

LOAN PARTICIPATION AGREEMENT

This LOAN PARTICIPATION AGREEMENT (this “**Agreement**”) is entered into as of _____, _____, by and between **[Participating Bank]**, a **[type of entity (e.g. bank, trust company, etc.)]** chartered by the State of Missouri (“**Participating Lender**”), and the **MISSOURI HOUSING DEVELOPMENT COMMISSION**, a body politic and corporate of the State of Missouri as amended from time to time (“**MHDC**”). The following recitals form the basis and are a material part of this Agreement:

WITNESSETH:

WHEREAS, MHDC is authorized and empowered under Chapter 215, RSMo, 1994, as amended, to participate in the purchase of uninsured, partially insured or fully insured loans, including mortgages insured or otherwise guaranteed by the federal government to finance the building, rehabilitation or purchase of residential housing designed and planned to be available for rental or sale to low or moderate income persons or families; and,

WHEREAS, MHDC has firmly committed to provide **[Name of Development Owner]**, a Missouri **[type of entity]**, as mortgagor (“Mortgagor”), a mortgage loan in an amount not to exceed **_____ AND _____/100 DOLLARS (\$_____)** (the “Mortgage Loan”) to finance the development of improvements on certain real property commonly referred to as **[Name of Development]**, MHDC Development # **_____** (the “Development”), which real property is more particularly described in the **Exhibit “A”** attached hereto and incorporated herein by this reference as if set forth verbatim; and,

WHEREAS, Participating Lender has firmly committed to purchase a participation interest in the portion of the Mortgage Loan providing funds for the construction of the Development (the “**Construction Loan**”) in the amount or percentage set forth in **Exhibit “B”** attached hereto and incorporated herein by this reference as if set forth verbatim (the “Construction Loan Participation Interest”) to partially finance the construction/rehabilitation of the Development; and,

WHEREAS, Participating Lender has also firmly committed to retain a participation interest in the portion of the Mortgage Loan providing long-term financing to the Development after completion of construction (the “**Permanent Loan**”) in the amount set forth in Exhibit “B” (the “**Permanent Loan Participation Interest**” and referred to together with the Construction Loan Participation Interest as the “**Participation Interest**”).

WHEREAS, on or before the date the Construction Loan amount is required to be paid down to Permanent Loan amount pursuant to the terms of the Deed of Trust Note evidencing the Mortgage Loan (the “Note”), Mortgagor shall make a principal payment to MHDC in the amount set forth on **Exhibit “B”** (“Construction Loan Buy-Down”) in order to reduce the principal balance of the Construction Loan Participation Interest down to the principal balance of the Permanent Loan Participation Interest; and,

WHEREAS, the Mortgage Loan evidenced by the Note will be secured by a Deed of Trust and Security Agreement (the “Deed of Trust”) and UCC-1 Financing Statements (the “Financing Statements”), a Regulatory Agreement, a Capital Advance Agreement, a Disbursing Agreement, a Guaranty Agreement and such other documents as are approved by MHDC (hereinafter collectively referred to as the “Security Documents”), which Security Documents shall constitute a first mortgage lien upon the Development in the amount of the Mortgage Loan; and,

WHEREAS, Participating Lender desires to own an undivided interest in the Mortgage Loan in the percentage of the principal amount of its Participation Interest as the numerator and the principal amount of the Mortgage Loan as the denominator, which percentage may change upon the payment of the Construction Loan Buy-Down; and,

WHEREAS, MHDC and Participating Lender desire their future relationship with respect to the Participating Lender's Participation Interest in the Mortgage Loan to Mortgagor to be governed by the terms and conditions of this Agreement and do intend that this Agreement shall provide for all the terms and conditions for the sale, purchase and prepayment of the Participation Interest in the Mortgage Loan after the effective date of this Agreement; and,

NOW THEREFORE, for good and valuable consideration, the sufficiency and delivery of which are hereby acknowledged, the parties agree as follows:

1. **Defined Terms.** All capitalized terms used in this Agreement and not otherwise defined within the text of the Agreement shall have the meaning set forth in this Section.

1.1 **Business Day** means any day (other than a Saturday or Sunday) on which commercial banks are open for business in New York, New York.

1.2 **Collateral** means all real and personal property of the Development and all products and proceeds therefrom securing the Mortgage Loan and secured by the Security Documents.

1.3 **Conversion Date** means the date upon which the Construction Loan on the Development converts to the Permanent Loan.

