

TAX CREDIT EXCHANGE PROGRAM
1602 SUBAWARD AGREEMENT

This Tax Credit Exchange Program 1602 Subaward Agreement (the “**Agreement**”) is made and entered into on [_____], 2010, by and between the Mississippi Home Corporation, a governmental instrumentality duly created, organized and existing under the laws of the State of Mississippi, (together with its successors, “**MHC**”) and [_____] (together with its successors and assigns, the “**Development Owner**”).

RECITALS

WHEREAS, MHC has entered into a grant agreement with Treasury for a grant of funds in lieu of federal low-income housing LIHTC (the “**LIHTC**”) under Section 42 of the Internal Revenue Code of 1986, as amended (the “**Code**”), pursuant to the Tax Credit Exchange Program (the “**Exchange Program**”) under Sections 1404 and 1602 of the American Recovery and Reinvestment Act of 2009 (as amended from time to time, “**ARRA**”);

WHEREAS, MHC is a “designated State housing credit agency” within the meaning of ARRA and has the authority to make subawards of Exchange Program funds (the “**Exchange Program Funds**”) to eligible applicants in accordance with the Program Requirements;

WHEREAS, Development Owner intends to acquire, develop and operate on the land described on **Exhibit A**, attached hereto and made a part hereof for all purposes (the “**Development Site**”) as a rental housing development (the Development Site, together with all improvements located or to be located thereon are collectively referred to as the “**Development**”);

WHEREAS, MHC adopted a policy which sets forth, among other things, the policies, rules and procedures by which MHC will implement the Exchange Program and allocate Exchange Funds to eligible applicants (the “**Exchange Program Policy**”);

WHEREAS, MHC has determined that Development Owner has been unable to obtain a commitment from an investor to purchase the LIHTC in an amount sufficient to make the Development financially feasible after having made a Good Faith Effort to obtain equity from sources other than the Exchange Program;

WHEREAS, Development Owner has submitted an application to MHC for an allocation of Exchange Program Funds (the “**Exchange Application**”) to assist in the financing of the Development as submitted in the application for LIHTC for the Development submitted to MHC (the “**Tax Credit Application**”);

WHEREAS, Development Owner has represented that it will use the Exchange Program Funds to finance the development of a “qualified low-income building” within the meaning of Section 42 of the Code;

WHEREAS, MHC has agreed to provide the Subaward provided that (a) Development Owner executes and delivers the documents and instruments contemplated herein all in form and substance satisfactory to MHC and its counsel (b) and Development Owner continues to operate the Development in a manner consistent with Section 42 of the Code and the Program Requirements;

WHEREAS, MHC has approved the Subaward to Development Owner in the aggregate amount outlined in Exhibit "B" (the "Subaward Agreement Summary"), and Development Owner has agreed to accept the Subaward subject to the terms and conditions set forth herein; and

WHEREAS, the parties have agreed that some or all of the Security Instruments shall be filed in the Real Property Records of the county in which the Development Site is located.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and other good and valuable consideration, the receipt and sufficient of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I DEFINITIONS

The capitalized terms used in this Agreement shall have the meanings ascribed to them in the Recitals hereto and in this Article 1; provided that certain capitalized terms used and not defined herein shall have the meanings ascribed to them in Section 42 of the Code.

"Affiliate" means in relation to any Person, any other Person: (i) directly or indirectly controlling, controlled by, or under common control with, the first Person; (ii) directly or indirectly owning or holding ten percent (10%) or more of any equity interest in the first Person; or (iii) ten percent (10%) or more of whose voting stock or other equity interest is directly or indirectly owned or held by the first Person. For purposes of this definition, "**control**" (including with correlative meanings, the terms "**controlling**", "**controlled by**" and "**under common control with**") means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Where expressions such as "[name of party] or any Affiliate" are used, the same shall refer to the named party and any Affiliate of the named party. Further, the Affiliates of any Person that is an entity shall include all natural persons who are officers, agents, directors, members, partners, or employees of the entity Person.

"Agreement" means this Tax Credit Exchange Program Subaward Agreement, as same may be amended, modified or restated from time to time (including all schedules, exhibits, annexes and appendices hereto).

"Architect" means the Person designed in the Exchange Application and/or the Construction Contract as being engaged as the architect for the Development, together with any successor or additional architect engaged by Development Owner with the prior written approval of MHC.

"ARRA" has the meaning assigned to such term in the Recitals.

“Asset Management” has the meaning ascribed to it in Section 9.2 of this Agreement.

“Asset Management Fee” means the annual fee payable for the Asset Management services of MHC pursuant to Section 9.2 of this Agreement, as in effect from time to time.

“Barred Person” has the meaning assigned to such term in Section 7.1(q).

“Budget” means the final sources and uses for the Development as evidenced in MHC’s underwriting report attached hereto as **Exhibit C**. The Budget must clearly show the total Development Costs and the total amount of Exchange Program Funds awarded to the Development.

“Business Day” means any day excluding (i) Saturday, (ii) Sunday, (iii) any day which is a legal holiday under the laws of the State where the Development is located, and (iv) any day on which banking institutions located in such State are generally not open for the conduct of regular business.

“Change Order” means any amendment, supplement or other modification in any respect to (i) the Plans and Specifications, (ii) the Budget, (iii) the construction schedule, (iv) this Agreement, (v) any Trade Contract, or (vi) any Permits, in each case which, without regard to any other such amendment and/or modification, would increase or decrease Development Costs.

“Closing” means the date all necessary documents hereunder for funding have been executed and delivered, and made available for recording if necessary.

“Code” means the Internal Revenue Code of 1986, as amended, and as the context may require, the Treasury Regulations promulgated thereunder, and any published rulings, procedures and notices thereunder.

“Compliance Period” means the compliance period described in Section 42(i)(1) of the Code, as applicable to particular building(s) in MHC.

“Construction” or “construction” whether upper case or lower case, refers to construction activity broadly and includes new construction and rehabilitation.

“Construction Contract” means the Construction Contract by and between Development Owner and the Contractor, for the development and construction of the Required Improvements on the Development Site.

“Construction Completion Date” means the date on which the Architect certifies that construction of the Development is substantially complete, and that the Development is ready for its intended use as evidenced by receipt of certificates of occupancy (or the jurisdictional equivalent).

“Construction Documents” means the Construction Contract including, without limitation, the general conditions, project manual (including general requirements and technical specifications, drawings or sketches), the Plans and Specifications, and any addenda thereto, the construction schedule, and any and all Trade Contracts pursuant to which construction of the

Required Improvements will be accomplished, as the same may be amended, supplemented or otherwise modified from time to time, when agreed upon by MHC.

“Contractor” means the Person identified as such in the Construction Contract, together with any successor or additional contractor engaged by Development Owner with the prior written approval of MHC.

“Control” (and the related terms “Controlling,” “Controlled by,” and “under common Control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, equity or other beneficial ownership interests, by contract or otherwise.

“Cost Certification” means the written certification of a certified public accountant as to the itemized amounts of the construction and Development Costs, similar to documents submitted to MHC in order to obtain IRS Form(s) 8609 for the Development or as otherwise required by MHC. Cost Certification shall be conducted in accordance with the QAP and the policies and procedures established by MHC.

“Developer” means the Person entering into the Development Agreement and receiving the Developer Fee, and any other Person receiving any portion of such fee, whether by subcontract or otherwise.

“Developer Fee” means the fee payable to the Developer pursuant to the Development Agreement and Section 4.6 of this Agreement (which fee cannot exceed the limits identified in the QAP).

“Development” has the meaning assigned to such term in the Recitals.

“Development Agreement” means the development agreement by and between Development Owner and the Developer.

“Development Costs” means the amounts set forth in the Budget required to complete the Development.

“Development Owner Parties” has the meaning assigned to it in Section 7.1(q).

“Development Site” has the meaning assigned to it in the recitals.

“Draw Request” has the meaning assigned to it in Section 4.1.

“Eligible Basis” means the amount determined for each building in accordance with Section 42(d) of the Code, as of the end of the first year of the “credit period” (as such term is defined in Section 42(f)(1) of the Code) applicable to each building, including any increases for buildings located in “high cost areas” under Section 42(d)(5)(C) of the Code.

“Eligible Costs” means any of the line-item expenditures to be reimbursed with Exchange Program Funds and such additional expenditures as may be approved by MHC from time to time. The payment of such costs must be permissible under the Program Requirements.

Eligible Costs for each residential rental building in a Development, determined at the time of Cost Certification, may not exceed 85% of such building's eligible basis.

“Entity” means any person other than an individual, including general partnership, limited partnership, corporation, joint venture, trust, limited liability company, limited liability partnership, business trust, cooperative or other business association, however organized.

