding Bonds**"). The principal amount of such Additional Bonds may include an amount allocated to pay the cost of issuance of such Additional Bonds as well as amounts required to be deposited in certain funds and accounts established pursuant to this Indenture.

In the event that any Additional Bonds are issued hereunder, all provisions of this Indenture which apply to the "Bond" shall apply equally to such Additional Bonds except only those provisions which clearly by their terms apply only to the initial series of Bond (e.g. interest rates, maturities and redemption provisions).

**Section 12.2 Provisions for Issuance of Additional Bonds.** Additional Bonds shall be dated, shall bear interest until their payment at such rate or rates payable on such date or dates and shall mature on such date or dates and shall have such other terms and conditions not inconsistent with the provisions of this Indenture as shall be provided for such series in any Supplemental Indenture authorizing the issuance thereof. The Additional Bonds may be issued in one or more series and the Additional Bonds of each series shall each be designated "Village of Downers Grove, DuPage County, Illinois Multifamily Housing Revenue Bond (Downers Grove Supportive Living Facility) Series [insert Series designation]."

**Section 12.3 Supplemental Indentures.** Each Supplemental Indenture executed in connection with the issuance of Additional Bonds shall specify:

- (a) the authorized principal amount of such Additional Bonds;
- (b) the purposes for which such Additional Bonds are being issued;
- (c) the date, maturity dates and amounts of each maturity and the first and subsequent Interest Payment Dates of such Additional Bonds or the manner of determining such items;

- (d) the interest rate or rates of such Additional Bonds, or the manner of determining such rate or rates;
- (e) the denomination or denominations of and the manner of numbering and lettering of such Additional Bonds or the manner of determining such items;
- (f) the form in which such Additional Bonds shall be initially issued;
- (g) the Redemption Price or Redemption Prices, if any, and, subject to Article III, the redemption terms, if any, for such Additional Bonds;
- (h) provisions for the sale of such Additional Bonds;
- (i) provisions with respect to funds and accounts, and revenues and application thereof, as provided in Article V;
- (j) directions for the application and disbursement of the proceeds of the Additional Bonds; and
- (k) any other provisions deemed advisable by the Issuer, in lieu of or in substitution for the provisions of this Indenture to the extent such action is permitted to be taken under this Indenture without the consent of the Bondholders.

**Section 12.4 Subordinated Bonds.** The Issuer may also issue revenue bonds for any purpose permitted under the Act secured by a charge and lien on, and payable from, the Revenues (only after disbursements pursuant to clauses (i) through (ix) of Section 5.7(b)) and the Trust Estate which is junior, inferior and subordinate in all respects to the lien of the Revenues and the Trust Estate which secures the Bond. Subordinated Bonds may be issued pursuant to and in accordance with the provisions of a resolution of the Issuer authorizing such bonds or otherwise as determined by the Issuer and shall be issued pursuant to an instrument other than this Indenture, but only upon there being filed with the Trustee the consent of the holders of at least two thirds of the aggregate principal amount of the Bond.

**Section 12.5 Requirements for Additional Bond.** Prior to the delivery of any Additional Bond on a parity with the Bond, there shall be filed with the Trustee: (i) a Supplemental Loan Agreement or a supplement or modification to the Mortgage, or both, which shall require payments by the Borrower at such times and in such manner as shall be necessary to provide for full payment of the debt service on such Additional Bond as such debt service becomes due; (ii) an Opinion of Bond Counsel to the effect that such Supplemental Loan Agreement is a valid, binding and legal instrument of the Issuer, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally; (iii) an Opinion of Counsel to the Borrower addressed to the Issuer and the Trustee and in form and substance satisfactory to the Issuer and the Trustee to the effect that the Supplemental Loan Agreement or a supplement or modification to the Mortgage, or both, is valid and binding upon the Borrower in accordance with its terms subject to the typical qualifications as to enforceability, and (iv) consent of the Purchaser, if the Debt Service Coverage Ratio equals or exceeds 1.50 based on the most recent audit, or otherwise the consent of the Holders of at least

two thirds of the aggregate principal amount of the Bond, which consent of Holders shall not be required in the event the Bond is refunded as a whole.

Notwithstanding anything herein to the contrary, no Additional Bond shall be issued without the consent of the Purchaser of if an Event of Default exists under the Loan Agreement or this Indenture at the time of the Issuance of such Additional Bond unless the issuance of such Additional Bond cures such Event of Default.

Unless such Additional Bonds are Refunding Bonds, no Additional Bonds shall be delivered by the Issuer unless there shall have been filed with the Trustee a certificate of an architect or engineer setting forth: (i) the estimated cost of capital additions or repairs to be financed with the proceeds of the Additional Bond; (ii) the estimated amounts which will be required from month to month for paying such cost; (iii) the estimated date of completion; and (iv) that in his/her opinion the proceeds of such Additional Bond together with other available moneys are not less than the amount of the cost of such capital additions or repairs to the extent that such plans and specifications for such capital additions or repairs have been prepared by such architect or engineer. In the event that the Purchaser so determines or in the event that the principal amount of such Additional Bond does not exceed five percent (5%) of the Borrower's fixed assets (exclusive of construction in progress, but after deduction of depreciation) as shown in the most recent audited financial statements of the Borrower, an Authorized Officer of the Borrower may submit a certificate setting forth the same information required from the architect or engineer in lieu of the architect's or engineer's certificate.

### **ARTICLE XIII**

#### **MISCELLANEOUS**

**Section 13.1 Consents, Etc., of Registered Owners.** Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Registered Owners may be in any number of concurrent documents and may be executed by such Registered Owners in person or by an agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bond, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive without independent investigation in favor of the Trustee with regard to any action taken by it under such request or other instrument, namely:

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

(b) The fact of ownership of Bond and the amount or amounts, numbers and other identification of such Bond, and the date of holding the same shall be proved by the registration books of the Issuer maintained by the Trustee pursuant to Section 4.6 hereof.

**Section 13.2 Limitation of Rights.** With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bond is intended or shall be construed to give to any person or company other than the parties hereto, the Borrower and the owners of the Bond, any legal or equitable right, remedy or claim under or with respect to this Indenture or any covenants, conditions and provisions herein contained, this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto, the Trustee and the owners of the Bond as herein provided.

**Section 13.3 Severability.** If any provision of this Indenture shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatsoever, *provided, however*, that no finding of illegality or unenforceability shall require payment by the Issuer of any funds from any source other than Revenues.

**Section 13.4 Notices.** Except as otherwise provided herein, any notices, certificates or other communications hereunder shall be deemed given to the parties required hereunder to receive such notice, certificate or communication when mailed by first class mail, postage prepaid, or actually delivered, addressed as follows:

If to the Issuer: Village of Downers Grove  
801 Burlington Ave  
Downers Grove, IL 60515  
Attention: \_\_\_\_\_

With a copy to: []  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the Borrower: Downers Grove Supportive Living Facility, LLC.  
8 South Michigan Ave  
Chicago, IL 60603  
Attention: John Fiandaca

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the Trustee: \_\_\_\_\_ Heartland Ba  
\_\_\_\_\_



If to the Investor Member: [AHP Housing Fund 77, LLC  
c/o Affordable Housing Partners, Inc.  
1999 Avenue of the Stars, Suite 3425  
Los Angeles, CA 90067  
Attention: Michael L. Fowler

With a copy to: Kutak Rock LLP  
1801 California Street, Suite 3000  
Denver, CO 80202  
Attention: Ellen O'Brien]

Notices to Interested Beneficial Holders shall be sent to the address specified by the Interested Beneficial Holder in its notice to the Trustee. A duplicate copy of each notice required to be given hereunder by the Trustee to either the Issuer or Borrower shall also be given to the other. The Issuer, the Borrower, the Investor Member and the Trustee may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 13.5 Payments Due on Saturdays; Sundays and Holidays.** In any case where the date of payment or performance hereunder shall not be a Business Day, then payment or performance need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date originally due and in the case of payment no interest shall accrue for the period after such date.

**Section 13.6 Counterparts.** This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 13.7 Applicable Provisions of Law.** This Indenture shall be governed by and construed in accordance with the internal laws of the State of Illinois.

**Section 13.8 Rules of Interpretation.** Unless expressly indicated otherwise, references to Sections or Articles are to be construed as references to Sections or Articles of this instrument as originally executed. Use of the words "herein," "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter" and other equivalent words refer to this Indenture and not solely to the particular portion in which any such word is used.

**Section 13.9 Captions.** The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Indenture.

**Section 13.10 Consent and Directions in Writing; Authorized Representatives.** Any consent, certification, request or direction by or from the Borrower or the Issuer shall be in

writing and in each case shall be executed by an Authorized Borrower Representative or Authorized Issuer Representative, respectively.

**Section 13.11 No Personal Liability.** No recourse shall be had for the payment of the principal of, premium, if any, and interest on the Bond or for any claim based thereon or upon any obligation, covenant or agreement contained in this Indenture, the Note, the Loan Agreement or the Bond Purchase Agreement against any past, present or future officer, commissioner, agent or employee of the Issuer, or any incorporator, member, officer, employee, director or trustee of any successor corporation, as such, either directly or through the Issuer or any successor corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, member, officer, employee, director, agent or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of this Indenture and the Loan Agreement and the issuance of the Bond.

*[Signature Page Follows]*

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

**VILLAGE OF DOWNERS GROVE,  
DUPAGE COUNTY, ILLINOIS**, as Issuer

[SEAL]

By: \_\_\_\_\_  
Martin Tully, Mayor

Approved as to form:

By: \_\_\_\_\_  
April Holden, Village Clerk

**HEARTLAND BANK AND TRUST  
COMPANY,**  
as Trustee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A - FORM OF BOND**

No. R-1

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

**VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS  
MULTIFAMILY HOUSING REVENUE BOND  
(DOWNERS GROVE SUPPORTIVE LIVING FACILITY), SERIES 2014**

<u>DATED DATE</u>	<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>CUSIP</u>
			N/A

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

STATED PRINCIPAL AMOUNT: Up to Twenty Million One Hundred Fourteen and Nine  
Hundred and Twenty Dollars as shown on Schedule A hereto

PRINCIPAL AMOUNT: As shown on Schedule A hereto

THIS BOND AND THE OBLIGATION TO PAY THE PREMIUM, IF ANY, AND INTEREST HEREON ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER (AS DEFINED HEREIN), SECURED AS AFORESAID AND PAYABLE SOLELY OUT OF THE REVENUES AND INCOME DERIVED FROM THE AGREEMENT (AS DEFINED HEREIN) AND THE NOTE (AS DEFINED HEREIN) AND AS OTHERWISE PROVIDED IN THE INDENTURE (AS DEFINED HEREIN), THE NOTE AND THE AGREEMENT. THIS BOND AND THE OBLIGATION TO PAY THE PREMIUM, IF ANY, AND INTEREST HEREON SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR AN OBLIGATION OF THE ISSUER, THE STATE OF ILLINOIS (THE "STATE") OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE PURVIEW OF ANY CONSTITUTIONAL LIMITATION OR PROVISION OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS, IF ANY, OF ANY OF THEM. NO OWNER OF THIS BOND SHALL HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER, IF ANY, OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF TO PAY ANY PRINCIPAL INSTALLMENT OF, PREMIUM, IF ANY, OR INTEREST ON THIS BOND.

The Village of Downers Grove, DuPage County, Illinois (the "Issuer"), a home rule unit and municipal corporation duly created and validly existing under the Constitution and the laws of the State of Illinois, for value received, hereby promises to pay (but only out of the sources hereinafter provided) to the Registered Owner identified above, or registered assigns, on the Maturity Date identified above, unless this Bond shall have been called for earlier redemption as provided herein, upon presentation and surrender hereof, the Principal Amount identified above (or such amounts as may then be outstanding pursuant to the terms hereof), and to pay (but only out of the sources hereinafter provided) interest on the balance of said Principal Amount from time to time remaining unpaid from and including the date hereof or from and including the most recent Interest Payment Date (as defined in the hereinafter defined Indenture) with respect to which interest has been paid or duly provided for, until payment of said Principal Amount has been made or duly provided for, at the rates and on the dates described herein until payment in full of such Principal Amount.

THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE. ACCORDINGLY, THIS BOND MAY BE SOLD OR OTHERWISE TRANSFERRED IN WHOLE ONLY IN TRANSACTIONS IN WHICH THIS BOND IS REGISTERED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, OR IN TRANSACTIONS IN WHICH THIS BOND IS EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. THE ISSUER HAS NOT UNDERTAKEN AN OBLIGATION TO CAUSE THIS BOND TO BE REGISTERED UNDER THE SECURITIES ACT OR APPLICABLE STATE SECURITIES LAWS, OR TO COMPLY WITH ANY EXEMPTION THAT MAY BE AVAILABLE UNDER THE SECURITIES ACT OR APPLICABLE STATE SECURITIES LAWS, INCLUDING, WITHOUT LIMITATION, RULE 144A UNDER THE SECURITIES ACT. THE REGISTERED OWNER OF THIS BOND AGREES THAT ANY TRANSFER OF THIS BOND WILL BE IN WHOLE IN ACCORDANCE WITH THE PROVISIONS OF THIS BOND.

THE VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS ("**Issuer**"), acknowledges itself indebted and for value received hereby promises to pay to the Registered Owner or registered assigns, the principal sum of up to Twenty Million One Hundred Fourteen and Nine Hundred and Twenty Dollars (\$20,114,920), on the Maturity Date stated above or on the date fixed for prior redemption, as the case may be, together with interest on such principal sum from the Dated Date of this Bond until the Issuer's obligations with respect to the payment of such principal sum shall be discharged, at the Interest Rate Per Annum stated above payable on monthly commencing \_\_\_\_\_ 1, 2014 (the "**Interest Payment Date**") until maturity or earlier redemption. This Bond, as to principal and redemption premium, if any, when due, will be payable at the corporate trust office of Heartland Bank and Trust Company, Chicago, Illinois, or its successors as trustee under the Indenture mentioned below (the "**Trustee**"). Interest on this Bond will be payable by check or bank draft and will be mailed to the registered owner who shall appear on the registration books of the Issuer which shall be kept and maintained by the Registrar hereinafter mentioned, as determined on the fifteenth day of the month which precedes the next succeeding Interest Payment Date or, if such date is not a Business Day, then the next Business Day (the "**Record Date**") (or, in the case of any proposed redemption of the bond, the day next preceding the date of the first publication of notice of such redemption); *provided*, that at the written request of a Registered Owner of \$1,000,000 or more of Bond, such interest shall be paid by wire transfer of funds to a bank account located in the United States as designated by such Registered Owner. Payment of the principal of, redemption premium, if any, and interest on this bond shall be made in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is the duly authorized issue of Revenue Bond, designated as Multifamily Housing Revenue Bond (Downers Grove Supportive Living Facility), Series 2014 (the "**Bond**"), of the Issuer, limited to the aggregate principal amount of not to exceed \$20,114,920, and authorized and issued under and pursuant to: (i) the act as set forth in the preambles of this Indenture (the "**Act**"), (ii) an Ordinance of the Issuer duly adopted on August 12, 2014 (the "**Ordinance**"); and (iii) a Trust Indenture from the Issuer and to the Trustee dated as of August

1, 2014 (the "**Indenture**"). Copies of the Indenture are on file in the office of the Issuer and at the principal corporate trust office of the Trustee.

ALL CAPITALIZED TERMS USED BUT NOT DEFINED IN THIS BOND SHALL HAVE THE RESPECTIVE MEANINGS ASSIGNED TO SUCH TERMS IN THE INDENTURE.

Pursuant to the Loan Agreement, dated as of August 1, 2014 (the "**Loan Agreement**"), between the Issuer and Downers Grove Supportive Living Facility, LLC, an Illinois limited liability company (the "**Borrower**"), the Borrower is obligated to make payments to the Trustee in the amounts and at the times corresponding to the payments of principal of, redemption premium, if any, and interest on the Bond (the "**Bond Service Charges**") when due. The obligations of the Borrower under the Loan Agreement are evidenced by a Promissory Note of the Borrower (the "**Note**") of even date with the Loan Agreement which is secured by the Mortgage described below. By the Indenture, the Issuer has assigned its right, title and interest in and to the Loan Agreement (except for the Issuer's "**Unassigned Rights**" as defined in the Indenture) to the Trustee as security for the payment of the Bond Service Charges.

The Bond is issued pursuant to and in compliance with the Act and laws of the State of Illinois.

The Bond is a limited obligation of the Issuer and the principal of, redemption premium, if any, and interest on the Bond is payable solely from and secured by: (i) amounts paid by the Borrower under the Loan Agreement and the Note; (ii) an assignment to the Trustee of all the Issuer's rights (except for the Unassigned Rights) under the Loan Agreement and the Note; (iii) a pledge of and security interest in all moneys and investments held by the Trustee under the Indenture, including any moneys representing earnings on monies held under the Indenture; and (iv) a mortgage on the Borrower's property located at 4200 – 4240 Lacey Road in Downers Grove, Illinois (the "**Mortgage**"). This Bond and the obligation to pay the premium, if any, and interest hereon are special, limited obligations of the Issuer, secured as aforesaid and payable solely out of the revenues and income derived from the Agreement (as defined herein) and the Note (as defined herein) and as otherwise provided in the Indenture (as defined herein), the Note and the Agreement. This Bond and the obligation to pay the premium, if any, and interest hereon shall not be deemed to constitute an indebtedness or an obligation of the Issuer, the State of Illinois (the "State") or any political subdivision thereof within the purview of any constitutional limitation or provision or a charge against the general credit or taxing powers, if any, of any of them. No owner of this Bond shall have the right to compel any exercise of the taxing power, if any, of the Issuer, the State or any political subdivision thereof to pay any principal installment of, premium, if any, or interest on this Bond.

This Bond is transferable, as provided in the Indenture, only upon the registration books of the Issuer which are kept for that purpose at the corporate trust office of the Trustee in Chicago, Illinois, as registrar under the Indenture (the "**Registrar**"), or its successor as Registrar, upon surrender of this Bond together with a written instrument of transfer which is satisfactory to the Registrar and which is duly executed by the registered owner or by his or her duly authorized attorney, and thereupon the Issuer shall issue in the name of the transferee a new registered Bond, of the same aggregate principal amount and series, designation, maturity and interest rate

as the surrendered Bond as provided in the Indenture, upon payment of the charges therein prescribed. The Issuer, the Trustee, the Registrar and any Paying Agent of the Issuer may treat and consider the person in whose name this Bond is registered as the holder and absolute owner of this Bond for the purpose of receiving payment of the principal of, redemption premium, if any, and interest due on this Bond and for all other purposes.

**This Bond may be transferred in whole, but not in part (and then only in conjunction with a transfer in whole of the Bond and only to a Qualified Transferee (as defined below). Notwithstanding the foregoing, the Owner may sell participations in this Bond in accordance with applicable law and the Agreement. For purposes of this paragraph, the term "Qualified Transferee" shall mean a "qualified institutional buyer" as defined in Rule 144A promulgated under the United States Securities Act of 1933, as amended.**

THE ACT PROVIDES THAT NEITHER THE MEMBERS OF THE ISSUER NOR ANY PERSON EXECUTING THE BOND SHALL BE LIABLE PERSONALLY ON THE BOND BY REASON OF THE ISSUANCE OF THIS BOND.

Redemptions. The Bond is subject to redemption prior to maturity as provided in the Indenture.

It is certified, recited and declared that (a) all conditions, acts and things which are required by the Constitution or by the statutes of the State of Illinois or by the Ordinance or Indenture to exist, to have happened or to have been performed precedent to or in the issuance of this Bond exist, have happened and have been performed, and (b) the Bond, together with all other indebtedness of the Issuer, are within every debt and other limit prescribed by said Constitution or statutes.

This Bond shall not be entitled to any security or benefit under the terms of the Indenture or be valid or obligatory for any purpose unless the certificate of authentication has been duly executed by the Trustee upon original issuance and thereafter by the Registrar.

IN WITNESS WHEREOF, the Village of Downers Grove, DuPage County, Illinois has caused this Bond to be executed in its name by the manual or facsimile signature of its Mayor and its corporate seal or a facsimile thereof to be impressed or printed hereon and attested by the manual or facsimile signature of its Village Clerk, all as of the Dated Date identified above.

**VILLAGE OF DOWNERS GROVE,  
DUPAGE COUNTY, ILLINOIS**

By: \_\_\_\_\_  
Its: Mayor

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Its: Village Clerk



FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This Bond is the Bond described in the within mentioned Indenture.

HEARTLAND BANK AND TRUST COMPANY,  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

Date of Authentication: \_\_\_\_\_

[FORM OF ASSIGNMENT]

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

UNIF GIFT MIN ACT --	Uniform Gifts to Minor Act
CUST --	Custodian
TEN COM --	as tenants in common
TEN ENT --	as tenants by the entireties
JT TEN --	as joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfer unto

\_\_\_\_\_  
(Name, Address and Taxpayer Identification Number of Assignee)

the Multifamily Housing Revenue Bond (Downers Grove Supportive Living Facility), Series 2014 of the Village of Downers Grove, DuPage County, Illinois and does hereby irrevocably constitute and appoint \_\_\_\_\_ to transfer the Bond on the books kept for registration thereof with full power of substitution in the premises.

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

\_\_\_\_\_  
Registered Owner

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

Signature Guaranteed:

Taxpayer Identification  
Number: \_\_\_\_\_

NOTICE: Signature(s) must be guaranteed by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Trustee.

**SCHEDULE A**  
**TABLE OF ADVANCES**

Date	Advance	Principal Installment/Amortization	Principal Amount
------	---------	------------------------------------	------------------

**SCHEDULE I**

**PRINCIPAL PAYMENT SCHEDULE**

Principal of the Bond shall be payable in monthly installments on the first day of each month in the amounts shown on the following schedule:

SEE ATTACHED

Record and return to:

Ice Miller LLP  
200 West Madison Street  
Suite 3500  
Chicago, Illinois 60606  
Attn: James M. Snyder

(For Recorder's Use Only)

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS**  
**SECURITY AGREEMENT**  
**AND FIXTURE FINANCING STATEMENT**

This MORTGAGE, ASSIGNMENT OF LEASES AND RENTS SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "**Mortgage**"), dated as of August 1, 2014, from DOWNERS GROVE SUPPORTIVE LIVING FACILITY, LLC, an Illinois limited liability company (the "**Borrower**"), as mortgagor, having an address at 8 South Michigan Avenue, 31<sup>st</sup> Floor, to HEARTLAND BANK AND TRUST COMPANY, [an Illinois state banking corporation] having its principal corporate trust office in Chicago, Illinois, as trustee under the Indenture identified below (the "**Trustee**"), or its assignee, as mortgagee.

**W I T N E S S E T H:**

WHEREAS, pursuant to the provisions of Section 6 of Article VII of the Illinois Constitution of 1970 and the Downers Grove Revenue Bond Ordinance constituting Chapter 27 of the Downers Grove Municipal Code (the "**Act**"), the Village of Downers Grove, Illinois, a municipal corporation and a home rule unit of local government duly organized and existing under the laws of the State of Illinois (the "**Issuer**") has agreed to issue its Multifamily Housing Revenue Bond (Downers Grove Supportive Living Facility), Series 2014, in the aggregate principal amount of not to exceed \$20,114,920 (the "**Bond**") for the purpose of (i) financing a portion of the costs of the acquisition of land located at 4200-4240 Lacey Road in Downers Grove, Illinois, and legally described on *Exhibit A* to this Agreement (the "**Real Estate**"), and all or a portion of the costs of acquisition, construction and equipping of a 120-unit supportive living multifamily housing facility and certain functionally-related improvements (the "**Project**"); (ii) funding the Debt Service Reserve Fund Requirement; (iii) paying capitalized interest; and (iv) paying certain costs of issuance of the Bond; and

WHEREAS, the Issuer and the Trustee will enter into a Trust Indenture, dated as of August 1, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "**Indenture**"), under the terms of which the Issuer will issue the Bond and lend the proceeds of the sale of the Bond to the Borrower to enable it to finance the Project and the Borrower, in consideration of the issuance of the Bond by the Issuer and the loan of the proceeds of the sale of the Bond to the Borrower by the Issuer will, pursuant to a Loan Agreement, dated as of August 1, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), between the Issuer and the Borrower, agree to repay said loan to the Issuer in such amounts and at such times as will be sufficient to enable the Issuer to pay the principal of, redemption premium (if any) and the interest on the Bond as the same become due and to make certain other payments with respect to the Bond; and

WHEREAS, the Bond will be issued under and secured by, *inter alia*, the Indenture and this Mortgage, all of the Issuer's right, title and interest (except only certain rights reserved by the Issuer under the Indenture) in the Bond Documents (as hereinafter defined) that are being assigned by the Issuer to the Trustee pursuant to the Indenture; and

WHEREAS, in order to evidence the indebtedness to the Issuer under the Indenture, the Borrower has executed and delivered to the Issuer a Promissory Note in the aggregate principal amount of not to exceed \$20,114,920, of even date herewith (the "**Note**"); and

WHEREAS, the Borrower has agreed to enter into this Mortgage to grant to the Trustee a mortgage lien on and perfected Security Interest (as hereinafter defined) in, the Mortgaged Property (as hereinafter defined), as security for the payment and performance of the following obligations on an equal basis: (a) the obligations of the Issuer under the Bond and (b) the obligations of the Borrower to the Trustee hereunder, and under the Note, the Indenture, and all of the other Bond Documents, and as security for all obligations of any nature, whether now existing or hereafter incurred, of the Borrower to the Trustee, the intended assignee of the Issuer (collectively, the "**Obligations**").