1.4 **LIBOR Index Rate** means the one-month LIBOR rate determined by MHDC, or its agent, from Bloomberg screen US0001M Index HP (or any screen or other Bloomberg information source that serves as a successor thereto) as of the close of business on the Business Day prior to the first calendar day of a month, or, initially, the Funding Date rounded up to the nearest one-hundredth percent.

1.5 **LIBOR Rate** means for each month the LIBOR Index Rate for the period beginning on the first day of a month, or, initially, the Funding Date, and ending on the last day of such month.

1.6 **Participation Percentage** means, with respect to the Mortgage Loan, the percentage that the Participating Lender's Participation Interest bears to the full amount of the Mortgage Loan.

2. **Commitment of Participating Lender.** Participating Lender agrees to purchase the Participation Interest in the Mortgage Loan from MHDC pursuant to the terms and conditions set forth in this Agreement.

3. **Term of Agreement.** Except as otherwise provided for hereunder, the rights and obligations of MHDC and Participating Lender under this Agreement shall expire on the date the Participating Lender's Participation Interest is repaid in full (the "**Expiration Date**").

4. **Calculation of Participation Interest Rate.**

4.1 The principal amount of the Participation Interest advanced by Participating Lender under this Agreement shall bear interest at an annual rate (the "**Participation Interest Rate**") equal to: (a) for the Construction Loan Participation Interest, a floating rate of interest equal to Three and 50/100 Percent (3.50%) plus the LIBOR Rate (provided, however, that in no event will the rate be less than 3.75%); and (b) for the Permanent Loan Participation Interest (if applicable), the fixed rate set forth in **Exhibit "B."**

4.2 Any request for early conversion of the Mortgage Loan is subject to Participating Lender's approval in its sole discretion. If such request is approved, then the Construction Loan shall be converted to the Permanent Loan, and the Participation Interest Rate (defined in Section 4.1 above) shall be converted to the Participation Interest Rate for a Permanent Loan under this Section 4.2, upon such terms as Participating Lender

approves (which terms could include amendments to the Security Documents to allow for, among other things, such interest-only debt service period under the Permanent Loan, as Participating Lender approves in its sole discretion).

4.3 Interest on each Construction Loan shall be computed on the basis of the actual number of days elapsed relative to a 360-day year (i.e. 365/360). Interest on each Permanent Loan shall be computed on the basis of the number of days elapsed in a 360-day year consisting of twelve 30-day months (i.e. 360/360).

4.4 Borrower shall have the right to prepay any Participation Interest in full without penalty. Participating Lender acknowledges that the Security Documents will not require a Borrower to pay any fee or penalty upon prepayment of a Mortgage Loan.

5. **Funding Date.** By delivery of the Participation Certificate (as defined in Section 6 below), MHDC shall be deemed to have transferred, assigned, set over, and conveyed the Participation Interest to Participating Lender on the date Participating Lender funds its portion of the first draw under the Construction Loan (the “**Funding Date**”).

6. **Participation Interest and Certificate.**

6.1 The Participation Interest shall be evidenced by a certificate (a “**Participation Certificate**”) in the form attached hereto as **Exhibit “D,”** which exhibit is incorporated herein by reference as if set forth verbatim, issued to Participating Lender by MHDC in accordance with this Agreement, and the principal amount of the Participation Interest shall bear interest payable monthly in arrears, at the applicable Participation Interest Rate, calculated on the outstanding principal balance of the Participation Interest.

6.2 The Participation Certificate shall be executed on behalf of MHDC by a duly authorized officer of MHDC.

6.3 The Participation Certificate may be reissued in the event of transfer or otherwise pursuant to this Agreement. Prior to due presentation of the Participation Certificate for registration of transfer, MHDC shall treat the person or entity in whose name any such Participation Certificate is registered as the owner of such Participation Certificate and the Participation Interest relating thereto.

6.4 In the event the Participation Certificate is mutilated, lost, destroyed, or stolen, MHDC shall execute and deliver a replacement Participation Certificate, in absence of notice that the Participation Certificate has been acquired by a bona fide purchaser, upon Participating Lender either (a) surrendering the mutilated Participation Certificate to MHDC, or (b) providing evidence to MHDC's satisfaction of the loss, destruction, or theft of the Participation Certificate, as applicable, and delivering such security or indemnity as may be required by MHDC to hold it harmless. A replacement Participation Certificate issued as provided herein shall constitute, absent fraud, misrepresentation or mistake, complete evidence of indefeasible ownership of the Participation Interest so evidenced by such Participation Certificate as if originally issued, whether or not the destroyed, lost or stolen Participation Certificate shall be found at any time.