“Event of Bankruptcy” means, as to a specified Person:

(i) the entry of a decree or order for relief by a court having jurisdiction in respect of such Person 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 such Person or for any substantial part of such property, or ordering the winding-up or liquidation of such Person's affairs and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days; or

(ii) the commitment by such Person of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by such Person to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of such Person or for any substantial part of his property or the making by him of any assignment for the benefit of creditors, or the taking of action by the person in furtherance of any of the foregoing.

“Event of Default” shall have the meaning attributed thereto in Section 10.1(a).

“Excess Amount” shall have the meaning attributed thereto in Section 2.1(c).

“Exchange Application” has the meaning assigned to such term in the Recitals..

“Exchange Program” shall have the meaning attributed thereto in the Recitals.

“Exchange Program Funds” shall have the meaning attributed thereto in the Recitals.

“Exchange Program Policy” shall have the meaning attributed thereto in the Recitals.

“Expiration Date” means December 31, 2011, as such date may be extended in accordance with Section 4.1(f).

“Extended Use Period” means the period beginning at the end of the Compliance Period and ending fifteen years thereafter.

“Fiscal Quarter” means any of the three (3) consecutive months of each Fiscal Year ending on March 31, June 30, September 30 and December 31.

“Fiscal Year” means the twelve (12)-month period which begins on January 1 and ends on December 31 of each calendar year.

“Force Majeure” shall have the meaning attributed thereto in Section 11.13.

“General Partner” means any general partner or managing member, as applicable, of Development Owner.

“Good Faith Effort” means attempts by Development Owner to secure final financing commitments from one or more investors to purchase the LIHTC as determined by MHC in its reasonable judgment.

“Governmental Authority” means MHC, HUD, the Treasury, the IRS or, with respect to any Person, any other Federal or State government or other political subdivision thereof any entity, including any regulatory or administrative authority or court, exercising executive, legislative, judicial, regulatory or administrative or quasi-administrative functions of or pertaining to government, and any arbitration board or tribunal in each case having jurisdiction over such applicable Person or such Person’s property.

“Guidelines” means the *“Application and Terms and Conditions” Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009* published by Treasury in May 2009, and any updates, modifications or successor guidelines thereto.

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

“Improvements” means all buildings, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements of every kind and nature now or hereafter located on the Development Site.

“Intercreditor Agreement” means the Intercreditor Agreement executed by MHC, MHC and/or Development Owner.

“MHC” means any third party loaning funds to be secured in whole or in part by the Development.

“LIHTC” has the meaning assigned to such term in the Recitals.

“Low-Income Unit” means the units in the Development identified in the Exchange Application and/or the LURA that are to be held for occupancy by Development Owner and occupied in such a manner as to qualify such units as “low-income units” under Section 42(i)(3) of the Code.

“LURA” means the Land Use Restriction Agreement between MHC and Development Owner which is binding upon Development Owner’s successors in interest that encumbers the Development.

“Material Adverse Effect” means, as determined by MHC in its reasonable sole and absolute discretion, (i) a material adverse effect (which may include economic or political events) upon the business, operations, properties, assets or condition (financial or otherwise) of Development Owner, or (ii) the impairment of the ability of Development Owner to perform its material obligations under the Agreement or the Security Instruments. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event does not of itself have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then occurring events and existing conditions would result in a Material Adverse Effect.

“Minimum Set-Aside Test” means the set-aside test described in Section 42(g)(1) of the Code selected by Development Owner with respect to the award of LIHTC to the Development pursuant to the Tax Credit Allocation, as specified in the Tax Credit Application.

“Mortgage” means any mortgage, mortgage deed, deed of trust, deed to secure debt or any similar security instrument, as amended, restated, modified or supplemented from time to time on the Development, or any portion thereof, given by Development Owner to any MHC to secure any indebtedness, together with any other documents pertaining to said indebtedness, which were required by MHC as a condition to making a Mortgage Loan.

“Mortgage Loans” means the loans listed on **Exhibit D**, or any replacements or substitutes thereof, as approved by MHC in its reasonable discretion pursuant to the terms of this Agreement.

“Mortgage Loan Documents” means any and all documents governing, securing and/or evidencing the Mortgage Loans.

“Permits” means, collectively, all authorizations, consents and approvals, licenses and permits given or issued by Governmental Authorities which are required for the construction of the Required Improvements, and for the performance and observance of all obligations and agreements of Development Owner contained herein relating to the development and construction of the Required Improvements.

“Person” means and includes natural persons, corporations, limited liability companies, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments and agencies and political subdivisions thereof and their respective permitted successors and assigns (or in the case of a governmental Person, the successor functional equivalent of such Person).

“Plans and Specifications” means the plans and specifications for the construction of the Development, including, without limitation, specifications for materials, and all amendments and modifications thereof.

“Program Requirements” means the Exchange Program Policy and any and all requirements for receiving and maintaining a Subaward of Exchange Program Funds as set forth in Sections 1404 and 1602 of ARRA, the Guidelines, and any other rules, regulations, guidelines or notices published by the IRS or Treasury from time to time with respect to the Exchange

Program that are applicable to the Development or any other laws, rules and regulations applicable to the receipt of federal funds, including, but not limited to, those set forth on **Schedule 1**.

“Property Management Agreement” means the agreement between Development Owner and the Property Manager providing for property management services to the Development as amended, supplemented or modified from time to time.

“Property Manager” means any Person acting as Property Manager under the Property Management Agreement.

“QAP” means the Qualified Allocation Plan governed and administered by MHC for the year in which the LIHTC were awarded to Development Owner with respect to the Development.

“Quarterly Financial Status Reports” has the meaning assigned to it in Section 8.1(b).

“Recapture Amount” has the meaning assigned to it in Section 6.1(b).

“Recapture Event” shall have the meaning attributed thereto in Section 6.1(a).

“Recapture Deed of Trust” means the deed of trust granted by Development Owner in favor of MHC to secure the obligation of Development Owner to repay all or a portion of the Subaward in accordance with the terms of this Agreement, as same may be modified or amended from time to time.

“Required Improvements” means the renovations and improvements to be constructed in accordance with the Plans and Specifications.

“Required Placed In-Service Date” means the date by which at least one unit in each building in the Development that must be Low-Income Units, and be ready and available for occupancy in accordance with State and local laws, which date shall not be later than the date outlined in **Exhibit B**.

“Required Percentage” means the minimum percentage of units in the Development that must be Low-Income Units, which shall be the greater of the Minimum Set-Aside and the Subaward Fraction.

“Security Instruments” includes any and all of the following if applicable to this award, (i) the LURA, (ii) the Recapture Deed of Trust, (iii) the Intercreditor Agreement, (iv) and any and all other documents, instruments, and writings whereby the Developer, Development Owner, and/or any Affiliate grants MHC any rights, liens, charges, security interests, ownership interests, Mortgages, pledges, hypothecations, or other rights, legally or beneficially, collaterally or directly, to provide for the protection of MHC against any failure to adhere to the Program Requirements.

“**Subaward**” means the Subaward of Exchange Program Funds in the aggregate amount to be made by MHC to Development Owner to assist in the financing of the Construction of the Development pursuant to all of the terms and conditions of this Agreement.

“**Subaward Agreement Summary**” has the meaning assigned to such term in the Recitals.

“**Subaward Fraction**” means the lesser of (i) the fraction obtained by dividing the amount of the Subaward, once fully disbursed, into the aggregate Eligible Basis of the Development, and (ii) the “applicable fraction” set forth in the LURA.

“**Tax Credit Allocation**” means the allocation of LIHTC to Development Owner with respect to the Development pursuant to the QAP, which allocation was exchanged by MHC for Exchange Program Funds.

“**Tax Credit Application**” has the meaning assigned to such term in the Recitals.

“**Trade Contract**” means any agreement, contract or purchase order (excluding agreements pertaining solely to professional services from other design professionals) entered into by Development Owner, its Affiliates or the Contractor (either on behalf of Development Owner or as a separate direct contract with Contractor) with any Trade Contractor, pursuant to which such Trade Contractor agrees to provide labor, materials, equipment and/or services in connection with the construction of the Required Improvements.

“**Trade Contractor**” means any Person that is a contractor, sub-contractor, supplier or provider of labor, materials, equipment and/or services in connection with the construction of the Required Improvements, as the case may be, under contract.

“**Treasury**” means the United States Department of the Treasury, including the United States of America acting through the Treasury.

“**Treasury Regulations**” means the temporary and final regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

ARTICLE II **GRANT OF EXCHANGE PRORAM FUNDS**

Section 2.1 Subaward.

(a) MHC shall make the Subaward to Development Owner pursuant to the terms and conditions of this Agreement. In no event shall the aggregate amount of funds advanced pursuant to this Agreement exceed the lesser of the amount outlined in **Exhibit B** or the amount determined by MHC to be necessary for the financial feasibility of the Development and its viability as a qualified low-income housing project throughout the Compliance Period and the Extended Use Period. The Subaward is conditioned on the Closing.