NOW, THEREFORE, for and in consideration of the mutual agreements contained herein, and the benefits to flow to each of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, to secure the Borrower's performance of the Obligations and all of the Borrower's other obligations under the Indenture, the other Bond Documents and hereunder, the Borrower does hereby grant, bargain, sell, convey, assign, transfer, mortgage, warrant and pledge to the Trustee, and does hereby grant a Security Interest to the Trustee in the following properties (collectively, the "**Mortgaged Property**"):

(a) All of the tract or parcel of land and premises known as the Downers Grove Supportive Living Facility, in the Village of Downers Grove, County of DuPage, State of Illinois, as more specifically described in *Schedule A* attached hereto and made a part hereof (the "**Project Site**"), including any land to the extent owned by the Borrower lying in the bed of any street, avenue or alley in front of or adjoining the Project Site to the center line thereof;

(b) All buildings, structures and improvements now or hereafter located on the land comprising the Project Site, including all appurtenant rights, easements and fixtures (as defined in

Section 9-313 of the UCC (as hereinafter defined) of the Project Facility (as hereinafter defined) and the Project, all as constructed, improved or acquired;

(c) All equipment, machinery, building materials and/or other affixed personal property and fixtures of whatever character or description located at or used or to be used by the Borrower in the operation or maintenance of the Project Facility (collectively, the "**Liened Equipment**");

(d) All right, title and interest of the Borrower to all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Project Facility or any part thereof under the power of eminent domain or conveyance in lieu thereof, or for any damage (whether caused by such taking or otherwise) to the Project Facility or any part thereof, or to any rights appurtenant thereto, including any award for change of grade of streets;

(e) All right, title and interest of the Borrower to all proceeds of insurance with respect to the Project Facility or any part thereof, and all claims and demands with respect thereto;

(f) All rights in and to all general construction contracts, engineering contracts and architectural services and contracts and other contracts and agreements affecting the Project Facility;

(g) All permits and approvals obtained and to be obtained by the Borrower from all federal, state, county and municipal bodies and agencies necessary, required and incident to the Borrower's renovations to the Project Facility;

(h) All easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interest, privileges, liberties, tenements, hereditaments, and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Project Facility (including without limitation, any and all development rights, air rights or similar or comparable rights of any nature whatsoever now or hereafter appurtenant to the Project Site or now or hereafter transferred to the Project Site);

(i) All Revenues (as defined in the Indenture), including without limitation, all present and future leases, rents and other agreements affecting the use or occupancy of the Project Facility now or hereafter entered into (hereinafter referred to as the "**Leases**") and all (including the right to receive and apply) rents, income, issues, profits, revenues and receipts of the Project Facility (hereinafter referred to as the "**Rents**");

(j) The right, in the name and on behalf of the Borrower, to appear in and defend any action or proceeding brought with respect to the Project Facility and to commence any action or proceeding to protect the interest of the Trustee in the Project Facility; and, including, without limitation, all "Revenues" of Borrower, defined as all gross income, interest income (including interest income received by the Trustee and deposited into the Revenues Account pursuant to Section 6.5 of the Indenture) and revenue received by the Borrower from the ownership or operation of the Mortgaged Property including, but not limited to, all residential and commercial rents, income from the Mortgaged Property (except deposits held as security) received in connection with leases or occupancy or services or otherwise received from or in regard to tenants of the Mortgaged Property, any additional money deposited by the Borrower from time to time

into the Project Fund created under the Indenture and, after certification of the Project by the Illinois Department of Healthcare and Family Services, the payments to be made to the Borrower pursuant to the agreement to be entered into between the Borrower and the Illinois Department of Healthcare and Family Services under the Supportive Living program upon completion of the Project (as defined in the Indenture), all business interruption insurance proceeds, and all rights to receive the same whether in the form of accounts, accounts receivable, general intangibles, contract rights, chattel paper, instruments or other rights and the proceeds thereof, whether now existing or hereafter coming into existence and whether now owned or held or hereafter acquired by the Borrower and any other moneys, revenues or receipts which are specifically included in such definition by the terms of any supplemental indenture

(k) The following assets of the Borrower, including accounts, accounts receivable, money, securities, contract rights and all proceeds therefrom associated, machinery, equipment, furniture, fixtures, including insurance proceeds and products thereof, now owned or hereafter acquired; and

(l) All proceeds of any of the foregoing and any expansions, repairs, accessions, alterations, renewals, betterments, replacements and substitutions on the Project Facility and additions, enlargements and improvements thereto.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto the Trustee and its successors and assigns forever, HEREBY RELEASING AND WAIVING ALL RIGHTS UNDER AND BY VIRTUE OF THE HOMESTEAD EXEMPTION LAWS OF THE STATE OF ILLINOIS.

PROVIDED, ALWAYS, that if the Obligations are paid according to the tenor and effect thereof when the same shall become due and payable, and if the Borrower performs all agreements herein contained or contained in the Indenture and the other Bond Documents in a timely manner, then this Mortgage shall be immediately cancelled and surrendered and the Trustee shall cooperate with the Borrower in executing all instruments necessary to evidence the release of this Mortgage and the Security Interest created hereby or by the Financing Statements (as hereinafter defined).

THE BORROWER HEREBY FURTHER AGREES WITH THE TRUSTEE, AS FOLLOWS:

## ARTICLE I

### DEFINITIONS AND CERTAIN RULES OF INTERPRETATION

**Section 1.1. Definitions.** The following terms shall have the meaning specified in the preambles to this Mortgage:

Act  
Bond  
Borrower  
Indenture  
Issuer  
Leases



Liened Equipment  
Loan Agreement  
Mortgage  
Mortgaged Property  
Note  
Obligations  
Project  
Project Site  
Real Estate  
Rents  
Trustee

In addition to the words and terms elsewhere defined herein, the following words and terms as used herein shall have the following meanings unless the context or use clearly indicates another or different meaning or intent:

**"Bond Documents"** shall have the meaning ascribed to such term in the Indenture.

**"Default"** means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, if any, become an Event of Default.

**"Event of Default"** shall have the meaning set forth in Section 4.1 hereof.

**"Financing Statements"** means any and all financing statements (including continuation statements) filed from time to time to perfect and continue the Security Interest.

**"GAAP"** means, as of the date of any determination with respect thereto, those accounting principles applicable in the preparation of financial statements, as promulgated by, or not inconsistent with those of, the Financial Accounting Standards Board, or such other body or bodies as may be recognized as authoritative by the American Institute of Certified Public Accountants or any successor body, consistently applied and maintained throughout the relevant periods and from period to period.

**"Permitted Encumbrances"** shall have the meaning ascribed to such term in the Loan Agreement.

**"Person"** means any natural person, corporation, cooperative, partnership, association, joint stock company, trust or unincorporated organization, governmental body or agency, political subdivision, municipality or municipal authority or any legal entity, as in the context may be appropriate.

**"Project Facility"** means the facility known as "Downers Grove Supportive Living Facility" located at the Project Site.

**"Security Interest"** shall refer to the security interest created by and in this Mortgage, the Loan Agreement and the Indenture and shall have the meaning set forth in the UCC.

**"State"** means the State of Illinois.

"UCC" means the Uniform Commercial Code in effect from time to time in the State.

**Section 1.2. Certain Rules of Interpretation.** The words "hereof", "herein", "hereto", "hereby" and "hereunder" and other equivalent words refer to this entire Mortgage. Unless otherwise indicated, all references to particular Articles or Sections (as capitalized terms) are references to the Articles or Sections of this Mortgage. Any pronoun used herein shall be deemed to cover all genders. References to any time of the day in this Mortgage shall refer to Central standard time or Central daylight savings time.

## ARTICLE II

### COVENANTS, WARRANTIES AND REPRESENTATIONS

**Section 2.1. Obligations of the Borrower.** The Borrower shall perform and comply with the terms and conditions of all agreements to which it is a party, including without limitation, all provisions of the Note and of the Indenture, or of any other Bond Document, or by which it or any of its properties (now owned or hereafter acquired) may be subject or bound.

**Section 2.2. Taxes and Claims.**

(a) The Borrower shall file all federal, state and local tax returns and other reports as the Borrower is required by law to file, maintain adequate reserves for the payment of all taxes, assessments, governmental charges, and levies imposed upon it, or upon any property belonging to it, including without limitation, the Mortgaged Property, and pay and discharge all such taxes, assessments, governmental charges and levies on or prior to the date on which due or before the period of grace (not to exceed thirty (30) days), if any, related thereto has expired, except where the same may be contested in good faith and by appropriate proceedings, if adequate reserves with respect thereto are maintained and segregated on the books of the Borrower in accordance with GAAP, and upon first giving the Trustee written notice thereof. The Borrower shall pay and discharge promptly all lawful claims of materialmen, mechanics, carriers, warehousemen, landlords, repairmen and other similar persons for labor, materials, supplies and rentals, which if unpaid might by law become a lien or charge upon its property, including without limitation, the Mortgaged Property, unless such claims are being contested in good faith and by appropriate proceedings, *provided* that adequate reserves with respect thereto are maintained and segregated on the books of the Borrower in accordance with GAAP, and upon first giving the Trustee written notice thereof.

(b) The Borrower shall establish with the Trustee an appropriate escrow account on a monthly basis to cover the costs of all real estate taxes on the Mortgaged Property, and the Borrower shall pay one-twelfth of the annual real estate taxes in respect of the Project Site and the Project Facility on or before the first day of each month (or at such other times as the Trustee shall require) to such escrow account and the Trustee shall pay all real estate taxes on the Mortgaged Property from such escrow account.

(c) The Borrower shall not claim or demand or be entitled to any credit or credits on account of the Obligations for any part of the taxes assessed against the

Mortgaged Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Mortgaged Property, or any part thereof, by reason of this Mortgage or the Obligations.

**Section 2.3. Casualty and Other Insurance.** The Borrower shall maintain insurance of the types, in such amounts and in such manner as set forth in Section 6.2 of the Loan Agreement, as such section may be subsequently amended. All policies must be kept in effect for the entire term of this Mortgage and until payment in full of all Obligations. The Borrower shall produce to the Trustee proof of payment of premiums therefor and provide copies of all policies and extensions and renewals thereof.