6.5 If the Participation Certificate is surrendered by Participating Lender, it shall be canceled by MHDC.

6.6 The Participation Certificate shall be deemed cancelled at such time as the Participation Interest evidenced by the Participation Certificate is paid and satisfied in full. At MHDC's request, upon satisfaction in full of the Participation Interest, Participating Lender will return to MHDC the Participation Certificate evidencing the Participation Interest.

6.7 MHDC shall remain mortgagee of record on the Mortgage Loan pursuant to the terms and conditions of this Agreement and MHDC and Participating Lender agree that with respect to the Mortgage Loan, the

Mortgagor shall have no obligation to recognize or deal with any other party other than MHDC with respect to the rights, benefits and obligations of the Mortgagor or MHDC under the Mortgage Loan, all subject to the rights of Participating Lender upon the occurrence of any MHDC Default.

6.8 MHDC shall retain the Note, the Security Documents, and all other instruments and documents which are necessary to evidence MHDC's legal title to the Mortgage Loan and to evidence, secure and guaranty the Mortgage Loan in accordance with its approved terms, to originate or service the Mortgage Loan, the disbursing agreement and other construction documents and bonds, and all records and documents with respect to the Mortgage Loan prepared by or which come into the possession of MHDC, and will furnish copies thereof to Participating Lender (such instruments, documents and records are hereinafter collectively referred to as the "**Mortgage Loan Documents**" and individually as a "**Mortgage Loan Document**"). The Mortgage Loan Documents shall be held in trust by MHDC on behalf of Participating Lender. MHDC shall segregate and retain the Mortgage Loan Documents and, without limiting the generality of the foregoing, shall safe-keep originals of the Mortgage Loan Documents, title and hazard insurance policies, all letters of credit and all other documents evidencing or securing the Mortgage Loan.

7. **Payments Due on Participation Interest.** The Participation Interest shall bear interest at the Participation Interest Rate, payable as provided in this Agreement and the Participation Certificate to be prepared by MHDC, signed and delivered by MHDC to Participating Lender evidencing the Participation Interest. The Participation Certificate shall incorporate by reference the terms of this Agreement. MHDC and Participating Lender agree that the terms of this Agreement shall govern the rights and obligations of the parties with respect to the Participation Interest purchased by Participating Lender pursuant to this Agreement.

8. **Condition to Purchase.** Participating Lender's obligation to purchase the Participation Interest is contingent upon its determination that all of Participating Lender's underwriting requirements have been satisfied.

9. **Payment of Purchase Price.** The purchase of the Participation Interest shall be funded as construction of the Development progresses, based on work in place for the Development. Provided the Mortgage Loan is not in default and is in balance, Participating Lender shall advance its Participation Percentage of each draw request to the escrow disbursing agent identified in the Disbursing Agreement executed by and between Mortgagor and MHDC (the "Disbursing Agreement") within three (3) Business Days of written request therefor. All funds advanced on the Construction Loan are to be advanced pursuant to said Disbursing Agreement. Participating Lender's failure to timely fund its portion of any draw request shall constitute a default under this Agreement. The Participation Certificate for the Mortgage Loan shall be delivered to Participating Lender on or before the Funding Date.

10. **Mortgage Loan Fees.**

10.1 Participating Lender's obligations under this Agreement are conditioned upon its receipt of (i) a commitment fee on the Construction Loan in the amount set forth Exhibit "B" (which amount is zero and 75/100 Percent (0.75%) of the principal amount of the Construction Loan Participation Interest) (The "**Construction Loan Commitment Fee**"), and (ii) a commitment fee on the Permanent Loan in the amount set forth on Exhibit "B" (which amount is one and 00/100 Percent (1.0%) of the Permanent Loan Participation Interest) (the "**Permanent Loan Commitment Fee**" and referred to together with the Construction Loan Commitment Fee as the "**Commitment Fee**"). The Commitment Fee shall be paid by Mortgagor out of funds from the first draw of funds from the Mortgage Loan. Participating Lender shall be entitled to the amount of the Commitment Fee set forth in Exhibit "B" (the "**Participating Lender Commitment Fee**"). Within a reasonable period of time after funding of the first draw, MHDC will remit Participating Lender the Participating Lender Commitment Fee.