(b) Development Owner shall receive the Subaward and use the proceeds thereof to pay Eligible Costs incurred by Development Owner in connection with the Construction of the Development. The funding of the Subaward (and any portion thereof) is expressly conditioned upon Development Owner complying with all of the Program Requirements and the terms of this Agreement.

(c) If, at the time of Cost Certification, MHC shall determine that (i) the amount of the Subaward is more than the amount necessary for the financial feasibility of the Development and its viability as a qualified low-income housing project throughout the Compliance Period, or (ii) the total amount of the Subaward exceeds 85% of the aggregate Eligible Basis of the Development as determined by MHC in accordance with Section 42 of the Code (the “**Excess Amount**”), MHC shall provide Development Owner with written notice thereof and Development Owner shall pay, in immediately available funds within thirty (30) Business Days from the date of such notice, an amount equal to the Excess Amount. In addition to the foregoing, MHC may take any other remedial action it deems necessary or advisable to fulfill its program obligations to Treasury or otherwise carryout the principal purposes of the Exchange Program.

(d) MHC acknowledges that it has entered into a [grant agreement with Treasury] for a grant of Exchange Program Funds sufficient to fulfill its obligations under this Agreement and the other Tax Credit Exchange Program Subaward Agreements that MHC has entered into, or hereafter enters into, with other development owners, including without limitation, MHC’s obligation to fund the Subaward in accordance with the terms of this Agreement; provided, however, Development Owner acknowledges that each disbursement of the proceeds thereof is contingent upon the disbursement of sufficient Exchange Program Funds by Treasury to MHC for reimbursement of Eligible Costs incurred by Development Owner with respect to the Development. If MHC fails to receive adequate Exchange Program Funds from Treasury, or if MHC is on notice that delivery of the Exchange Program Funds will be materially delayed, MHC shall notify Development Owner in writing within a reasonable period of time and shall not be liable for failure to make payments under this Agreement.

Section 2.2 Term. This Agreement shall be effective upon its execution and delivery and shall remain in full force and effect until the expiration of the Compliance Period and the Extended Use Period, unless earlier terminated in accordance with the terms hereof.

ARTICLE III **INITIAL DISBURSEMENT OF EXCHANGE PROGRAM FUNDS**

Section 3.1 Due Diligence and Final Acceptance Requirements. Prior to the release of any Exchange Funds under this Agreement and not more than sixty (60) days after the date of Closing, Development Owner shall provide any and all evidence of satisfaction of all outstanding award conditions.

Section 3.2 Other Conditions Prior to Release of Funds. Prior to the initial release of Exchange Funds under this Agreement, Development Owner shall perform the items described below.

(a) Development Owner shall execute and deliver this Agreement and submit all other required opinions, reports, affidavits, documents and other information to MHC or MHC's counsel.

(b) Development Owner shall execute, record if applicable, and deliver all Security Instruments prior to funding. If the documents were recorded, a copy of such recorded document must also be submitted to MHC showing the recorder's stamp.

(c) The Developer and Development Owner shall execute and deliver the Security Instruments to which they are a party to MHC. Upon request of Development Owner, MHC shall subordinate the Security Instruments to such of the Mortgage Loans as MHC determines necessary or advisable to permit the financing of the Development.

(d) Development Owner shall timely complete a quarterly progress report in a form prescribed by MHC and deliver such reports to MHC at such times as required by MHC.

(e) Development Owner shall have paid any applicable fees due to MHC with respect to the Tax Credit Application.

(f) Development Owner shall have provided evidence satisfactory to MHC that construction will commence prior to the required construction commencement date outlined in **Exhibit B**.

(g) To the extent necessary to fund interim Development Costs, Development Owner shall provide a binding construction loan commitment in the amount and for the term deemed appropriate by MHC.

(h) The representations and warranties of Development Owner contained in this Agreement and the Security Instruments shall be true and correct in all material respects as of the Closing with the same effect as if made on and as of such date, no Default or Event of Default shall have occurred and be continuing, and Development Owner shall be in compliance in all material respects with all terms and conditions set forth in this Agreement on its part to be observed or performed.

ARTICLE IV **DISBURSEMENTS OF EXCHANGE PROGRAM FUNDS**

Section 4.1 Request for Exchange Program Funds from Treasury.

(a) Development Owner shall submit to MHC for approval a draw request (a "**Draw Request**") substantially in a form and substance approved by MHC requesting an advance of the Exchange Funds, no more frequently than once in each calendar month.

(b) MHC shall use the Exchange Program Funds it receives from Treasury which have been subawarded to Development Owner to reimburse Development Owner for Eligible Costs incurred in connection with the development of the Development to the extent such costs are properly submitted to MHC in accordance with the procedures set forth in this Article IV and all other terms and conditions of this Agreement. Development Owner may not request a

disbursement of Exchange Program Funds from MHC until such funds are needed to pay Development Costs. Accordingly, the amount of each Draw Request must be limited to the amount of money needed to pay costs actually incurred by Development Owner at the time of the Draw Request and may not include amounts for prospective or future needs, or placed into escrow accounts or advanced in lump sums to Development Owner.

(c) MHC may withhold any draw pending completion of a site inspection as deemed necessary by MHC to ensure that construction progress is being made in accordance with the Construction Documents.

(d) MHC shall submit a request for Exchange Program Funds to the Treasury in an amount equal to the approved amount of the current Draw Request (not to exceed, in the aggregate, the amount of the Subaward) within five (5) Business Days of the later to occur of (i) approval of the Draw Request by MHC or (ii) receipt by MHC of all of the completed and signed draw documents.

(e) Development Owner shall cooperate with MHC in obtaining and providing any additional documentation that may be required by the Treasury to approve the request for Exchange Program Funds or as MHC otherwise requires.

(f) Development Owner acknowledges and agrees that no Exchange Program Funds may be disbursed after the Expiration Date; *provided, however*, that the Expiration Date may be extended in the discretion of MHC if, and only to the extent that, the expiration date for funding subawards of Exchange Program Funds set forth in Section 1602(d) of ARRA is extended beyond December 31, 2011. All Draw Requests shall be submitted to MHC at least sixty (60) Business Days prior to the Expiration Date.

(g) MHC will not make any payments to Development Owner for costs that:

- (i) are prohibited under Program Requirements;
- (ii) are not in accordance with the terms of this Agreement;
- (iii) were requested and/or incurred after termination of this Agreement;
- (iv) were requested during the occurrence and continuation of an Event of Default; or

(v) were requested and/or incurred less than sixty (60) Business Days prior to the Expiration Date.

(h) Upon prior written notice to Development Owner, MHC is authorized to make modifications to the disbursement procedures to establish additional requirements for payment of the Subaward to Development Owner as may be necessary or advisable for compliance with all Program Requirements.

(i) The closing conditions set forth in Sections 3.1 and 3.2 shall be a pre-condition to any disbursement of funds pursuant to this Agreement.

Section 4.2 Disbursements of Exchange Program Funds to Development Owner.

(a) In a timely manner after the receipt of the Exchange Program Funds by MHC from Treasury, MHC shall disburse such funds to Development Owner.

(b) MHC will not disburse any Exchange Funds to Development Owner unless Development Owner has correctly submitted and is current on submission of each and every required report including any required reporting under Program Requirements as described in this Agreement.

Section 4.3 Draw Requests and Change Orders.

(a) Development Owner shall obtain the prior written consent of MHC for any Change Order, regardless of whether any proposed disbursement of Exchange Program Funds would be affected by such Change Order. As a pre-condition to MHC's consent to any Change Order, Development Owner shall submit to MHC a description of the curative actions to be taken by the Developer and the Contractor to accelerate construction progress and/or align the sources and uses of funds for the Development notwithstanding such Change Order.

(b) MHC will not approve any Change Order which would, in the reasonable determination of MHC, (i) cause the Development to fail to meet the Required In-Service Date, (ii) be in violation of state or federal law, or (iii) prevent the Subaward from being fully disbursed in a timely manner to Development Owner in accordance with the requirements and procedures set forth herein by the Expiration Date.

Section 4.4 Construction Meetings; Monitoring. MHC shall have the right to participate in construction progress meetings and monitor the Development's construction until the Construction Completion Date.

Section 4.5 Development Expenditures.

(a) The proceeds of the Subaward must be used to pay costs that have been incurred by Development Owner. MHC shall determine Development Owner's compliance with this requirement based upon a review of the draw documents. MHC may establish such additional limitations on the expenditure of Exchange Program Funds as it determines are necessary to ensure compliance with Program Requirements.

(b) In the event that MHC determines that the proceeds of the Subaward have been used to pay non-incurred costs, MHC shall provide Development Owner with written notice thereof and Development Owner shall pay to MHC, in immediately available funds within twenty (20) Business Days from the date of said notice, an amount equal to that portion of the Subaward used to pay non-incurred costs.