**Section 2.4. Application of Net Proceeds.** Any insurance policy required pursuant to Section 6.2 of the Loan Agreement shall be so written or endorsed as to make losses, if any, payable to the Issuer and the Trustee as their interests may appear and in accordance with Section 6.2 of the Loan Agreement. The Net Proceeds (as hereinafter defined) of any insurance proceeds or condemnation award resulting from the (a) destruction or damage (in whole or in part) of the Mortgaged Property by fire or other casualty or (b) taking under the exercise of the power of eminent domain by any Person, acting under governmental authority, of title to or any interest in, or the temporary use of, the Mortgaged Property or any part thereof, shall be deposited in a separate trust fund to be held by an escrow agent. Provided that a Default has not occurred and is continuing, the Net Proceeds shall be used for the prompt repair, restoration, modification or improvement of the Mortgaged Property; provided that the following conditions are satisfied as determined by the Bondholder; and provided, further, that if the Net Proceeds are insufficient to pay in full the cost of any such repair, restoration, modification or improvement, the Borrower shall nonetheless complete the work and shall pay any cost in excess of the amount of the Net Proceeds:

(a) The plans and specifications, project budget, construction contract, construction schedule, contractor and payment and performance bonds for the work of repair or reconstruction must all be reasonably acceptable to the Bondholder; and

(b) The Bondholder receives evidence satisfactory to it that after repair or reconstruction, the Project Facility would be at least as valuable as it was immediately before the damage or condemnation occurred; and

(c) The Net Proceeds (together with the net proceeds of any rental interruption insurance and reasonably projected rental receipts during the repair or reconstruction period) must be sufficient in Bondholder's determination to pay for the total cost of repair or reconstruction, including all associated development costs and interest projected to be payable on amounts owed by Borrower pursuant to the Bond Documents until the repair or reconstruction is complete; or Borrower must deposit with Bondholder Borrower's own funds in an amount equal to the difference between the Net Proceeds and a reasonable estimate, made by Borrower and found acceptable by Bondholder, of the total cost of repair or reconstruction; and

(d) The Bondholder shall receive evidence satisfactory to it that, after the repair or reconstruction is complete, the Mortgaged Property will continue to operate in substantially the

same manner, and will, following restoration, generate the same debt service coverage as immediately before the damage or condemnation occurred; and

(e) Disbursements of Net Proceeds shall be subject to the conditions set forth in a construction escrow agreement with a mutually acceptable title company; and

(f) no Event of Default shall remain uncured and no event shall have occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default, and Bondholder shall have received a certificate to that effect signed by a Designated Representative; and

(g) Bondholder shall have received, at Borrower's expense, all endorsements, binders, supplements and modifications to the lender's title policy insuring this Mortgage reasonably required by the Bondholder at any time after the issuance of such title policy.

In the event that a Default has occurred and is continuing, the Net Proceeds shall be applied in one or more of the following ways, as shall be elected by the Trustee in its sole discretion (after notice to the Borrower):

(a) For the prompt repair, restoration, modification or improvement of the Mortgaged Property; *provided*, that if the Net Proceeds are insufficient to pay in full the cost of any such repair, restoration, modification or improvement, the Borrower shall nonetheless complete the work and shall pay any cost in excess of the amount of the Net Proceeds;

(b) To prepay without preference or priority all or a part of the outstanding Obligations secured hereunder; or

(c) For any other lawful purpose.

For the purposes of this Section, "**Net Proceeds**" shall mean the amount remaining after deducting from the gross proceeds of any insurance or condemnation award all expenses (including reasonable attorneys' fees) incurred in the collection of any insurance proceeds or condemnation award.

**Section 2.5. After-Acquired Property.** All right, title and interest of the Borrower in and to all improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property, hereafter acquired, constructed, assembled or placed by the Borrower on the Project Site, and all conversions of the security constituted thereby, shall immediately upon such acquisition, construction, assembly, placement or conversion, as the case may be, and in each such case without any further mortgage, filing, conveyance or assignment or other act of the Borrower, become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Borrower and specifically described in the granting clause hereof, but at any time and all times the Borrower, on demand, shall execute, acknowledge and deliver to the Trustee any and all such further assurances, deeds, conveyances or assignments thereof, and authorizes the Trustee to prepare and file such Financing Statements as the Trustee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

**Section 2.6. Condemnation.** Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise, the Borrower shall continue to pay the Obligations at the time and in the manner provided for such payment in the Note, the Indenture, this Mortgage, the other Bond Documents or any other instruments evidencing or connected with the Obligations and the payment therefor shall continue to be actually received and applied by the Trustee to the discharge of the Obligations. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by the Trustee of such award or payment, the Trustee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive such award or payment, or if such award or payment exceeds the amount sufficient to pay the Obligations in full, the portion thereof sufficient to pay the Obligations in full. The Borrower shall file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to the Trustee. The Borrower hereby irrevocably authorizes and empowers the Trustee, in the name of the Borrower or otherwise, to collect and receive any such award or payment and to file and prosecute such claim or claims. Although it is hereby expressly agreed that the same shall not be necessary in any event, the Borrower shall, upon demand of the Trustee, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to the Trustee, free and clear of any encumbrances of any kind or nature whatsoever.

**Section 2.7. Authority.** The Borrower warrants that it has good and marketable fee simple title to the Mortgaged Property and it has full power, authority and legal right to execute, deliver and perform this Mortgage, and to mortgage, give, grant, bargain, sell, alien, convey, confirm and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on the Borrower's part to be performed.

**Section 2.8. Enforcement.** The Borrower hereby authorizes the Trustee at the expense of the Borrower and in its name, place and stead or otherwise to exercise any and all of the rights of the Borrower under the terms of this Mortgage. The Trustee does not assume and shall not be subject to any obligation or duty undertaken by the Borrower under the terms of this Mortgage. Any failure or omission to enforce this Mortgage for any period of time shall not impair its force and effect or prejudice the rights of the Trustee to enforce it in the future.

**Section 2.9. Indemnification.** The Borrower hereby agrees to indemnify the Trustee, its successors and assigns against and to save it harmless from any and all liability arising from this Mortgage.

**Section 2.10. Additional Documents.** The Borrower agrees to execute any and all additional documents and/or instruments and take all additional actions which are or may be necessary to effectuate the purpose and intent of this Mortgage.

**Section 2.11. Conditional License.** So long as the Borrower is not in Default of any covenant, duty or obligations imposed upon it pursuant to the terms of the Loan Agreement, the Indenture or the Note, the Borrower is hereby granted a conditional license to act based upon the authority given to the Borrower pursuant to the various terms and conditions of this Mortgage.

**Section 2.12. Miscellaneous Covenants.**

(a) No Sale or Transfer. The Borrower shall not sell, transfer or otherwise lease all or any part of the Mortgaged Property so long as this Mortgage or the Obligations remain unsatisfied, except for leases to residents of the Project.

(b) Continuing Use. The Borrower shall promptly act to obtain any reasonable easement or contract the Trustee may deem appropriate to insure the continuing use of all utilities and access to the Mortgaged Property. The continuing use shall be for whatever reasonable duration the Trustee deems necessary in its sole discretion. The Trustee shall notify the Borrower of any such easement or contract deemed appropriate.

(c) Alteration, Additions, Removals. The Borrower shall keep the Mortgaged Property protected and in good order, condition and repair at all times and shall not (a) commit, permit or suffer any waste, damage, disfigurement or injury to or upon the Mortgaged Property or any portion thereof, (b) demolish, destroy, or remove any buildings, fixtures, structures or improvements now or hereafter erected on or annexed or affixed to the Mortgaged Property, (c) install, or permit to be installed, in or on the Project Facility any new fixture in replacement of, substitution for or addition to, any fixture in or on the Project Facility, if such new fixture would be subject to a security interest held by any person other than the Trustee, or (d) make any additions, alterations or changes thereto that would constitute structural changes or execute or cause to be executed any document purporting to grant any security interest therein without the prior written consent of the Trustee except as may otherwise be allowed under the Indenture or the Loan Agreement.

(d) Repairs and Maintenance. Throughout the term of this Mortgage, the Borrower, at its sole cost and expense, will take good care of the Mortgaged Property and the sidewalk and curbs if any, adjoining the Mortgaged Property and will keep the same in good order and condition and make all necessary repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, and unforeseen and foreseen. All repairs made by the Borrower shall be equal or better in quality and class to the original work. The necessity for and adequacy of repairs to the building and improvements pursuant to this Mortgage shall be measured by the standard which is appropriate for structures of similar construction and class, *provided* that the Borrower shall in any event make all repairs necessary to avoid any structural damage or injury to the buildings and improvements and to keep the buildings and improvements in proper condition for their intended use.

(e) Inspection and Repairs by the Trustee. The Borrower will permit the Trustee and the Trustee's representatives to enter the Mortgaged Property at reasonable times to inspect same. In case of any breach or default under this Section 2.12, the Trustee may, at its option, upon reasonable prior notice, enter the Mortgaged Property to protect, restore or repair any part thereof, but the Trustee shall be under no obligation to do so. The Borrower will repay to the Trustee on demand any sums paid by the Trustee to protect, with interest thereon at the rate set forth in the Note, and until so paid, the same shall be secured by this Mortgage.

(f) Utilities. The Borrower shall maintain and make available at all times adequate sewer, water, electric, fuel and other utilities for the Project Facility and the

Mortgaged Property. The Borrower shall cooperate with such utility companies to the extent reasonably required to comply with this covenant.

(g) No Liens or Encumbrances. The Borrower shall not create, incur, assume or suffer to exist any lien or encumbrance or agree to become liable to do so on any of its assets, including without limitation, the Project, the Mortgaged Property or any portion thereof, whether now or hereafter owned or acquired, except Permitted Encumbrances.

(h) Additional Covenants and Agreements. All additional covenants and agreements contained in the Indenture and the Loan Agreement are hereby incorporated herein by reference and made a part hereof as if more fully set forth herein.

### ARTICLE III

#### SPECIAL AGREEMENTS

**Section 3.1. Advances by the Trustee.** If the Borrower fails to maintain the full insurance coverage required by this Mortgage, or the Loan Agreement, or fails to keep the Mortgaged Property in a safe condition or fails to keep or cause to be kept the Project Facility and Liened Equipment in good repair and good operating condition, the Trustee may (but shall be under no obligation to) take out the required policies and pay the premiums on the same or make the required repair, renewals and replacements; and all amounts so advanced or paid therefor by the Trustee will become a part of the Obligations secured by this Mortgage and will immediately, upon demand, become due and payable by the Borrower and will bear interest at the rate set forth in the Note.

**Section 3.2. Further Assurances.** At any time, and from time to time, upon request by the Trustee, the Borrower shall, and shall authorize the Trustee (at the Borrower's expense) to, make, execute and deliver or cause to be made, executed and delivered, to the Trustee and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or filed at such time and in such offices and places as shall be reasonably deemed desirable by the Trustee, any and all such other and further security agreements, Financing Statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of the Trustee, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligations of the Borrower under the Loan Agreement and this Mortgage, and (b) the lien of this Mortgage as a first and prior lien upon, and Security Interest in and to, all of the Mortgaged Property. Upon any failure by the Borrower so to do, the Trustee (at the Borrower's expense) may make, execute, record, file, re-record and/or refile any and all such security agreements, Financing Statements, continuation statements, instruments, certificates, and documents for and in the name of the Borrower and the Borrower hereby irrevocably appoints the Trustee as its agent and attorney-in-fact of the Borrower so to do. The lien hereof shall automatically attach, without further act, to all after-acquired property deemed to be a part of the Mortgaged Property.

**Section 3.3. Expenses.** The Borrower shall pay or reimburse the Trustee upon demand, for all reasonable counsel fees, reasonable out-of-pocket costs and expenses incurred by the Trustee in any suit, action, legal proceeding or dispute of any kind in which the Trustee is made a

party or to appear as party plaintiffs or defendants, affecting the Obligations, this Mortgage or the interests created or assigned herein, or the Project, any condemnation action involving the Mortgaged Property or any action to protect the security hereof; and any such amounts paid by the Trustee shall become a part of the Obligations secured by this Mortgage and will immediately, upon demand, become due and payable by the Borrower and will bear interest as set forth in the Indenture and the Loan Agreement.

**Section 3.4. Estoppel Affidavits.** The Borrower, upon ten (10) days prior written notice, shall furnish the Trustee a written statement, duly acknowledged, setting forth the unpaid amount of, and any interest due on, the Obligations, and whether or not any offsets or defenses exist against the Obligations. The Trustee shall, upon ten (10) days prior written notice furnish the Borrower a written statement, duly acknowledged, setting forth the amount of any Obligations owed to it and other amounts owing to it and secured by this Mortgage.

**Section 3.5. Subrogation.** The Trustee shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the Obligations or are otherwise discharged or paid by the Trustee.

**Section 3.6. Filing of Mortgage, Etc.** The Borrower forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, shall cause this Mortgage, and any security instrument creating a lien or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such a manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect, preserve and perfect the lien hereof upon and the interest of the Trustee in the Mortgaged Property. The Borrower shall pay all filing, registration and recording fees, and all expenses incident to the preparation, execution and acknowledgement of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property, and any instrument of further assurance, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance.