10.2 **Late Fee.** Failure of Mortgagor to pay to MHDC the Construction Mortgage Buy-Down and any unpaid accrued interest thereon on or before the date such payment is required to be made pursuant to the terms of

the Note shall result in the Mortgagor incurring a one-time fee in the amount set forth in Exhibit “B” (the “Late Fee”). Such Late Fee shall be payable to MHDC within thirty (30) days after the date upon which the Construction Mortgage Buy-Down is due and payable to MHDC pursuant to the terms of the Note. In addition to the Late Fee, any unpaid portion of the principal balance of the Construction Mortgage Buy-Down and/or accrued interest thereon not received by MHDC on or before the date such payment is due shall accrue interest at the Participation Interest Rate applicable to the Construction Loan Participation Interest plus three percent (3.00%), until such time as the payment of unpaid principal and/or interest is made.

11. **MHDC's Representations, Warranties and Covenants.** MHDC represents, warrants, and covenants, as of the date of this Agreement as follows:

11.1 MHDC (a) is validly existing under the laws of the State of Missouri and duly authorized to enter into this Agreement; (b) has all requisite power to acquire, own, transfer and convey the Participation Interest, to make and service the Mortgage Loan, and to engage in the transactions contemplated hereby; and (c) has the full power, authority and legal right and has taken all necessary action to execute and deliver this Agreement. MHDC is a body politic and corporate established pursuant to and under the laws of the State of Missouri. MHDC is, to the extent necessary under any applicable law or regulation, duly authorized and qualified to transact any and all business contemplated by this Agreement in the jurisdiction where the Development is located (or is exempt from such qualification). MHDC possesses and shall continue to possess all requisite authority and power to conduct its business and to execute, deliver, and comply with its obligations under this Agreement.

11.2 Neither the execution, delivery or performance of this Agreement nor compliance herewith will, to the best of MHDC's knowledge, result in any violation of or be in conflict with any agreement, instrument, judgment, decree, order, statute, rule or government regulations applicable to MHDC. The execution and delivery of this Agreement and MHDC's performance of and compliance with the terms hereof in the manner contemplated by this Agreement will not violate the statutes under which MHDC is created and operated, or any other laws, in a manner that could have a material adverse effect upon the validity, performance, and/or enforceability of any of the terms of this Agreement applicable to MHDC, and will not constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under any contract, agreement, court order or other instrument to which MHDC is a party or which may be applicable to any of its assets.

11.3 No consent, approval or authorization of any government authority is required for the execution, delivery or performance of, or compliance by MHDC with, this Agreement, or the consummation of any other transaction contemplated hereby, except as has been duly obtained.

11.4 This Agreement constitutes a valid, legal and binding obligation of MHDC, enforceable in accordance with its terms.

11.5 MHDC understands and agrees that Participating Lender has purchased the Participation Interest in reliance upon the covenants of MHDC, and MHDC's full compliance with all of the terms, covenants and conditions of this Agreement. MHDC further understands and agrees that the covenants of MHDC set forth in this Section 11 shall survive the execution and delivery of this Agreement, the delivery of the Participation Interest and the Participation Certificate to Participating Lender and its successors and assigns, and shall inure to the benefit of any registered owners(s) of the Participation Certificate.

12. **Participating Lender's Representations, Warranties and Covenants.** Participating Lender represents, warrants, and covenants, as of the date of this Agreement as follows:

12.1 Participating Lender understands that the Participation Interest purchased hereunder will not be registered or qualified under the Securities Act of 1933 (the “1933 Act”) or the securities laws of any state, and cannot be resold unless it is registered under the 1933 Act and such laws or unless an exemption from registration or qualification is available;

12.2 Participating Lender is not acquiring the Participation Interest with a view to distribution in violation of the 1933 Act, nor will it offer or sell the Participation Interest in connection with any such distribution;

12.3 Participating Lender is an “accredited investor” as such term is defined in Regulation D promulgated under the 1933 Act;

12.4 Neither Participating Lender nor anyone acting on its behalf has offered, transferred, pledged, sold or otherwise disposed of the Participation Interest, any interest in the Participation Interest or any other similar security to, or solicited any offer to buy or accept a transfer, pledge or other disposition of the Participation Interest, any interest in the Participation Interest or any other similar security from, or otherwise approached or negotiated with respect to the Participation Interest, any interest in the Participation Interest or any other similar security with, any person or entity in any manner, or made any general solicitation by means of general advertising or in any other manner, or taken any other action any of which would constitute a distribution of the Participation Interest under the 1933 Act or which would render the disposition of the Participation Interest a violation of Section 5 of the 1933 Act or require registration pursuant thereto, nor will it act, nor has it authorized or will it authorize any person or entity to act, in such manner with respect to the Participation Interest; and