Section 4.6 Developer Fee Payments.

(a) The Developer shall be entitled to receive the Developer Fee in an amount set forth in the Budget, not to exceed the limits identified in the QAP.

(b) Up to seventy-five percent (75%) of the Developer Fee may be disbursed in accordance with the percentage of construction completion of the Development. The balance of the Developer Fee may be paid upon the later to occur of (i) MHC's receipt and acceptance of Cost Certificate in form and substance satisfactory to MHC, or (ii) the reasonable determination by MHC that there are sufficient sources of funds available after payment of all other Development Costs to pay the balance of the Developer.

ARTICLE V
COVENANTS AND RESTRICTIONS

Section 5.1 Land Use Restriction Agreement (LURA). Development Owner and MHC shall have entered into the LURA. The terms and conditions of the LURA are incorporated herein by reference.

Section 5.2 Compliance with Program Requirements.

(a) Development Owner will comply with all of the Program Requirements applicable to the Development throughout the Compliance Period and the Extended Use Period.

(b) Development Owner will comply with all of the requirements of Section 42 of the Code to the extent necessary to receive and maintain a subaward of Exchange Program Funds.

(c) Development Owner will maintain the Required Percentage throughout the Compliance Period and the Extended Use Period.

(d) Development Owner will comply with the income and rent restrictions and maintain the "applicable fraction" as set forth in the LURA throughout the term of the LURA.

(e) Each building in the Development which is required to contain Low-Income Units will be placed in service by the Required Placed In-Service Date.

(f) The Development will become a "qualified low-income housing project" (as defined in Section 42(g)(1) of the Code).

Section 5.3 Covenants Regarding Sale or Assignment of Development, Contracts or Interests.

(a) Other than in connection with the Mortgage Loans, Development Owner shall not sell, lease, encumber (other than by residential or commercial leases in the ordinary course of business), transfer or otherwise dispose of any material portion of the Development, without the prior written consent of MHC, which consent shall not be unreasonably withheld.

(b) Development Owner shall not, without the prior written consent of MHC, permit any material change in the ownership interests in Development Owner which consent shall not be unreasonably withheld.

(c) Without the prior written consent of MHC, which consent shall not be unreasonably withheld, Development Owner shall not:

- (i) designate a new Property Manager;
- (ii) designate a new Contractor; or
- (iii) designate a new Developer.

(d) Development Owner shall ensure that the following rights of MHC are included in the Mortgage Loan Documents and Development Owner's organizational documents:

(i) MHC shall have the right to replace the General Partner and/or Property Manager of the Development in the event that there is an Event of Default.

(ii) MHC shall have the right to approve any new General Partner and/or Property Manager selected by Development Owner, MHC, and/or the other partners of Development Owner, which approval shall not be unreasonably withheld.

(e) MHC shall, in any partnership agreement, limited liability company management agreement or other organizational document of Development Owner, be allowed to (i) replace, in consultation with the other partners, the General Partner, (ii) approve the selection of a new General Partner and to [(iii) have an Option to purchase of up to 20% of the partnership interests in the event of the sale of the Development as this Option shall be evidenced in writing in a separate Option Agreement provided by MHC.]

ARTICLE VI **RECAPTURE**

Section 6.1 Recapture Event.

(a) A "**Recapture Event**" shall be deemed to occur if, at any time prior to the end of the Compliance Period, any one or more of the following events shall occur and remain uncured as provided in Section 6.1 below;

(i) Development Owner does not comply with Section 5.2(e) or Section 5.2(f) of this Agreement;

(ii) the percentage of Low-Income Units in the Development falls below the Minimum Set-Aside;

(iii) the Development ceases to be a "qualified low-income housing project" (as defined in Section 42(g)(1) of the Code).

(iv) 100% of the Exchange Program Funds available or advanced to Development Owner have not been expended by the later of either, December 31, 2011, or a date approved by the Treasury; or

(v) Exchange Program Funds have been determined by MHC or the Treasury to have been expended for non-Eligible Costs in violation of Program Requirements and have not been repaid in accordance with the terms of this Agreement.

(b) If a Recapture Event shall occur, the applicable portion of the Subaward disbursed to Development Owner shall be subject to “recapture” in the amounts set forth below (the “**Recapture Amount**”).

(i) If the Recapture Event arises under Section 6.1(a)(ii) or (iii) above, after allowing any permitted period for cure of correction, the Recapture Amount shall be equal to the full amount of the Subaward, less 6.67% for each full calendar year of the Compliance Period in which a Recapture Event has not occurred; provided, however, that if Development Owner restores (a) the percentage of Low-Income Units to the Required Percentage and/or (b) the Development as a “qualified low-income housing project,” as applicable, the Recapture Event and any Recapture Amount shall be waived by MHC with respect to subsequent years in the Compliance Period in which the Development is in compliance, provided that such waiver is permitted under the Program Requirements.

(ii) If the Recapture Event arises under Section 6(a)(i) above, the Recapture Amount shall be an amount equal to the amount of the Exchange Program Funds actually disbursed to Development Owner under the terms of the Agreement.

(iii) If the Recapture Event arises under Section 6.1(a) (iv) or (v) above, the Recapture Amount shall be an amount equal to the amount of the Subaward determined by MHC, in its reasonable discretion, not to have been expended by December 31, 2011 or to have been expended for non-Eligible Costs in violation of Program Requirements, as applicable.

(c) In the event of any Recapture Event set forth above, the Recapture Amount shall include any interest or penalties that accrue in accordance with the Program Requirements.

(d) If a Recapture Event occurs, in addition to the Recapture Amount, Development Owner shall pay to MHC upon demand an amount equal to the reasonable out-of-pocket costs and fees reasonably incurred by MHC in connection with the Recapture Event.

Section 6.2 Enforcement.

(a) The Recapture Amount shall be due and payable to the General Fund of Treasury and shall be deemed a debt owned to the Treasury, enforceable against any assets of Development Owner by Treasury. Such debt shall be secured and enforceable by the lien of the Recapture Deed of Trust in favor of the Treasury, which lien may be enforced by MHC on behalf of the Treasury; provided, however, that upon any foreclosure of the lien of the Recapture Deed of Trust, MHC may bid the lien amount on behalf of the Treasury and may take title to the Development in its own name, to be held for the benefit of the Treasury, subject to the terms of any senior Mortgage Loan Documents and the Intercreditor Agreement.

(b) The Recapture Deed of Trust imposed hereunder shall be filed and recorded in the real property records of the county in which the Development is situated, as designated by the laws of the State of Mississippi.

(c) The amount due shall be reduced to judgment and filed in the real property records of the county in which the Development is located and shall continue in force until the Recapture Amount is paid to MHC in full.

(d) If MHC determines it to be in the best interests of current and prospective occupants of the Low-Income Units of the Development, and if permitted under the Program Requirements, MHC may delay foreclosure or other enforcement of any Recapture Deed of Trust or obligation until the end of the Compliance Period.

(e) MHC may defer the enforcement of remedies upon the occurrence of a Recapture Event until the end of the Compliance Period, if it determines that MHC is taking appropriate measures to correct the circumstances giving rise to the Recapture Event.

(f) To the extent permitted under applicable law, [the Intercreditor Agreement] and the Mortgage Loan Documents governing any liens that are senior to the Recapture Deed of Trust, MHC may utilize any and all reasonable means and efforts to recapture funds under the Recapture Deed of Trust up to and including foreclosure and taking ownership of the Development.

Section 6.3 Notice of Recapture Event. MHC shall provide Development Owner and the Developer with written notice in accordance with Section 11.1 of any Recapture Event or of any circumstances which, with the passage of time, would give rise to a Recapture Event, of which, in either event, it shall become aware. Upon the giving of any such notice to Development Owner, the Developer and MHC, MHC shall also provide copies of any such notice(s) to MHC. The failure of MHC to provide notice as herein required shall not relieve Development Owner of any obligation hereunder or the LURA, or prevent the occurrence of a Recapture Event, nor shall it serve to relieve Development Owner of any of the consequences thereof.

Section 6.4 Right to Cure. Development Owner shall have the right to cure a Recapture Event within thirty (30) days after Development Owner and MHC have received Notice of the circumstances giving rise to such Recapture Event or after Development Owner would have become aware of the circumstances giving rise to such Recapture Event had Development Owner exercised reasonable diligence with respect thereto. Any cure made or tendered by the Developer or any MHC shall be accepted or rejected on the same basis as a cure made directly by Development Owner, to the extent not inconsistent with Program Requirements.

Section 6.5 Preservation of Rights and Remedies. Any action under this Article VI will not limit or deprive MHC or Treasury from exercising any other rights and remedies that they have under law or equity, or any rights and remedies provided herein with respect to Events of Default.