**Section 3.7. Compliance with Act and Other Laws.** Throughout the term of this Mortgage, the Borrower, at its sole cost and expense, shall promptly comply with the Act and all other present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, courts, departments, commissions, boards and officers, any national or local Board of Fire Underwriters, or any other body exercising functions similar to those of any of the foregoing, which may be applicable to the Mortgaged Property, the maintenance and use thereof and the sidewalks and curbs adjoining the Mortgaged Property whether or not such law, ordinance, order, rule, regulation or requirements shall necessitate structural changes or improvements, or the removal of any encroachments or projections, ornamental, structural or otherwise, onto or over property contiguous or adjacent thereto. The Borrower will comply with all the orders and notices of violation thereof issued by any governmental authority. The Borrower will pay all license fees and similar municipal charges for the use and/or occupancy of the Mortgaged Property and the other areas now or hereafter comprising part thereof or used in connection therewith and will not, unless so required by any governmental agency having jurisdiction, discontinue use of the Mortgaged Property without prior written consent of the



Trustee. If the Borrower shall fail to perform any covenant herein, the Trustee may (but shall be under no obligation to) perform such covenant for the account of the Borrower and any sums paid by the Trustee in such event shall be repaid by the Borrower to the Trustee with interest thereon at the rate set forth in the Note, and until so paid, the same shall be added to the principal sum secured by this Mortgage.

## ARTICLE IV

### DEFAULTS AND REMEDIES

**Section 4.1. Events of Default.** The term "Event of Default", wherever used in this Mortgage, shall mean any one or more of the following events:

(a) failure by the Borrower to make any payment or payments required under the Indenture, the Loan Agreement, the Note or this Mortgage and such failure continues unremedied for a period of ten (10) days after the due date for such payment;

(b) failure of the Borrower to duly perform or observe any obligation, covenant or agreement on its part contained herein not otherwise specifically constituting an Event of Default under this Mortgage and such failure continues unremedied for a period of thirty (30) days (which thirty (30) day period may be extended to ninety (90) days in the event a remedy cannot reasonably be accomplished within the thirty (30) day period, *provided* that the Borrower commences to accomplish such remedy within such thirty (30) day period and diligently pursues such remedy) after delivery of written notice to the Borrower of the existence of such failure, *provided* that in the event such failure is incapable of remedy or was willfully caused or permitted by the Borrower, the Borrower shall not be entitled to any notice or grace hereunder. The Borrower expressly acknowledges and agrees that all notice and grace periods in the Bond Documents shall run concurrently with each other;

(c) an "Event of Default" occurs and is continuing under the Indenture, the Loan Agreement, or any Bond Documents; or

(d) any representation or warranty of the Borrower herein proves to have been false or misleading in any material respect when made; or the Borrower or any other person is in Default under any mortgage or deed of trust covering any part of the Mortgaged Property whether superior or inferior in lien to this Mortgage, and including without limitation, any such mortgage or deed of trust now or hereafter held by the Trustee.

**Section 4.2. Acceleration of Maturity.** If an Event of Default shall have occurred and be continuing uncured upon the expiration of any cure period provided for herein, then the Trustee may, at its option and in its sole discretion by notice to the Borrower, declare the Obligations to be forthwith due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived; *provided*, that upon the occurrence of an Event of Default described in Section 8.1 or Section 7.1 of the Indenture or the Loan Agreement, respectively, the Obligations shall automatically become due and payable without declaration, presentment, demand, protest or notice of any kind, all of which are hereby expressly waived.

**Section 4.3. The Trustee's Right to Enter and Take Possession, Operate and Apply Revenues.**

(a) If an Event of Default shall have occurred and be continuing, the Borrower, upon demand of the Trustee, shall forthwith surrender to the Trustee the actual possession of the Mortgaged Property, including without limitation, the Project Facility and, to the extent permitted by law, the Trustee may enter and take possession of all of the Mortgaged Property, including without limitation, the Project Facility, without the appointment of a receiver, or an application therefor, and may reasonably exclude the Borrower and its agents and employees wholly therefrom, and may have joint access with the Borrower to the books, papers and accounts of the Borrower with respect to the Mortgaged Property.

(b) If the Borrower shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by the Trustee or to cure the Event of Default giving rise to such demand (within any applicable cure period) the Trustee may seek a judgment or decree conferring upon the Trustee the right to immediate possession or requiring the Borrower to deliver immediate possession of the Mortgaged Property to the Trustee. The Borrower shall pay to the Trustee all expenses of obtaining such judgment or decree, including reasonable compensation to the Trustee, its counsel and agents, and all such expenses and compensation will become a part of the Obligations secured by this Mortgage and will immediately, upon demand, become due and payable by the Borrower and will bear interest as set forth in the Note.

(c) Upon every such entering upon or taking of possession, the Trustee may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof and, from time to time, (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property, (ii) insure or keep the Project Facility, the Liened Equipment and the Project Site insured, (iii) manage and operate the Project Facility and exercise all the rights and powers of the Borrower to the same extent as the Borrower could in its own name or otherwise with respect to same, and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Trustee, all as the Trustee from time to time may determine to be in its best interest.

(d) For the purpose of carrying out the provisions of this Section, the Borrower hereby irrevocably constitutes and appoints the Trustee the true and lawful attorney-in-fact of the Borrower to do and perform, from time to time, any and all actions necessary and incidental to such purpose and does, by these presents, ratify and confirm any and all actions of said attorney-in-fact with respect to the Mortgaged Property.

**Section 4.4. Performance by the Trustee on Default by the Borrower.** If the Borrower shall Default in the payment, performance or observance of any term, condition or agreement of this Mortgage, the Trustee may, upon reasonable notice to the Borrower, at the Trustee's option, pay, perform or observe the same, and all payments made or costs or expenses incurred by the Trustee in connection therewith will become a part of the Obligations secured by this Mortgage and will immediately, upon demand, become due and payable by the Borrower and

will bear interest as set forth in the Note. The Trustee shall be the sole judge of the necessity for any such actions and of the amounts to be paid. The Trustee is hereby empowered to enter and to authorize others to enter upon the Project Facility and the Project Site or any part thereof for the purpose of performing or observing any such defaulted term, condition or agreement without thereby becoming liable to the Borrower or any person in possession holding under the Borrower. The Borrower expressly acknowledges and agrees, however, that notwithstanding anything contained in this Section to the contrary, the Trustee shall not be obligated under this Section to incur any expense or to perform any act whatsoever. Any sums so expended by the Trustee hereunder shall be added to the Obligations secured by the Mortgage and shall be repayable by the Borrower on demand.

**Section 4.5. Receiver.** If an Event of Default shall have occurred and be continuing, the Trustee, upon application to a court of competent jurisdiction, shall be entitled to the appointment of a receiver to take possession of and to operate the Project Facility and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the State. All reasonable out-of-pocket expenses, including receiver's fees, counsel fees, costs and agents' compensation, incurred pursuant to the provisions of this Section shall become a part of the Obligations secured by this Mortgage and will immediately, upon demand, become due and payable by the Borrower and will bear interest as set forth in the Note. The Trustee's rights hereunder include its rights under 735 *ILCS* 5/15-1703, as such Section may be amended from time to time.

**Section 4.6. Foreclosure Sale.**

(a) If an Event of Default shall have occurred and be continuing, the Trustee shall have the right to institute proceedings for the foreclosure of this Mortgage in accordance with applicable law governing foreclosures.

(b) If an Event of Default shall have occurred and be continuing, the Trustee may, in addition to and not in abrogation of the rights covered under Section 4.6(a), either with or without entry or taking possession as herein provided or otherwise, proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy (i) to enforce the Obligations or the performance of any term, condition or agreement of this Mortgage or any other right, and (ii) to pursue any other remedy available to it, all as the Trustee shall determine most effectual for such purposes.

(c) If this Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may, at the discretion of the Trustee, be sold in one or more parcels or in several interests or portions and in any order or manner.

(d) In lieu of a foreclosure sale, the Trustee at its option and in its sole discretion may accept from the Borrower a deed to the Mortgaged Property for a nominal consideration.

(e) Upon any foreclosure sale, the Trustee, its officers, attorneys and agents may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Obligations as a credit to the purchase price.

**Section 4.7. Application of Proceeds of Foreclosure Sale.** In the event of a foreclosure sale of the Mortgaged Property pursuant to Section 4.6(a) subject to applicable law, the proceeds of said sale, after paying all of the Trustee's reasonable costs and expenses (including attorneys' fees) of collection, storage, custody, sale and delivery in connection with the Indenture, the Loan Agreement and this Mortgage shall be applied to the payment of amounts in respect of the Obligations in such order as Trustee shall determine. No purchaser at any sale shall be responsible for the application of the purchase money. Any balance of the proceeds remaining after payment of the items above and the Obligations shall be returned to the Borrower; and if there results a deficiency, the Borrower shall be responsible for the same, with interest as set forth in the Note.

**Section 4.8. Discontinuance of Proceedings and Restoration of the Parties.** In case the Trustee shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the Borrower and the Trustee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Trustee shall continue as if no such proceeding had been taken.

**Section 4.9. Remedies Cumulative.** No right, power or remedy conferred upon or reserved to the Trustee by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, under the Loan Agreement or now or hereafter existing at law or in equity or by statute.

**Section 4.10. Waiver.**

(a) No delay or omission of the Trustee to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default, or acquiescence therein; and every right, power and remedy given by this Mortgage to the Trustee may be exercised from time to time and as often as may be deemed expedient by the Trustee. No consent or waiver, expressed or implied, by the Trustee to or of any breach or default by the Borrower in the performance of the obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance of the same or any other obligations of the Borrower hereunder. Failure on the part of the Trustee to act, complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, or to enforce this Mortgage shall not constitute a waiver by the Trustee of its rights hereunder or impair any rights, powers or remedies consequent on any breach or default by the Borrower. The Trustee may resort for payment of the Obligations to any other security held by the Trustee in such order and manner as the Trustee, in its discretion, may elect. The Trustee may take action to recover the Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of the Trustee thereafter to foreclose this Mortgage.

(b) If the Trustee: (i) grants forbearance of or an extension of time for the payment of any sums secured hereby; (ii) takes other or additional security for the payment of any sums secured hereby; (iii) waives or does not exercise any right granted herein, in

the Indenture or in the Loan Agreement; (iv) releases any part of the Mortgaged Property from the lien and Security Interest of this Mortgage or otherwise changes any of the terms, conditions or agreements of this Mortgage, the Indenture, the Loan Agreement or any documents related to the Mortgage, the Indenture or the Loan Agreement; (v) consents to the filing of any map, plat or replat affecting the Mortgaged Property; (vi) consents to the granting of any easement or other right affecting the Mortgaged Property; or (vii) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under the Note, the Loan Agreement, this Mortgage or any other obligation of the Borrower; nor shall any such act or omission preclude the Trustee from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then made or of any subsequent default; nor, except as otherwise expressly provided herein or in an instrument or instruments executed by the Trustee, shall the lien and Security Interest of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Trustee, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the Obligations secured hereby, or with reference to any of the terms, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings of the Borrower.

(c) Any waiver asserted against the Trustee as being given by the Trustee must be evidenced by an express writing validly signed by the Trustee.

**Section 4.11. Suits to Protect the Mortgaged Property.** The Trustee shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property and in the rents, issues, profits and revenues arising therefrom, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Trustee under the Note, the Indenture or the Loan Agreement. All such reasonable costs and expenses, including counsel fees, expended by the Trustee hereunder will become a part of the Obligations secured by this Mortgage and will immediately, upon demand, become due and payable by the Borrower and will bear interest as set forth in the Note.

**Section 4.12. The Trustee May File Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceeding affecting the Borrower, its creditors or its property, the Trustee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such proceedings for the entire amount due and payable by the Borrower under the Note, the Indenture, the Loan Agreement and this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by the Borrower under the Note, the Indenture, the Loan Agreement and this Mortgage after such date.

**Section 4.13. Rights of the Trustee.** This Mortgage shall terminate as to the interests and rights of the Trustee upon the payment in full of all the Obligations. Upon payment of all of the Obligations, this Mortgage and all related Financing Statements will be released or terminated and the Trustee at the Borrower's expense, shall execute such documents as may be necessary to evidence such release.

**Section 4.14. Provisions for Benefit of the Trustee.** The rights and remedies of the Trustee specified in this Article 4 are for the sole and exclusive benefit, use and protection of the Trustee, and the Trustee is entitled but shall have no duty or obligation to, the Borrower, the owner or holder of any Bond, or any other person, or otherwise, (a) to exercise or to refrain from exercising any right or remedy reserved to the Trustee hereunder, or (b) to cause any other person to exercise or to refrain from exercising any right or remedy available to such person under this Mortgage, the Note, the Indenture, the Loan Agreement or any other Bond Document.