12.5 Participating Lender is not an employee benefit plan as defined in Section 393) of the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”) or Section 4975 (e)(1) of the Internal Revenue Code of 1986, as amended (the “**Code**”) that is subject to Section 406 of ERISA or Section 4975 of the Code. Participating Lender is not acquiring the Participation Interest or any interest therein directly or indirectly on behalf of such a plan if such acquisition constitutes a non-exempt prohibited transaction under ERISA or the Code. The acquisition of the Participation Interest or any interest therein by Participating Lender shall not cause MHDC to become a fiduciary with respect to any such employee benefit plan for any reason, including but not limited to the plan asset rules set forth at United States Department of Labor Regulations §2510.3-101.

12.6 Participating Lender: (a) is, and will at all times during the term of this Agreement remain, validly existing under the laws of the United States of America and duly authorized to enter into this Agreement; (b) has all requisite power to acquire and own the Participation Interest and to engage in the transactions contemplated hereby; and (c) has the full power, authority and legal right and has taken all necessary action to execute and deliver this Agreement. Participating Lender is a [describe state of formation of participating lender and type of entity], and is, and will at all times during the term of this Agreement remain, in good standing. Participating Lender is, to the extent necessary under any applicable law or regulation, duly authorized and qualified to transact any and all business contemplated by this Agreement (or is exempt from such qualification). Participating Lender possesses and shall continue to possess all requisite authority and power to conduct its business and to execute, deliver, and comply with its obligations under this Agreement.

12.7 Neither the execution, delivery or performance of this Agreement nor compliance herewith will, to the best of Participating Lender’s knowledge, result in any violation of or be in conflict with any agreement, instrument, judgment, decree, order, statute, rule or government regulations applicable to Participating Lender. The execution and delivery of this Agreement and Participating Lender’s performance of and compliance with the terms hereof in the manner contemplated by this Agreement will not violate the statutes under which Participating Lender is created and operated, or any other laws, in a manner that could have a material adverse effect upon the validity, performance, and/or enforceability of any of the terms of this Agreement applicable to Participating Lender, and will not constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under any contract, agreement, court order or other instrument to which Participating Lender is a party or which may be applicable to any of its assets.

12.8 No consent, approval or authorization of any government authority is required for the execution, delivery or performance of, or compliance by Participating Lender with, this Agreement, or the consummation of any other transaction contemplated hereby, except as has been duly obtained.

12.9 This Agreement constitutes a valid, legal and binding obligation of Participating Lender, enforceable in accordance with its terms..

13. **Escrows and Deposits.** All escrows, reserves and other deposits required of Mortgagor in connection with the Mortgage Loan will be made in cash into an account held by MHDC. Such escrows will be administered in accordance with the applicable escrow agreement with MHDC as the escrow agent.

14. **Loan Servicing.**

14.1 **Servicing Standards.** MHDC shall service the Mortgage Loan in accordance with customary loan servicing practices of prudent lenders, and shall perform all duties and acts which a reasonably prudent owner of the Mortgage Loan would perform with respect to its own mortgage loans, all subject to and in accordance with the provisions of this Agreement.

14.2 **Collections and Application of Mortgage Payments.** With respect to the Mortgage Loan, MHDC shall:

(a) Proceed diligently to collect all payments due under the Mortgage Loan Documents as they come due and to require the Mortgagor to perform all material terms, covenants and conditions of the Mortgage Loan Documents;

(b) Keep a complete and accurate account of all sums collected by MHDC from Mortgagor and any other obligor on account of the Mortgage Loan Documents and the application thereof;

(c) Segregate (on its books and records) all funds received on account of the Mortgage Loan Documents (including without limitation any amounts paid under any guaranty or other credit support) from the other funds held by MHDC in its trust account;

(d) Remit to Participating Lender by check, wire transfer ACH transaction, or other means of payment acceptable to Participating Lender, and account to Participating Lender for, Participating Lender's Participation Percentage in all payments of principal, interest, late charges, and other sums under the outstanding Mortgage Loan Documents, on or before the 23rd day of each calendar month, at the offices of Participating Lender located at the address set forth in **Exhibit "B,"** but only to the extent of funds received by MHDC from or on behalf of the Borrowers on or before the 21st day of each calendar month; provided, however, that in the event MHDC receives a partial payment from Mortgagor, such remittance to Participating Lender will be prorated based upon a fraction whose numerator is the regular monthly principal and interest due to Participating Lender and whose denominator is the total monthly principal and interest payment due from Mortgagor;