Section 6.6 Third-Party Rights. Treasury shall be deemed a third-party beneficiary of this Article VI.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES

Section 7.1 Representations and Warranties of Development Owner.

Development Owner hereby represents and warrants to MHC that the following are true as of the date hereof and will be true on the due date of each disbursement of Exchange Program Funds, and, as applicable, will be true throughout the Compliance Period and the Extended Use Period, where applicable.

(a) Development Owner is duly organized to conduct business and validly existing under the laws of the state of its organization, is qualified to conduct its business in the State of Mississippi, and has full power and authority to (i) own and operate the Development, (ii) carry on its business as now conducted and proposed to be conducted, (iii) enter into this Agreement and the Security Instruments and (iv) perform its obligations under this Agreement and the Security Instruments.

(b) No litigation, demand, investigation, claim or proceeding against Development Owner or any other litigation or proceeding directly affecting the Development is pending or, to the best knowledge of Development Owner, threatened, before any court, administrative agency or other Governmental Authority that would, if adversely determined, have a Material Adverse Effect on Development Owner or the construction, use and operation of the Development.

(c) No default by Development Owner or any Affiliate thereof under any contractual relationship with the Development has occurred or is continuing (nor has there occurred any continuing event which, with the giving of notice or the passage of time or both, would constitute such a default in any material respect) or under any of the Mortgage Loan Documents for the Development or other documents or instruments governing the development, use, occupancy or operation of the Development.

(d) The execution, delivery and performance by Development Owner of the Agreement and the Security Instruments do not and will not require any registration with, consent or approval, notice to or any other action to, with or by any Governmental Authority.

(e) All material building, zoning, health, safety, business, and other applicable certificates, permits and licenses necessary to permit the construction, use, occupancy and operation of the Development have been or will, at the time required, be obtained and maintained (other than, prior to completion of construction of the Development or a specified portion thereof, such as are issuable only upon completion of construction or such specified portion thereof); and Development Owner has not received any notice and has no knowledge of any violation with respect to the Development of any law, rule, regulation, order or decree of any Governmental Authority having jurisdiction which would have a Material Adverse Effect on the Development or the construction, use or occupancy thereof, except for violations which have been cured or can be cured within any applicable cure period, and are in the process of being cured, and notices or citations which have been withdrawn or set aside by the issuing agency or by an order of a court of competent jurisdiction.

(f) Development Owner has, or upon Closing, shall have good, marketable and insurable fee simple title to the Development Site, free and clear of all Liens except those listed on **Schedule 2.**

(g) Development Owner is not aware of any latent or patent structural or other material defect or deficiency in the Development Site. City water supply, storm and sanitary sewers, and electrical, gas and telephone facilities are available to the Development Site within the boundary lines of the Development Site, are or will be fully connected to the Improvements and are or will be fully operational, will be sufficient to meet the reasonable needs of the Development Site as now used or presently contemplated to be used, and no other utility facilities are necessary to meet the reasonable needs of the Development Site as now used or presently contemplated. The design and as-built conditions of the Development Site is such that surface and storm water does not accumulate on any of the Development Site (except in facilities specifically designed for the same) and does not drain from any of the Development Site across land of adjacent property owners in any manner which would have a Material Adverse Effect on the Development Site or violate any applicable law. None of the Improvements create an encroachment over, across or upon the Development Site's boundary lines, rights of way or easements, and no building or other improvements on adjoining land create such an encroachment which could reasonably be expected to have a Material Adverse Effect. All public roads and streets necessary for service of and access to the Development Site for the current and contemplated uses thereof have been completed and are serviceable and are physically and legally open for use by the public. Any liquid or solid waste disposal, septic or sewer system located at any of the Development Site is in good and safe condition and repair and in compliance with all applicable law.

(h) No Event of Default has occurred and is continuing.

(i) No Event of Bankruptcy has occurred as to Development Owner or the Developer.

(j) All Federal, State and local tax returns and reports of Development Owner required to be filed have been timely filed, and all taxes, assessments, fees and other governmental charges (including any payments in lieu of taxes) upon Development Owner and its Development Site, assets, income and franchises which are due and payable have been paid when due and payable. There is not presently pending (and, to Development Owner's knowledge, there is not contemplated) any special assessment against the Development Site or any part thereof. No tax liens are in existence and, to the knowledge of Development Owner, no claims are being asserted with respect to such taxes.

(k) The sources of funds available to Development Owner are sufficient to enable Development Owner to complete construction of the Development in accordance with the Plans and Specifications.

(l) In the event that Development Owner will be financing the acquisition of the Development Site, MHC may not, under the requirements applicable to the Exchange Program, provide such financing. Therefore, prior to the first Draw Request for Exchange Program Funds Development Owner must certify that it has acquired the Development Site with funds from another source. Thereafter, MHC will provide funding as requested up to the total amount of the Subaward.

(m) Each of the representations and disclosures made by Development Owner to MHC in the Tax Credit Application and/or the Exchange Application is true and correct as of the date hereof, or in the case of changed circumstances, such changes has been presented to and approved by MHC in writing. Each of the covenants, agreements and conditions contained in such applications have been duly performed or satisfied by Development Owner to the extent that performance or satisfaction is required on or prior to the date hereof, and Development Owner has no reason to believe that the covenants, agreements, and conditions required to be performed or satisfied after the date hereof will not be performed or satisfied in a timely manner.

(n) No federal appropriated funds have been paid or will be paid, by or on behalf of Development Owner, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and/or the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

(o) No funds have been paid for influencing or attempting to influence an office or employee of a Member of Congress in connection with a federal contract, grant, loan and/or cooperative agreement benefiting Development Owner. To the best knowledge of Development Owner, Development Owner has complied with all restrictions, certifications and disclosure requirements contained in the Byrd amendment to the fiscal 1990 appropriations measures for the United States Department of the Interior (P.L. 101-121) and with any guidelines and rules issued by any federal Entity in connection therewith, if applicable.”

(p) Neither the Department Owner nor any of its principals or Affiliates is currently debarred from submitting proposals to or entering into agreements with any Governmental Authority.

(q) Neither Development Owner nor any of its principals or Affiliates, nor, to the best knowledge of Development Owner, any contractor or agent of Development Owner nor any Affiliate of Development Owner, nor any Person who or which directly or indirectly owns or Controls Development Owner or any of its or their constituent Entities, nor any Person who or which directly or indirectly owns or Controls any Affiliate of Development Owner or any of its constituent Entities, nor any Person who or which directly or indirectly holds a substantial (i.e., ten percent (10%) or more) equity interest in Development Owner or in any of its constituent Entities or in any Affiliate of Development Owner or any of its or their constituent Entities (collectively, “**Development Owner Parties**”), is a Barred Person or has ever been a Barred Person (as hereinafter defined). “**Barred Person**” means any Person with whom a U.S. Person is barred from transacting business under U.S. law, including but not limited to (i) Persons identified as specifically designated terrorists, narcotics traffickers, or blocked persons by the U.S. Government on the “Specially Designated Nationals and Blocked Persons List” maintained by the U.S. Treasury Department, and (ii) Persons that are citizens of or organized or domiciled or resident in countries subject to U.S. economic embargo restrictions and thereby barred from transactions with U.S. Persons. “U.S. Person” means a Person, that is a citizen of or organized or domiciled or resident in the United States. “Owned or controlled” and variations thereof mean a direct or indirect interest in the entity in question, including but not limited to voting or non-

voting equity, partnership, joint venture and other arrangements, and specifically including but not limited to (1) all members of limited liability companies, (2) all shareholders owning ten percent (10%) or more of the outstanding shares of corporations, measured on an aggregate and/or class-by-class basis, (3) all general partners of limited partnerships and general partnerships, (4) all limited partners owning twenty-five percent (25%) or more of the outstanding limited partnership interests in limited partnerships, (5) all trustees and settlors of trusts, and (6) all beneficiaries owning twenty-five percent (25%) or more of the beneficial interests in trusts.

(r) Neither any General Partner nor any other Development Owner Party nor any of Development Owner's property is or has ever been subject to or a party to or bound by any agreement or other arrangement with any Barred Person.

(s) Development Owner and all other applicable Development Owner Parties have not engaged and shall not engage in any act or omission that would violate anti-money-laundering laws, including but not limited to 18 USC § 1956; have complied or will comply with requirements for instituting an anti-money laundering compliance program required under 31 USA § 5318(h) and applicable to all "financial institutions" as defined in 31 USC § 5312(a)(2); and have instituted or will institute policies and procedures and use commercially reasonable due diligence to identify and report Suspicious Transactions to relevant U.S. Government Officials. "Suspicious Transactions" that may require reporting include, but are not limited to, (i) individual or related transactions in which a third-party provides payment in U.S. or foreign currency in excess of \$10,000 that may require reporting under 31 USC § 5331 and 26 USC § 60501; (ii) any transaction where Development Owner or any Development Owner Party knows, suspects, or has reason to know that the transaction (A) is for an illegal purpose, including but not limited to money laundering; (B) is otherwise an attempt to disguise funds derived from illegal activity or evade reporting requirements under U.S. law; or (C) is suspicious because the transaction appears to serve no business or lawful purpose.