**Section 4.15. Security Agreement.** This Mortgage constitutes both a real property mortgage and a "security agreement", within the meaning of the UCC, and the Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of the Borrower in the Mortgaged Property. The Borrower by executing and delivering this Mortgage has granted to the Trustee, as security for the performance of the Obligations and all of the Borrower's other obligations under the Note, the Indenture, the Loan Agreement and hereunder, a Security Interest in the Mortgaged Property. If there shall be continuing uncured an Event of Default under this Mortgage, the Trustee, in addition to any other rights and remedies which the Trustee may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC, including without limitation, the right to take possession of the Mortgaged Property or any part thereof, and to take such other measures as the Trustee may deem necessary for the care, protection and preservation of the Mortgaged Property. Upon request or demand of the Trustee, the Borrower shall at the Borrower's expense, assemble the Mortgaged Property and make it available to the Trustee at a convenient place acceptable to the Trustee. Any and all reasonable expenses, including legal expenses and attorneys' fees, incurred or paid by the Trustee in protecting its interest in the Mortgaged Property and in enforcing the Trustee's rights hereunder with respect to the Mortgaged Property will immediately, upon demand, become due and payable by the Borrower and will bear interest as set forth in the Note. Any notice of sale, disposition or other intended action by the Trustee with respect to the Mortgaged Property sent to the Trustee in accordance with the provisions of this Mortgage at least seven (7) days prior to the date of any such sale, disposition or other action, shall constitute reasonable notice to the Borrower and the method of sale or disposition or other intended action set forth or specified in such notice shall conclusively be deemed to be commercially reasonable within the meaning of the UCC. The proceeds of any sale or disposition of the Mortgaged Property, or any part thereof, may be applied by the Trustee to the payment of the Obligations in such order, priority and proportions as the Trustee in its sole discretion shall deem proper.

**Section 4.16. Fixture Financing Statement.** From the date of its recording, this Mortgage shall be effective as a fixture financing statement with respect to all fixtures included within the definition of the Mortgaged Property and with respect to all goods constituting part of the Mortgaged Property which are or are to become fixtures related to the real estate described herein. It is intended that as to such fixtures and the proceeds thereof, this Mortgage shall be

effective as a financing statement within the purview of Section 9-502(b) of the Illinois Uniform Commercial Code, filed as a fixture filing in the real estate records of the county in which the Mortgaged Property is located. For this purpose, the following information is set forth.

(a) Name and Address of Debtor:

Downers Grove Supportive Living Facility, LLC  
8 South Michigan Drive  
31st Floor  
Chicago, Illinois 60605  
Attention: Greg Stec

(b) Name and Address of Trustee:

Heartland Bank and Trust Company, as Trustee  
under Trust Indenture dated as of August 1, 2014

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

**Section 4.17. Lease and Contract Assignment.** The Borrower, acknowledges that concurrently herewith, the Borrower has executed and delivered to the Trustee, as additional security for the repayment of the Note, an Absolute Assignment of Leases and Rents, and an Assignment of Contracts and Licenses, Permits and Agreements (collectively, the “Assignment”) pursuant to which the Borrower has assignment to the Trustee interests in the leases of the Mortgaged Property and the rents and income from the Mortgaged Property. All of the provisions of the Assignment are hereby incorporated in this Mortgage as is fully set forth at length in the text of this Mortgage. The Borrower agrees to abide by all of the provisions of the Assignment.

## ARTICLE V

### MISCELLANEOUS

**Section 5.1. Binding Effect.** This Mortgage shall inure to the benefit of and be binding upon the Borrower, the Trustee and their respective successors and assigns (subject in the Borrower’s case to such consent of the Trustee as may be required under the Loan Agreement); *provided*, that this Mortgage may not be assumed by any successor of and to the Borrower without the Trustee’s prior written consent.

**Section 5.2. Severability.** If any provision of this Mortgage shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof. Should a term, condition or provision of this Mortgage become in conflict with a federal, state or county regulation and said conflict results in the modification of such term, condition or provision, then only the specific term, condition or provision will be affected. All other terms, conditions or provisions of this Mortgage will remain in full force and effect.

**Section 5.3. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, return receipt requested, postage prepaid, or by private delivery service addressed as follows:

(a) If to the Borrower:

Downers Grove Supportive Living Facility, LLC  
8 South Michigan Avenue  
31<sup>st</sup> Floor  
Chicago, IL 60603  
Attention: Greg Stec

With a copy to:

Michael Fiandaca Law Office  
6756 N. Harlem Avenue  
Chicago, IL 60631  
Attention:

If to the Investor Member:

[TO COME]

(b) If to the Trustee:

Heartland Bank and Trust Company, as Trustee

\_\_\_\_\_, IL \_\_\_\_  
Attention: \_\_\_\_\_

The Borrower and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 5.4. Amendments, Changes, Consents, Waivers and Modifications.** The Borrower, together with the Trustee, may amend this Mortgage, and the Trustee may terminate this Mortgage or waive any term or condition hereof or grant any consent required hereunder, and any such amendment, termination, waiver or consent shall be binding upon the Borrower and the Trustee and their respective successors and assigns, without the necessity of any further action by the Trustee. All such amendments, terminations, waivers or consents under this Mortgage must be in an express writing signed by the Trustee and the Borrower.

**Section 5.5. Captions.** The captions and headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provision hereof.



**Section 5.6. Law Governing Construction of Mortgage.** This Mortgage shall be governed by, and construed in accordance with, the internal laws of the State without regard to principles of conflicts of law.

**Section 5.7. Trustee's Counsel.** All items subject to the Trustee's review, consent or approval hereunder shall also be subject to the review, consent or approval of the Trustee's counsel.

**Section 5.8. Changes in Laws Regarding Taxation.** In the event of the passage after the date of this Mortgage of any law of the State deducting from the value of real property for the purpose of taxation any lien or encumbrance thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on this Mortgage or the Obligations, the Borrower shall, if permitted by law, pay any tax imposed as a result of any such law within the statutory period or within fifteen (15) days after demand by the Trustee, whichever is less; *provided*, that if, in the opinion of the attorneys for the Trustee, the Borrower is not permitted by law to pay such taxes, the Trustee shall have the right, at its option, to declare the Obligations due and payable on a date specified in a prior notice to the Borrower of not less than thirty (30) days.

**Section 5.9. Offsets, Counterclaims and Defenses.** Any assignee of this Mortgage shall take the same free and clear of all offsets, counterclaims or defenses of any nature whatsoever which the Borrower may have against any assignor of this Mortgage, and no such offset, counterclaim or defense shall be interposed or asserted by the Borrower in any action or proceeding brought by any such assignee upon this Mortgage and any such right to interpose or assert any such offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by the Borrower.

**Section 5.10. Documentary Stamps.** If at any time the United States of America, any state thereof, or any governmental subdivision of any such state, shall require revenue or other stamps to be affixed to the Note, the Loan Agreement or this Mortgage, the Borrower shall pay for the same, with interest and penalties thereon, if any.

**Section 5.11. Right of Entry.** The Trustee and its agents or representatives shall have the right to enter and inspect the Mortgaged Property at any reasonable time and from time to time.

**Section 5.12. Sole Discretion of the Trustee.** Except as may otherwise be expressly provided to the contrary, wherever pursuant to the Note, the Indenture, the Loan Agreement, this Mortgage, or any other document or instrument now or hereafter executed and delivered in connection therewith or otherwise with respect to the obligations secured hereby, the Trustee exercises any right given to it to consent or not consent, or approve or disapprove, or any arrangement or term is to be satisfactory to the Trustee, the decision of the Trustee to consent or not consent, approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory, shall be in the sole and absolute discretion of the Trustee and shall be final and conclusive.

**Section 5.13. Reasonableness.** If at any time the Borrower believes that the Trustee has not acted reasonably in granting or withholding any approval or consent under the Indenture, the Loan Agreement, this Mortgage, or any other document or instrument now or hereinafter executed and delivered in connection therewith or otherwise with respect to the obligations secured hereby, as to which approval or consent either the Trustee has expressly agreed to act reasonably, or absent such agreement, a court of law having jurisdiction over the subject matter would require the Trustee to act reasonably, then the Borrower's sole remedy shall be to seek injunctive relief or specific performance and no action for monetary damages or punitive damages shall in any event or under any circumstances be maintained by the Borrower against the Trustee.

**Section 5.14. Recovery of Sums Required to be Paid.** The Trustee shall have the right at any time and from time to time to take action to recover any sum or sums which constitute a part of the Obligations as the same become due, without regard to whether or not the balance of the Obligations shall be due, and without prejudice to the right of the Trustee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by the Borrower existing at the time such earlier action was commenced.

**Section 5.15. Actions and Proceedings.** The Trustee shall have the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of the Borrower which the Trustee, in its discretion, feels should be brought to protect its interest in the Mortgaged Property.

**Section 5.16. Waiver of Notice.** The Borrower shall not be entitled to any notices of any nature whatsoever hereunder from the Trustee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by the Trustee to the Borrower, and the Borrower hereby expressly waives the right to receive any notice from the Trustee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by the Trustee to the Borrower.

**Section 5.17. Waiver of Statutory Rights.** The Borrower shall not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereinafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws to the full extent that the Borrower may do so under applicable law. The Borrower for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien of this Mortgage and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. The Borrower hereby waives for itself and all who may claim through or under it, and to the full extent the Borrower may do so under applicable law, any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or granted under any statute now existing or hereafter enacted.

**Section 5.18. Relationship.** The relationship of the Trustee to the Borrower hereunder is strictly and solely that of lender and borrower and nothing contained in the Indenture, the Loan Agreement, this Mortgage, or any other document or instrument now or hereafter executed and delivered in connection therewith or otherwise in connection with the obligations secured hereby is intended to create, or shall in any event or under any circumstance be construed as creating, a

partnership, joint venture, tenancy-in-common, joint tenancy or other relationship of any nature whatsoever between the Trustee and the Borrower other than as lender and borrower.

**Section 5.19. Waiver of Jury Trial.** The Borrower and the Trustee each hereby unconditionally and irrevocably waive any and all right to trial by jury in any action, suit, counterclaim or cross claim arising in connection with, out of or otherwise relating to this Mortgage, the other Bond Documents, the Obligations hereunder, the collateral, or any transaction arising therefrom or related thereto.

**Section 5.20. Subordination to Extended Use Agreement.** The Borrower has informed the Trustee that the Borrower intends that the mortgaged property qualify for an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code ("Tax Credits"). In order to receive an allocation of Tax Credits, the Borrower will be required to record in the real property records of an "extended low-income housing commitment" (as defined in Code Section 42(h)(6)(B)) (the "Extended Use Agreement"). If the Borrower demonstrates to the reasonable satisfaction of the Trustee that applicable federal law requires that the lien of this Mortgage be subordinate to the Extended Use Agreement, then the Trustee shall execute a subordination agreement (the "Subordination Agreement") wherein the lien of this Mortgage is subordinated to the Extended Use Agreement. The Subordination Agreement will:

(a) provide that, if the Trustee or its successors or assigns (collectively, the "REO Owner") acquires the mortgaged property by foreclosure (or instrument in lieu of foreclosure), then the "extended use period" (as defined in Code Section 42(h)(6)(D)) shall terminate, except for the obligation of the REO Owner to comply with the limitations on evictions, termination of tenancy and increase in rents for the three year period following the REO Owner's acquisition of the mortgaged property, as set forth in Code Section 42(h)(6)(E)(ii); and

(b) otherwise be in a form reasonably acceptable to the Trustee.

## ARTICLE VI

### LOCAL LAW PROVISIONS

This Mortgage is subject to the following provisions relating to the particular laws of the state wherein the Property is located:

**Section 6.1. Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Article VI and the other terms and conditions of this Mortgage, the terms and conditions of this Article VI shall control and be binding.

**Section 6.2. Type of Real Estate.** Borrower acknowledges that the transaction of which this Mortgage is a part is a transaction that does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.; "Foreclosure Act") or residential real estate (as defined in Section 15-1219 of the Foreclosure Act).

**Section 6.3. Interest Rate.** To the extent the provisions of the Illinois Interest Act (815 ILCS §205/4(1)) apply, the Obligations constitute business loans which come within the purview

of 815 ILCS 205/4(1)(c), as well as loans secured by a mortgage on real estate which comes within the purview of 815 ILCS 205/4(1)(l).

**Section 6.4. Illinois Mortgage Foreclosure Law.**

(a) In the event any provision in this Mortgage shall be inconsistent with any provision of the Foreclosure Act, the provisions of the Foreclosure Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Foreclosure Act.

(b) If any provision of this Mortgage shall grant to Trustee any rights or remedies upon default of Borrower which are more limited than the rights that would otherwise be vested in Trustee under the Foreclosure Act in the absence of said provision, Trustee shall be vested with the rights granted in the Foreclosure Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all reasonable expenses incurred by Trustee to the extent reimbursable under Sections 15-1510(b) and 15-1512 of the Foreclosure Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

(d) In addition to any provision of this Mortgage authorizing the Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Foreclosure Act, to be placed in possession of the Property or, at its request, to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities and duties, as provided for in Sections 5/15-1701 and 5/15-1703 of the Foreclosure Act.

(e) THE BORROWER, ON ITS OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBSEQUENT TO THE DATE OF THIS MORTGAGE, HEREBY IRREVOCABLY WAIVES PURSUANT TO 735 ILCS 5/15-1601 OF THE FORECLOSURE ACT ANY AND ALL RIGHTS OF REINSTATEMENT (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REINSTATEMENT PROVIDED FOR IN 735 ILCS 5/15 1602) OR REDEMPTION FROM SALE OR FROM OR UNDER ANY ORDER, JUDGMENT OR DECREE OF FORECLOSURE OF THIS MORTGAGE (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REDEMPTION PROVIDED FOR IN 735 ILCS 5/15 1603) OR UNDER ANY POWER CONTAINED HEREIN OR UNDER ANY SALE PURSUANT TO ANY STATUTE, ORDER, DECREE OR JUDGMENT OF ANY COURT.

**Section 6.5. Future Advances; Maximum Indebtedness.** This Mortgage is granted to secure not only existing indebtedness, but also future advances made pursuant to or as provided in this Mortgage, the Note, the Loan Agreement, the Indenture and the other Bond Documents, whether such advances are obligatory or to be made at the option of Mortgagee, or otherwise, to the same extent as if such future advances were made on the date of execution of this Mortgage, although there may be no advance made at the time of execution hereof, and although there may

be no indebtedness outstanding at the time any advance is made. Notwithstanding anything in this Mortgage to the contrary, the maximum amount of the indebtedness secured by this Mortgage shall not exceed \$20,114,920, plus all costs of enforcement and collection of this this Mortgage, the Note, the Loan Agreement, the Indenture and the other Bond Documents, plus the total amount of any advances made pursuant to the Bond Documents to protect the collateral and the security interest and lien created hereby, or the priority thereof, together with interest on all of the foregoing as provided in the Note, the Loan Agreement, the Indenture and the other Bond Documents.

**Section 6.6. Insurance Disclosure.** The following notice is provided pursuant to paragraph (3) of 815 ILCS 180/10: Unless the Borrower provides evidence of the insurance coverage required by the Loan Documents, the Trustee may purchase such insurance at the Borrower's expense to protect the Trustee's interests in the Borrower's collateral. This insurance may, but need not, protect the Borrower's interests. The coverage that the Trustee purchases may not pay any claim that the Borrower may make or any claim that is made against the Borrower in connection with the collateral. The Borrower may later cancel any insurance purchased by the Trustee, but only after providing evidence that the Borrower has obtained insurance as required by the Loan Documents. If the Trustee purchases insurance for the collateral, the Borrower will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges that the Trustee may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations of the Borrower. The costs of the insurance may be more than the cost of insurance that the Borrower may be able to obtain on the Borrower's own.

*[Remainder of the Page Intentionally Left Blank; Signature Page Follows]*

IN WITNESS WHEREOF, the Borrower, pursuant to a resolution duly adopted, has caused this Mortgage to be signed in its name by its managing member, all on the date first above written.

**DOWNERS GROVE SUPPORTIVE LIVING FACILITY, LLC,**  
an Illinois limited liability company

By: \_\_\_\_\_, an Illinois limited liability company, its managing member

By: \_\_\_\_\_, an Illinois limited liability company, its controlling member

By: \_\_\_\_\_, its sole member

By: \_\_\_\_\_  
Name: Greg Stec  
Title:

Signature Page to Mortgage, Assignment of Leases and  
Rents Security Agreement

STATE OF ILLINOIS                    )  
  ) **SS.**  
COUNTY OF DUPAGE                 )

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, CERTIFY that \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of **DOWNERS GROVE SUPPORTIVE LIVING FACILITY, LLC**, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument as his own free and voluntary act and as the free and voluntary act of the limited liability company for the uses and purposes set forth in such instrument.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of May, 2014.

\_\_\_\_\_  
Notary Public  
in and for DuPage County, Illinois

(SEAL)  
My Commission Expires:

\_\_\_\_\_

**Legal Description**

(Attached)



**ASSIGNMENT OF CONTRACTS AND  
INTEREST IN LICENSES, PERMITS AND AGREEMENTS**

WHEREAS, pursuant to Section 6 of Article VII of the Illinois Constitution of 1970 and the Downers Grove Revenue Bond Ordinance constituting Chapter 27 of the Downers Grove Municipal Code (collectively, the "**Act**"), as supplemented and amended, the Village of Downers Grove, Illinois (the "**Issuer**") has agreed to issue its Multifamily Housing Revenue Bond (Downers Grove Supportive Living Facility), Series 2014, in the aggregate principal amount of not to exceed Twenty Million One Hundred Fourteen Thousand Nine Hundred Twenty and 00/100 Dollars (\$20,114,920) (the "**Bond**") for the purpose of enabling Downers Grove Supportive Living Facility, LLC, an Illinois limited liability company (the "**Borrower**"), to finance a portion of the costs of the acquisition of land (the "**Real Estate**") located at 4200 – 4240 Lacey Road in Downers Grove, Illinois, within the territorial jurisdiction of the Issuer, and the acquisition, construction, and equipping on the Real Estate of an approximately 120-unit supportive living multi-family housing facility and certain functionally-related improvements (collectively, the "**Project**"); and

WHEREAS, the Issuer and Heartland Bank and Trust Company, an Illinois state banking corporation (the "**Trustee**"), will enter into a Trust Indenture, dated as of August 1, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "**Indenture**"), under the terms of which the Issuer will issue the Bond and lend the proceeds of the sale of the Bond to the Borrower to enable it to finance the Project, and the Borrower, in consideration of the issuance of the Bond by the Issuer, and the loan of the proceeds of the sale of the Bond to the Borrower by the Issuer, will, pursuant to a Loan Agreement, dated as of August 1, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), between the Issuer and the Borrower, agree to repay said loan to the Issuer in such amounts and at such times as will be sufficient to enable the Issuer to pay the principal of, redemption premium (if any) and the interest on the Bond as the same become due and to make certain other payments with respect to the Bond; and

WHEREAS, the Bond will be issued under and secured by, *inter alia*, the Indenture and a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Financing Statement, dated as of August 1, 2014, on the Project (as amended, restated, supplemented or otherwise modified from time to time, the "**Mortgage**"), and all of the Issuer's right, title and interest (except only certain rights reserved by the Issuer under the Indenture) in the Bond Documents (as the term is defined in the Indenture) that are being assigned by the Issuer to the Trustee pursuant to the Indenture; and

WHEREAS, in order to evidence the indebtedness to the Issuer under the Loan Agreement, the Borrower has executed and delivered to the Issuer a Note of even date herewith, in the aggregate principal amount of not to exceed Twenty Million One Hundred Fourteen Thousand Nine Hundred Twenty and 00/100 Dollars (\$20,114,920) (the "**Note**"); and

WHEREAS, the Borrower has agreed to enter into this Assignment of Contracts and Interest in Licenses, Permits and Agreements (this "**Assignment**") to grant to the Trustee a lien on and perfected security interest in, the Contracts and Permits (each as defined below), as security for the payment and performance of all obligations of the Borrower to the Trustee hereunder, and under the Note, the Indenture, and all of the other Bond Documents, and as security for all

obligations of any nature, whether now existing or hereafter incurred, of the Borrower to the Trustee, the intended assignee of the Issuer (collectively, the "**Obligations**").

FOR VALUE RECEIVED, the Borrower assigns, transfers, and sets over unto the Trustee, all of the rights, title, interests and privileges which the Borrower has and may have in all of the contracts, agreements and commitments set forth on Exhibit A hereto (collectively, the "**Contracts**"), and all of the licenses, permits, approvals and agreements by and among the Borrower, or issued to the Borrower, by all boards, agencies, departments, governmental or otherwise (collectively referred to as "**Permits**"), which Contracts and Permits relate or pertain to the acquisition, ownership, construction, equipping and operation of the Project.

1. This Assignment is made as separate and independent security for the payment of the Note from the Borrower to the Issuer, and as separate and independent security for the performance by the Borrower of its agreements, obligations, and undertakings under the Loan Agreement, and under any other loan documents therein identified (collectively, the "**Loan Documents**"). The acceptance of this Assignment shall not constitute a waiver of any rights of the Issuer or the Trustee under the terms of any of the Loan Documents. The security provided by this Assignment is intended to be of the same quality and significance as the security provided by the Mortgage, and all rights and remedies of the Trustee under this Assignment and under the Loan Documents are cumulative and concurrent and may be exercised singly, successively or concurrently, at the discretion of the Issuer.

2. Until the occurrence of an Event of Default (as defined in the Loan Documents), the Borrower may retain, use and enjoy the benefits of any one or more or all of the Contracts or Permits. After the occurrence of an Event of Default, the Trustee may enforce this Assignment by notifying the Borrower by certified mail sent to the address specified in the Loan Documents. The affidavit or written statement of an officer, agent or attorney of the Trustee stating that there has been a default or an Event of Default shall constitute prima facie evidence thereof and any contractor or governmental authority or other person is authorized and directed to rely thereon.

3. After the occurrence of an Event of Default, the Trustee may elect to exercise any and all of the Borrower's rights, remedies and privileges under the Contracts and Permits, without any interference or objection of the Borrower, and the Borrower shall lend full cooperation in carrying out this Assignment.

4. The Trustee shall not be liable or responsible in any manner to the Borrower or to any contractor for the performance of any action, matter or thing connected with the work or with any aspect of the Contracts or to any of the governmental authorities for any matter or thing connected with any aspect of the Permits, including performance thereunder.

5. After an Event of Default, the Trustee may, with or without entry upon the Project, at its option, exercise the Borrower's rights and remedies under the Contracts and Permits and perform all acts in the same manner and to the same extent as the Borrower might do. The Borrower hereby releases any and all claims which it has or might have against the Trustee arising out of such performance by the Trustee, except those caused by the Trustee's gross negligence or willful misconduct and except such claims which are preserved to the Borrower by the provisions of the Loan Agreement. The Trustee may in connection with any and all of the forgoing powers,

and without limiting the same, effect new contracts or permits, cancel or surrender existing contracts and permits, and make concessions to parties and governmental agencies. The Trustee shall follow any direction of the Purchaser (as defined in the Indenture) in exercising remedies under the Contracts and Permits.

6. From and after the date hereof, no Contract or Permit may be materially altered, amended or cancelled by the Borrower without the prior written consent of the Trustee, which consent shall not be unreasonably withheld, and no Contract with respect to the Project shall be entered into by the Borrower without giving the Trustee prior notice thereof. Notwithstanding anything in this paragraph 6 to the contrary, the Trustee is not required to consent to amendments or cancellations of Contracts and Permits if the change or cancellation would have a material adverse effect on the Bondholders (as defined in the Indenture), provided that the Trustee shall consent to any such change or cancellation in the Contract and Permits if the Purchaser approves such change of cancellation.

7. All of the foregoing powers herein granted to the Trustee shall be liberally construed. The Trustee need not expend its own funds in the exercise of such powers, but if it does, such amount shall be considered as an advance for and on behalf of the Borrower secured by this Assignment and also secured by the Loan Documents.

8. The Borrower agrees faithfully to observe and perform all of the obligations and agreements imposed upon the Borrower under the Contracts and Permits. The Trustee will not be deemed in any manner to have assumed the same, nor shall the Trustee be liable to contractors by reason of any default by any party under the Contracts. The Borrower agrees to defend, indemnify and to hold the Trustee harmless of and from any and all liability, loss or damage which it may or might incur by reason of any claims or demands against it based on its alleged assumption of the Borrower's duty and obligation to perform and discharge the terms, covenants, and agreements of the Contracts and Permits.