Section 7.2 Covenants. Development Owner unconditionally covenants and warrants that:

(a) Development Owner shall cause the Construction Completion date to occur within twenty-four (24) months from the date of Closing, but in no event later than the Required Placed In-Service Date. Development Owner shall satisfy all construction-related requirements of the Mortgage Loans, including any requirement related to completion of the Development. Development Owner shall pay all costs to complete construction of the development in accordance with the Plans and specifications when and as incurred, regardless of whether such costs exceed the amounts anticipated for such items in the Budget or the sources otherwise available to pay such costs.

(b) As of the date of Closing, all reserves and accounts required to be maintained by Development Owner under the terms of this Agreement are currently funded (or will be funded at the time(s) required) up to the specified levels.

(c) Development Owner will Construct and operate the Development in accordance with the terms of the LURA.

(d) All utilities are, or will be, available to the Development, including sanitary and storm sewers, water, gas (if applicable) and electricity.

(e) The Development will continue to be owned and operated by Development Owner through the Compliance Period and the Extended Use Period or, if later, the date (if any) through which Development Owner is required to own and operate the Development pursuant to any of the documents governing the use and operation of the Development, unless MHC consents to a change of ownership in accordance with its rules and procedures.

(f) The Development will be operated so that it will meet (and an appropriate election has been or will be made with respect to) the Minimum Set-Aside Test as of the dates established by Section 42(g)(3) of the Code and at all times thereafter through the end of the Compliance Period and the Extended Use Period.

(g) The Development will, at all times through the Compliance and Extended Use Periods, comply with the LURA.

(h) The Development will be operated so that the number of units as specified in the LURA will qualify as Low-Income Units at all times during the Compliance Period and the Extended Use Period, which is the “applicable fraction” required for purposes of the LURA.

(i) None of the Low-Income Units will be occupied entirely by “students” (as defined in the Code).

(j) Tenants for the units will be screened and selected from a pool of eligible tenants base on uniformly applied tenant selection criteria that are commonly employed by other property owners in determining tenant eligibility in projects similar to the Development, and:

(i) no preferences or discrimination will be employed in selecting tenants that violates or is inconsistent with federal housing policy governing nondiscrimination as determined under HUD rules and regulations;

(ii) units in the Development will be available for use by the general public within the meaning of Section 1.42-9 of the Treasury Regulations and Section 42(g)(9) of the Code; and

(iii) the units will be rented on a non-transient basis except in accordance with the Code and Revenue Procedure 2007-54.

(k) The LURA, which constitutes an “extended low-income housing commitment” as defined in Section 42(h)(6) of the Code, will be in effect as of the end of each taxable year in which the buildings in the Development as placed in service.

(l) Development Owner will develop and operate the Development in accordance with (i) the applicable provisions of Section 42 of the Code, (ii) the terms of this Agreement, (iii) the Program Requirements, (iv) all applicable federal, state and local statutes, rules and regulations with respect to the Development including, without limitation, the Fair Housing Act

(42 U.S.C. 3601, et seq.), as amended, and (v) all applicable requirements of any Governmental Agency having jurisdiction over the Development.

(m) From the Closing until the termination of the LURA, Development Owner shall maintain the following forms of insurance coverage (from an insurance carrier rated within at least the top three rating categories of the relevant rating agency): Builders Risk/Construction Insurance, Casualty Loss Insurance, Flood Insurance (if applicable), Business/Rent Loss Insurance and Liability Insurance (including personal injury, bodily insurance, death, accident and property damage). Development Owner shall cause its insurance carrier to give MHC a copy of the existing policy and provide thirty (30) days notice prior to cancellation, termination, or failure to renew the policy. In the event of cancellation for failure to pay premiums the insurance carrier should agree to provide ten (10) days notice to MHC. Development Owner hereby provides the right to MHC to directly contact its insurance carrier about the coverage and policies in place without imposing any obligation or liability on MHC. MHC shall be listed as an additional insured on any and all policies purchased on the Development. In the event of an insured event occurring, the first priority is to maintain the Development in its original condition.

Section 7.3 Cost Certification. Development Owner shall provide a full accounting of funds expended under the terms of this Agreement as part of Cost Certification on the earlier of January 13, 2012 or sixty (60) days of Construction Completion. In addition to the remedies available to MHC under Section 10.2 of this Agreement with respect to an Event of Default, failure of Development Owner to provide a full accounting in accordance with the QAP and the policies and procedures of MHC shall be sufficient reason for MHC to make Development Owner or its Affiliates ineligible to apply for assistance under MHC programs. Development Owner, in providing such accounting, represents and warrants to and covenants with MHC that the entirety of Exchange Funds disbursed hereunder have been for items that are Eligible Costs and that if Exchange Funds were disbursed for items other than Eligible Costs, they will be returned in accordance with this Agreement.

ARTICLE VIII **BOOKS AND REPORTING**

Section 8.1 Financial Status Reports

(a) Development Owner shall maintain or cause to be maintained for the term of this Agreement a complete and accurate set of books and supporting documentation of transactions with respect to the conduct of Development Owner's business. MHC and its duly authorized representatives shall have the right to examine the books of Development Owner and all other records and information concerning the operation of the Development from time to time with reasonable prior notice during regular business hours provided that such examination shall not unreasonably disrupt or interfere with Development Owner's business or operations.

(b) Beginning with the first Fiscal Quarter after the later of Closing or the Construction Completion date, Development Owner shall send to MHC no later than forty-five (45) days following the close of each Fiscal Quarter the following information (which need not be audited): (i) a balance sheet as of the end of the applicable Fiscal Quarter, (ii) a statement of income for the applicable Fiscal Quarter, (iii) a statement of cash flow, (iv) a quarterly financial

summary (collectively, the “**Quarterly Financial Status Reports**”). If the Quarterly Financial Status Reports are not delivered to MHC when due hereunder, then Development Owner shall be obligated to pay to MHC or its duly authorized representatives (as the agent and representative of MHC) an amount equal to \$100 per day for each day after the due date until such Quarterly Financial Status Reports are delivered. Failure to deliver the Quarterly Financial Status Reports when due hereunder may also result in the suspension of any disbursements of Exchange Program Funds hereunder and/or give rise to a Recapture Event, unless waived by MHC.

(c) Development Owner shall prepare or cause to be prepared balance sheets as of the end of each Fiscal Year and financial statements for such Fiscal Year which are accompanied by the opinion of a third-party accountant that said balance sheets and statements have been prepared in accordance with generally accepted accounting principles applied consistently with prior periods, identifying any matters to which such accountant takes exception and stating, to the extent practicable, the effect of each such exception on such financial statements. As a note to such financial statements, Development Owner shall prepare (or shall cause to be prepared) a schedule of all loans to Development Owner, setting forth the purpose(s) for which the proceeds of such loan were applied by Development Owner and such schedule will be reviewed by the third-party accountant. Development Owner shall transmit to MHC a copy of the final financial statements within thirty (30) calendar days from completion of the audit, but in no event later than the first Business Day following one hundred fifty (150) calendar days after the end of each such Fiscal year. If the final financial statements are not delivered to MHC when due hereunder, then Development Owner shall be obligated to pay to MHC or its duly authorized representatives (as the agent and representative of MHC) an amount equal to \$100 per day for each day after the due date until such statements are delivered, unless waived by MHC.

(d) Development Owner shall prepare and furnish to MHC an estimate of the profits and losses of Development Owner for federal income tax purposes for the current Fiscal Year not later than September 30 of each year.

(e) Development Owner shall submit to MHC or its duly authorized representatives any other reports and information that MHC reasonably deems necessary to comply with Section 1602 of ARRA and Program Requirements, as the same may be amended from time to time.

(f) Development Owner will maintain systems of accounting established and administered in accordance with sound business practices and sufficient in all respects to permit preparation of financial statements in conformity with generally applied accounting principles. All financial statements should be prepared in accordance with generally applied accounting principles, consistently applied.

(g) In the event that Development Owner fails to submit to MHC or its duly authorized representatives in a timely and satisfactory manner any report required by this Agreement, MHC may, in its sole discretion, withhold any or all payments otherwise due or requested by Development Owner hereunder until such time as Development Owner fully cures or performs any and all delinquent reporting obligations.

Section 8.2 Quarterly Progress Reports. No later than five (5) Business Days following the end of each calendar quarter, commencing with the date hereof, Development

Owner shall timely complete a quarterly progress report in a form prescribed by MHC and deliver such reports.