9. Nothing herein contained shall be construed as making the Trustee a mortgagee in possession, or as constituting a waiver or suspension of the Trustee of its right to enforce payment of the debts under the terms of the Loan Documents. The Trustee is not the agent, partner, or joint venturer of the Borrower.

10. Notices required hereunder shall be sent to the persons, in the manner and at the addresses required for notices as set forth in the Loan Agreement.

11. The repayment in full of the Note and the full performance of the obligations of the Borrower under the Loan Documents shall render this Assignment void automatically. This Assignment is irrevocable and is binding upon the Borrower and the Borrower's successors and assigns so long as any of the Obligations remains unpaid. The duly recorded satisfactions, release or reconveyance of all or any portion of the Project shall render this Assignment void automatically with respect to the portion of the Project described in any such satisfaction, release or reconveyance.

***[Remainder of this Page Intentionally Left Blank; Signature Page Follows]***

IN WITNESS WHEREOF, the Borrower has duly executed this Assignment of Contracts and Interest in Licenses, Permits and Agreements dated as of August 1, 2014.

DOWNERS GROVE SUPPORTIVE LIVING FACILITY, LLC,  
an Illinois limited liability company

By: DOWNERS GROVE SLF, JV, LLC,  
its Managing Member

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

**EXHIBIT A [SUBJECT TO REVIEW AND REVISION]**

1. AIA Standard Agreement Between Owner and Contractor (Form A101 – 2007 (Revised and Modified)) between Borrower and Ledcor Construction Inc.
2. Supportive Living Facility Management Agreement between Borrower and BMA Management, Ltd.
3. Agreement with Craft Architecture LLC re: architectural services for the Project.
4. All insurance policies and surety bonds with respect to the Project.
5. All other agreements between the Borrower and any other party relating to the construction or operation of the Project to the extent assignable.

**EXHIBIT B**

**CONSENT OF THE MANAGER**

The undersigned, on behalf of BMA Management, Ltd. (“**Manager**”) is the Manager under the Supportive Living Facility Management Agreement dated August \_\_, 2014 (the “**Management Agreement**”) between the undersigned and Downers Grove Supportive Living Facility, LLC (the “**Assignor**”) , hereby acknowledges, agrees with, consents to, and agrees to abide by all the terms and provisions of the Assignment of Contracts and Interest in Licenses, Permits and Agreements dated as of August 1, 2014 (the “**Assignment**”) from the Assignor to Heartland Bank and Trust Company, as Trustee (“**Assignee**”).

DATED as of August \_\_, 2014

BMA MANAGEMENT, LTD.

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

## EXHIBIT C

### AGREEMENT AND CONSENT TO ASSIGNMENT BY ARCHITECT

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned, Craft Architecture LLC (the "**Architect**"), hereby acknowledges and agrees as follows:

1. All capitalized terms not specifically defined in this agreement (this "**Agreement and Consent**") shall have the meanings ascribed to those terms in the Assignment of Contracts and Interest in Licenses, Permits and Agreements dated as of even date herewith (the "**Assignment**") made by Downers Grove Supportive Living Facility, LLC (the "**Borrower**") to and in favor of Heartland Bank and Trust Company, as Trustee (the "**Trustee**") under the Trust Indenture dated as of August 1, 2014 (the "Indenture") between the Village of Downers Grove, Illinois and the Trustee. The Architect acknowledges receipt of the Assignment.

2. Architect hereby consents to the execution and delivery of the Assignment by Borrower and to the assignment of the agreement between the Architect and the Borrower (AIA Document A201-2007) relating to the Project (the "**Architect's Contract**"), a true, correct and complete copy of which is attached hereto as **Exhibit A**, the plans and specifications for the Project (the "**Plans and Specifications**"), a true, correct and complete copy of which is attached hereto as **Exhibit B**, and the Permits (collectively, the "**Architect Documents**") made by Borrower to Trustee thereby, and agrees to the terms thereof, notwithstanding any contrary terms in the Architect's Contract.

3. Architect hereby represents to Trustee as follows:

(a) The Plans and Specifications are complete and contain all detail necessary for construction of the Project, and upon construction of the Project in accordance therewith the Project will be ready for occupancy (excluding tenant improvements, if applicable).

(b) To the knowledge of Architect, no change orders or other amendments, modifications or supplements shall be required to the Plans and Specifications to complete the Project.

(d) With respect to any governmental approvals, permits and licenses required in connection with the completion of the Project which have not been obtained, if any, Architect knows of no reason why such governmental approvals, permits and licenses will not be timely issued so that the Project may be completed by the required completion date pursuant under the general contract for the Project in accordance with the Plans and Specifications.

(e) Architect knows of no other reason why the Project will not be completed by the required completion date pursuant under the Architect Documents and the agreement(s) between the Borrower and Ledcor Construction, Inc., as general contractor

(collectively, the “**Transaction Documents**”) in accordance with the Plans and Specifications.

(f) At the date hereof, Architect has no counterclaim, right of set-off, claim for additional payment, defense or like right against Borrower, and that the Architect's Contract is valid and binding and in full force and effect and that no default exists thereunder.

5. Architect shall not enter into or otherwise agree to any changes to the Architect's Contract or the Plans and Specifications without the prior written approval of Trustee, except with respect to such changes for which Trustee's approval is not required under the Transaction Documents.

6. Architect agrees to look solely to the Borrower for the performance of any of the obligations of the Borrower under the Architect's Contract. However, if Trustee exercises, with respect to the Architect's Contract, any rights and privileges conferred upon it by the Mortgage and the Assignment and asserts the present right to have the benefits of the Architect's Contract and to enforce the same against the Architect in the place and stead of the Borrower, the Architect agrees with respect to such Architect's Contract (i) to perform for, and for the benefit of, Trustee, all of the obligations of Architect under and pursuant to the Architect's Contract if the balance then due under the Architect's Contract (being the portion of the total Architect's Contract which is then due and payable as provided therein, less the total of all portions thereof theretofore paid to or for the benefit of the Architect) has been paid or is then paid, and if Trustee thereafter pays Architect such amounts that become due under the Architect's Contract as such amounts become due, and (ii) Trustee shall have no personal obligations or liabilities of any kind under the Architect's Contract, the Mortgage and Assignment or otherwise.

7. Architect expressly acknowledges that by accepting the Assignment or by exercising any of its rights under the Assignment, the Trustee assumes no obligations or liabilities of Borrower under the Architect's Contract and that the Trustee shall have no obligation to the Architect to exercise its rights under the Assignment or to declare a default under the Loan Agreements or any other Transaction Documents, but that the right and option to exercise such rights or declare a default rests in the sole and absolute discretion of the Trustee.

8. Architect acknowledges that Architect is not a third-party beneficiary under the Transaction Documents and has no interest whatsoever enforceable against the Trustee in any right of action under the Transaction Documents to garnish, require or compel payment to be applied toward payment of Borrower's liabilities or obligations under the Architect's Contract. The Architect further acknowledges that the Trustee's authorization or approval of disbursement of funds to or for the benefit of Borrower for purposes of the payment of the costs associated with the Project are subject to the terms and conditions of the Transaction Documents. Architect agrees that in connection with any application for payment made by it to Borrower, the Architect shall deliver all documentation required to be obtained and/or delivered by Architect under the terms of the Transaction Documents.



9. In the event of any default by Borrower under the Architect's Contract, Architect agrees to give written notice thereof to Trustee. Trustee shall have the right, but not the obligation, to commence a cure for such breach within thirty (30) days after the receipt of such notice and in such event, no default shall be deemed to have occurred thereunder provided the Trustee commences to cure such default within that period and continues to diligently pursue such cure to completion.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, this Agreement and Consent to Assignment is executed and delivered as of the \_\_\_\_\_ day of August, 2014.

ARCHITECT:

CRAFT ARCHITECTURE LLC

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

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

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

EXHIBIT A  
ARCHITECT'S CONTRACT

EXHIBIT B  
PLANS AND SPECIFICATIONS

## **EXHIBIT D**

### **AGREEMENT AND CONSENT TO ASSIGNMENT BY CONTRACTOR**

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned, Ledor Construction Inc. (the "**Contractor**"), hereby acknowledges and agrees as follows:

1. All capitalized terms not specifically defined in this instrument (this "**Agreement and Consent**") shall have the meanings ascribed to those terms in Assignment of Contracts and Interest in Licenses, Permits and Agreements Documents dated as of even date herewith (the "**Assignment**") made by Downers Grove Supportive Living Facility, LLC (the "**Borrower**") to and in favor of Heartland Bank and Trust Company, as Trustee (the "**Trustee**") under the Trust Indenture dated as of August 1, 2014 (the "**Indenture**") between the Village of Downers Grove, Illinois and the Trustee. The Contractor acknowledges receipt of the Assignment.

2. Contractor hereby consents to the execution and delivery of the Assignment by Borrower and to the assignment of the Standard Form of Agreement between Owner and Contractor (AIA Document A102-2007) between the Contractor and the Owner and the Permits (as defined in the Assignment) (collectively, the "**Contractor Documents**") made by Borrower to Trustee thereby, and agrees to the terms thereof, notwithstanding any contrary terms in the Construction Contract.

3. The Contractor certifies that attached to the Assignment as **Exhibit A** is a true, correct and complete copy of Construction Contract, and that the Construction Contract has not been amended or modified.

4. Contractor shall not enter into or otherwise agree to any changes to the Construction Contract or the plans and specifications for the Project without the prior written approval of Trustee, except with respect to such changes for which Trustee's approval is not required under the Transaction Documents.

5. Contractor agrees to look solely to the Borrower for the performance of any of the obligations of the Borrower under the Construction Contract. However, if Trustee exercises, with respect to the Construction Contract, any rights and privileges conferred upon it by the Mortgage and Assignment and asserts the present right to have the benefits of the Construction Contract and to enforce the same against the Contractor in the place and stead of the Borrower, the Contractor agrees with respect to such Construction Contract (i) to perform for, and for the benefit of, Trustee, all of the obligations of Contractor under and pursuant to the Construction Contract if the balance then due under the Construction Contract (being the portion of the total Construction Contract which is then due and payable as provided therein, less the total of all portions thereof theretofore paid to or for the benefit of the Contractor) has been paid or is then paid, and if Trustee thereafter pays Contractor such amounts that become due under the Construction Contract as such amounts become due, and (ii) Trustee shall have no personal obligations or liabilities of any kind under the Construction Contract, the Mortgage and Assignment or otherwise.

6. Contractor expressly acknowledges that by accepting the Assignment or by exercising any of its rights under the Assignment, the Trustee assumes no obligations or liabilities of Borrower under the Construction Contract, except as provided in Paragraph 5 above, and that the Trustee shall have no obligation to the Contractor to exercise its rights under the Assignment or to declare a default under the Loan Agreement any other Transaction Documents, but that the right and option to exercise such rights or declare a default rests in the sole and absolute discretion of the Trustee.

7. Contractor acknowledges that Contractor is not a third-party beneficiary under the Transaction Documents and has no interest whatsoever enforceable against the Trustee in any right of action under the Transaction Documents to garnish, require or compel payment to be applied toward payment of Borrower's liabilities or obligations under the Construction Contract. The Contractor further acknowledges that the Trustee's authorization or approval of disbursement of funds to or for the benefit of Borrower for purposes of the payment of the costs associated with the Project are subject to the terms and conditions of the Transaction Documents. Contractor agrees that in connection with any application for payment made by it to Borrower, the Contractor shall deliver all documentation required to be obtained and/or delivered by Contractor under the Transaction Documents.

8. At the date hereof, Contractor represents and warrants that it has no counterclaim, right of set-off, claim for additional payment, defense or like right against Borrower, and that the Construction Contract is valid and binding and in full force and effect and that no default exists thereunder.

9. In the event of any default by Borrower under the Construction Contract, Contractor agrees to give written notice thereof to Trustee. Trustee shall have the right, but not the obligation, to commence a cure for such breach within thirty (30) days after the receipt of such notice and in such event, no default shall be deemed to have occurred thereunder provided the Trustee commences to cure such default within that period and continues to diligently pursue such cure to completion.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, this Agreement and Consent to Assignment is executed and delivered as of the \_\_\_\_ day of August, 2014.

CONTRACTOR:

LEDCOR CONSTRUCTION INC.

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

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

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