ARTICLE IX **ASSET MANAGEMENT**

Section 9.1 Asset Management Duties.

(a) Development Owner will be subject to Asset Management (“**Asset Management**”) oversight by MHC, which may include the following:

(i) review the use of the proceeds of the Subaward to ensure such proceeds are being spent in accordance with the requirements of this Agreement and with Program Requirements;

(ii) review and report to MHC no less than quarterly on the progress of construction of the Development, its compliance with the Construction Schedule, the Plans and Specifications, and the Budget, and any Change Orders, changes to anticipated sources and uses, or other matters which, in the judgment of MHC, may adversely affect the ability of Development Owner to complete construction of the Development.

(iii) review all financial status reports required to be delivered pursuant to Article IX of this Agreement;

(iv) review all compliance monitoring reports required to be delivered pursuant to this Agreement; and

(v) review reports required to be delivered pursuant to Article IX of this Agreement and consult with Development Owner as to such measures as may be necessary or desirable to remedy any unfavorable compliance or financial circumstances concerning the Development.

Section 9.2 Asset Management Fee.

(a) In consideration of MHC’s Asset Management services and obligations, Development Owner hereby agrees to pay to MHC an annual fee (the “**Asset Management Fee**”) reasonably adjusted from time to time by MHC. The Asset Management Fee shall be an operating expense of Development Owner and must be included in the annual pro forma operating budgets for the Development. The Asset Management Fee may be changed by MHC on thirty (30) days’ prior written notice if necessary to cover any projected or actual increase in costs to MHC attributable to the performance of its Asset Management duties hereunder.

(b) The Asset Management Fee shall be payable annually commencing May 1, 2010 and due and payable every January 30th thereafter, or such other date as may be specified by MHC. Upon receipt of an invoice for the amount of Asset Management Fees (which may be quarterly or annually), Development Owner shall have until the first Business Day following thirty (30) calendar days to remit payment to MHC.

ARTICLE X
DEFAULT; TERMINATION

Section 10.1 Default. Any of the following events shall constitute an “**Event of Default**” under this Agreement:

(a) a breach by Development Owner of any of its representations or warranties contained in this Agreement or in the performance of any of its obligations under this Agreement, in either event that (i) has or might reasonably be expected to have a material adverse impact on the operation of the Development, and (ii) is not cured the first Business Day following thirty (30) calendar days (in the case of a monetary default) or the first Business Day following sixty (60) calendar days (in the case of a non-monetary default) following notice of such breach or default from MHC to Development Owner and Developer *provided, however,* that if a non-monetary default cannot reasonably be cured by the first Business Day following sixty (60) calendar days and Development Owner commences a cure within twenty (20) Business days and proceeds in good faith to effect such cure thereafter, the cure period with respect to such breach or default shall be extended to a date no later than the latest permissible date for correction of the applicable breach under the Program Requirements without causing a Recapture Event; or

(b) the commencement of non-judicial foreclosure proceedings with respect to any Mortgage, which have not been withdrawn or dismissed by the first Business Day following thirty (30) calendar days from the date of such commencement or the commencement of any judicial foreclosure proceeding;

(c) a violation of any law, regulation or order applicable to Development Owner or the Development that has or might reasonably be expected to have a material adverse impact on the operation of the Development and is not cured within the applicable cure period, if any, provided in such law, regulation, or order, or prior to such adverse impact;

(d) a default has occurred under the LURA, which is not cured within the time period for cure as provided therein;

(e) gross negligence, fraud, willful misconduct, misappropriation of funds, or criminal activity by Development Owner or any Affiliate of Development Owner providing services to or in connection with Development Owner;

(f) the Construction Completion Date has been delayed by more than sixty (60) calendar days, and such is not due to Force Majeure;

(g) a Recapture Event shall occur and the Recapture Amount due in connection therewith shall remain unpaid for a period of ten (10) Business Days after notice thereof from MHC or Treasury, unless a later date is specified in such notice or this Agreement; or

(h) if the Developer or Development Owner mortgages, hypothecates, grants lien upon, permits the placing of a lien upon, grants a security interest in or otherwise encumbers the Property or any portion thereof without the prior written consent of MHC.

Section 10.2 Remedies on Default.

(a) MHC shall have the right to exercise any of the following remedies during the existence of an Event of Default:

(i) temporarily suspend making payments of the Subaward under this Agreement pending correction of the event of Default by Development Owner;

(ii) cease making any further payments under this Agreement;

(iii) terminate this Agreement;

(iv) require that the Developer, the Property Manager, the Contractor or any other Person providing services to Development Owner be replaced by another contractor chosen by Development Owner and acceptable to MHC;

(v) removal of the General Partner of Development Owner and provide for MHC or its designee, to act in its stead, pending appointment of a replacement General Partner under the organizational documents of Development Owner;

(vi) exercise any rights it may have under the Recapture Deed of Trust (in the event of an Event of Default under 10.1(g)) and the Security Instruments, including foreclosure of the liens thereunder;

(vii) deny to Development Owner and the principals of Development Owner the right to participate in programs of MHC; and

(viii) exercise any other rights and remedies that may be available under law or in equity.

(b) In addition to the remedies described in Section 10.2(a) above, Development Owner shall, upon demand by MHC during the existence of an Event of Default, repay any amount of Exchange Program Funds previously disbursed to Development Owner under the terms of this Agreement.

(c) MHC may defer the enforcement of remedies upon the occurrence of an Event of Default for such period as it determines appropriate, if it determines that MHC, the Developer, Development Owner, and/or any Affiliate thereof, is taking appropriate measures to correct the circumstances giving rise to the Event of Default.

(d) Each right and remedy provided in this Agreement is distinct from all other rights or remedies under this Agreement, the Recapture Deed of Trust, the Security Instruments, or the LURA, or otherwise afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

Section 10.3 Third-Party Rights to Notice and Cure. MHC shall provide the Developer and MHC with copies of any written notice of default provided to Development Owner pursuant to the terms of this Article X. MHC hereby agrees that any cure of any default

made or tendered by the Developer or a MHC shall be deemed to be a cure by Development Owner and shall be accepted or rejected on the same basis as if such cure were made or tendered by Development Owner. All terms of this Agreement shall be subject to the terms and provisions of the Intercreditor Agreement.

Section 10.4 Enforcement of Provisions. Development Owner acknowledges that one of the primary purposes for requiring compliance with the provisions of this Agreement is to assure compliance by the Development and Development Owner with Section 42 of the Code and the other Program Requirements. In consideration for receiving the Exchange Program Funds, Development Owner hereby agrees and consents that MHC, the State of Mississippi and/or the United States of America shall be entitled to enforce specific performance by Development Owner (and its successors and assigns) of its obligations under this Agreement in any tribunal in the State for any and all breaches of the conditions and restrictions hereof or material representations made by Development Owner at any time in addition to all other remedies expressly provided in this Agreement and/or by law or in equity.

ARTICLE XI
GENERAL PROVISIONS

Section 11.1 Notices. Except as otherwise specifically provided herein, all notices, demands or other communications hereunder shall be in writing and shall be deemed to have been given (i) five (5) Business Days after being deposited in the United States mail and sent by certified or registered mail, postage prepaid, (ii) one (1) Business Day after being delivered to a nationally recognized overnight delivery service, (iii) on the day sent by telecopy or other facsimile transmission, answerback requested and received, or (iv) on the day delivered personally, in each case, to the parties at the addresses set forth below or at such other addresses as such parties may designate by notice to each other:

(i) If to MHC, at:

Mississippi Home Corporation
935 Riverside Drive
Jackson, Mississippi 39202
Attention: Dianne Bolen
Executive Director

(ii) With a copy to:

Balch & Bingham LLP
200 East Capitol Street, Suite 200
Jackson, Mississippi 39201
Attention: Matthew P. McLaughlin

(iii) If to Development Owner, at _____
_____] with
copies to [_____].

(iv) If to the Developer, at [_____] with copies to [_____].

(v) If to lenders pursuant to Section 6.3 or 10.3, at the address shown on **Exhibit D**.

Any of the above-listed Persons may, by ten (10) days prior written notice to all other such Persons and Entities, revise the place to which notice may be directed. Until the full ten (10) day period has elapsed and the notice of change has actually been sent and received, the locations set forth in the Summary or the most recent in effect locations shall be presumptively correct.

Section 11.2 Rules of Construction. Unless the context clearly indicates to the contrary, the following rules apply to the construction of this Agreement:

(a) Words importing the singular number include the plural number and words importing the plural number include the singular number;

(b) Words of the masculine gender include correlative words of the feminine and neuter genders, and vice-versa;

(c) The table of contents and the headings or captions used in this Agreement are for convenience of reference and do not constitute a part of this Agreement, nor affect its meaning, construction, or effect;

(d) Words importing persons include any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust unincorporated organization, or government or agency or political subdivision thereof;

(e) Any reference in this Agreement to a particular "Article," "Section," or other subdivision shall be to such Article, Section, or subdivision of this Agreement unless the context shall otherwise require;

(f) Each reference in this Agreement to an agreement or contract shall include all amendments, modifications, and supplements to such agreement or contract unless the context shall otherwise require; and

(g) When any reference is made in this document or any of the schedules or exhibits attached hereto to the Agreement, it shall mean this Agreement, together with all other schedules and exhibits attached hereto, as though one document.

Section 11.3 Binding Provisions. The covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the heirs, legal representatives, successors and assignees of the respective parties hereto, except in each case as expressly provided to the contrary in this Agreement.

Section 11.4 American Recovery and Reinvestment Act of 2009 and State Requirements. The following criteria are required and will be followed:

(a) Requirement to Post Notice of Whistleblower Rights and Remedies: any employer receiving funds under this Agreement shall post notice of the rights and remedies afforded whistleblowers under Section 1153 of ARRA.

(b) Requirements for Fixed-Price Contracting: To the maximum extent possible, subcontracts funded under this Agreement shall be awarded as fixed-price contracts through the use of competitive procedures. Development Owner shall post a summary of any contract awarded with such funds that is not fixed-price and not awarded using competitive procedures on the federal website established pursuant to Section 1526 of ARRA.

(c) Prohibited Use of Funds: Development Owner shall not use any of the funds made available under this Agreement for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool, as outlined in Section 1604 of ARRA.

(d) Legal use of Fund Certification: Development Owner hereby certifies, as a condition to receiving funds from MHC under this Agreement in accordance with Executive Order RP72, that the Exchange Program Funds will be used in accordance with State and federal laws.

(e) Designated Development Owner Contracts: Development Owner shall designate, in writing, at the time it executes this Agreement, one or more responsible and qualified individuals as points of contact with MHC to maintain a flow of current information relating to the receipt, deployment, management and use of funds received under this Agreement.

(f) Development Owner shall track all funds under this Agreement and their projected statuses separately from all other funds and comply with State and Federal reporting requirements in accordance with Executive Order RP72.

(g) Development Owner agrees to execute and deliver to MHC any and all documents, instruments, and writings that MHC may reasonably request in order to comply with the terms of the federal grant agreement between MHC and Treasury, including, but not limited to, federal reporting requirements.

Section 11.5 Assignments. Development Owner may not assign, pledge, hypothecate, transfer, mortgage or otherwise convey this Agreement and the proceeds of the Subaward without the prior written consent of MHC and Development Owner.

Section 11.6 Absence of Rights in Third Parties. No provision of this Agreement shall be construed in any manner so as to create any rights in Persons or Entities that are not a party to this Agreement other than Treasury as contemplated in Article VI hereof. The provisions of this Agreement shall be interpreted solely to define specific duties and responsibilities between Development Owner and MHC and shall not provide any basis for claims of any other Person or Entity other than Treasury.

Section 11.7 Applicable Law. Except as required by federal law, this Agreement shall be construed and enforced in accordance with the internal laws of the State of Mississippi without regard to its conflicts of law principles.

Section 11.8 Counterparts. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all the parties hereto. Any counterpart of this Agreement, which has attached to it separate signature pages which together contain the signatures of all the parties hereto or is executed by an attorney-in-fact on behalf of some or all of the parties, shall for all purposes be deemed a fully executed instrument.

Section 11.9 Survival. All representations, warranties, and indemnifications contained herein shall survive the termination of this Agreement.

Section 11.10 Separability of Provisions; Rights and Remedies; Consistency with Program Requirements.

(a) Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid. Any portion hereof found to be illegal or invalid shall be deemed deleted *ab initio* and all other provisions shall remain in full force and effect and construed so as most nearly to effectuate the intent of the parties.

(b) Unless otherwise specifically provided herein, the rights and remedies of any of the parties hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. Each of the parties confirms that damages at law may be an inadequate remedy for breach or threat of breach of any provisions hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other parties for a breach or threat of breach of any provision hereof, it being the intention by this paragraph to make clear that under this Agreement the respective rights and obligations of the parties shall be enforceable in equity as well as at law or otherwise.

(c) The provisions of this Agreement are intended to implement the Exchange Program in accordance with the Program Requirements and with Section 42 of the Code as applicable to the Exchange Program, and shall be interpreted consistently therewith. In the event of any conflict between the provisions of this Agreement and the Program Requirements, the program Requirements shall govern, and to the extent necessary, the inconsistent provisions of this Agreement shall be without effect.

Section 11.11 Independent Contractor; Indemnification. It is expressly understood and agreed by the parties hereto that MHC contracting with Development Owner as an independent contractor, and that Development Owner, as such, agrees to hold harmless and to indemnify MHC and its officers, agents and employees from and against any and all claims, demands and causes of action of every kind and nature which may be asserted by any third-party in connection with, arising out of, or in any way incident to the services performed by Development Owner under this Agreement.

Section 11.12 Non-Discrimination. Development Owner shall ensure that no person shall on the grounds of race, color, religions, sex, handicap, familial status, or national origin be

excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds provided under this agreement.

Section 11.13 Force Majeure. Performance under this contract interrupted by an event of force Majeure will not constitute an Event of Default. Force Majeure means an event of catastrophic weather conditions or other extraordinary elements of nature or acts of God; or acts of war (declared or undeclared); acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; or quarantines, embargoes and other similar unusual actions of federal, provincial, local or foreign governmental Authorities where the non-performing Party is without fault in causing or failing to prevent the occurrence of such event, and such occurrence could not have been circumvented by reasonable precautions and could not have been prevented or circumvented through the use of commercially reasonable alternative sources, workaround plans or other means.

Section 11.14 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns except that Development Owner may not assign its rights or obligations hereunder the written consent of MHC. Any attempted assignment or transfer of its obligations without MHC's consent shall be null and void.

Section 11.15 Reasonableness of Determinations. In any instance where any consent, approval, determination or other action by MHC is, pursuant to the Agreement or the Security Instruments or applicable law, required to be done reasonably or required not to be unreasonably withheld, then MHC's action shall be presumed to be reasonable, and Development Owner shall bear the burden of proof of showing that the same was not reasonable. In the event that a claim or adjudication is made that MHC or its agents have acted unreasonably or unreasonably delayed acting in any case where, by law or under this Agreement or the Security Instruments, MHC or such agent, as the case may be, has an obligation to act reasonably or promptly, neither MHC nor its agents shall be liable for any monetary damages, and Development Owner's sole remedy shall be limited to commencing an action seeking injunctive relief or declaratory judgment. Any action or proceeding to determine whether MHC has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 11.16 Entire Agreement. This Agreement and the Security Instruments referred to herein embody the final, entire agreement among the parties hereto and supersede any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. There are no oral agreements among the parties hereto.

Section 11.17 Consent to Jurisdiction. DEVELOPMENT OWNER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF HINDS, STATE OF MISSISSIPPI AND IRREVOCABLY AGREES THAT, SUBJECT TO MHC'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS LOAN AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. DEVELOPMENT OWNER ACCEPTS FOR ITSELF AND IN CONNECTION WITH THE PROPERTY, GENERALLY

AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS LOAN AGREEMENT, THE NOTE, SUCH OTHER LOAN DOCUMENTS OR SUCH OBLIGATION. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF MHC TO BRING PROCEEDINGS AGAINST DEVELOPMENT OWNER IN THE COURTS OF ANY OTHER JURISDICTION.

[signatures follow on next page]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Loan Agreement as of the date first written above.

DEVELOPMENT OWNER

BY: _____, a Mississippi limited liability company, its General Partner

BY: _____, a Mississippi corporation, its Member

BY: _____

MISSISSIPPI HOME CORPORATION

BY: DIANNE BOLEN, its Executive Director

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SCHEDULE 1

The Fair Housing Act (42 U.S.C. §§ 3601-20) and implementing regulations at 24 CFR part 100; Executive Order 11063, as amended by Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR, Part 107

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR, Part 1; Executive Order 11063, as amended by Executive Order 12259, and 24 CFR part 107, “Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063”

The Age Discrimination Act of 1975 (42 U.S.C. §§ 6101, *et seq.*) and implementing regulations at 24 CFR, Part 146, “Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance”, and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and implementing regulations at 24 CFR, Part 8; Executive Order 11246 (3 CFR 1964-65, Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR, Chapter 60

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and implementing regulations at 24 CFR Part 8, “Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development”

SCHEDULE 2

EXHIBIT A
DESCRIPTION OF DEVELOPMENT SITE

EXHIBIT B
SUBAWARD AGREEMENT SUMMARY

EXHIBIT C
BUDGET

EXHIBIT D
MORTGAGE LOANS