(e) From the funds deposited by Mortgagor into escrow accounts held by MHDC pursuant to this Agreement, pay promptly to the proper parties when due, the ground rents, water rates, taxes, assessments and other public charges, premiums for hazard insurance policies, and other such payments required to be made by MHDC under the Mortgage Loan Documents;

(f) Provide, or cause to be provided, to Participating Lender on an annual basis, no later than thirty (30) days after the end of a calendar year, a statement of the Participation Interest, setting forth the outstanding principal balance of the Mortgage Loan after recordation of December's financial activity, including an itemization of principal, interest and any other amounts collected under the Mortgage Loan Documents and escrow account activity;

(g) Assure that at all times during the existence of this Agreement, the Development is kept insured against loss by fire and such other hazards, casualties and contingencies as required by the Mortgage Loan Documents. Participating Lender acknowledges that the insurance carrier providing the insurance shall be chosen by the Mortgagor subject to MHDC's approval; such carrier shall meet the minimum rating requirements of MHDC for carriers of hazard insurance, unless an exception is otherwise approved by MHDC. If the Development is located in an area designated as flood zone by federal or state authorities, MHDC will require the Borrower to maintain a flood insurance policy in the form of a federal flood insurance policy in an amount which is not less than the maximum amount insurable under the flood insurance policy;

(h) Hold and monitor in accounts at MHDC all mortgage cash escrows and deposits, including without limitation, if applicable under the Mortgage Loan Documents, all tax and insurance, operating reserves, latent defect, repair escrows, replacement reserves, and all letters of credit provided by the Borrower to MHDC and any other such escrows required by MHDC, and if requested by Participating Lender, provide Participating Lender with transaction activity information and current balances of any escrow accounts held by MHDC;

(i) Monitor all UCC financing statements and file all UCC continuation statements as necessary to avoid a lapse of any security interest on the personal property of the Development and/or the personal property of the Mortgagor; and

(j) Notify Participating Lender of the occurrence of any default by Mortgagor under the Mortgage Loan Documents ("**Mortgagor Default**") within ten (10) Business Days following MHDC's receipt of knowledge of such Mortgagor Default.

14.3 Return of Mortgage Payments. Notwithstanding the provisions of Section 14.2(d), Participating Lender agrees to return any portion of Participating Lender's share of principal, interest and/or late fees forwarded by MHDC back to MHDC if the original remittance to MHDC from Mortgagor (from which such payment was made to Participating Lender) is returned as unpaid by Mortgagor's bank.

14.4 Insurance; Condemnation.

(a) During the term of this Agreement, MHDC shall retain custody of all insurance policies, certificates, or renewals thereof which are required to be maintained by Mortgagor under the terms of the Mortgage Loan Documents, MHDC shall provide to Participating Lender promptly upon request, a copy of any insurance policy that Mortgagor is required to maintain (or a certificate evidencing the same) under the terms of the Mortgage Loan Documents and shall notify Participating Lender promptly of the cancellation of any insurance policy that Mortgagor is required to maintain under the terms of the Mortgage Loan Documents;

(b) To the extent any insurance coverage described above is not maintained by Mortgagor, MHDC shall advance funds to obtain such coverage, as provided in Section 14.7 hereof (subject to reimbursement, as provided therein); and

(c) MHDC shall receive the proceeds for all insurance policies required to be maintained by Mortgagor under the terms of the Mortgage Loan Documents or any award for the condemnation of all or any part of the Development, and shall apply such proceeds as required by the Mortgage Loan Documents; provided, however, if MHDC permits the use of insurance proceeds or condemnation awards for restoration of the Development and such restoration cannot be completed prior to the maturity of the Mortgage Loan (either the scheduled maturity of the Construction Loan portion of the Mortgage Loan or the final maturity of the Permanent Loan following the Conversion Date), then MHDC shall be subject to the buy-back requirements

under Section 21 of this Agreement (unless Participating Lender otherwise agrees to extend the loan maturity date pursuant to the provisions of this Agreement). Payments for losses under any such policies or condemnation awards, to the extent paid to MHDC and not applied to the rehabilitation, repair or restoration of the Development, shall be held in trust by MHDC for the benefit of both MHDC and Participating Lender and all or a portion of such proceeds (as the case may be) will be remitted to Participating Lender as a prepayment under the Mortgage Loan in the manner provided in this Agreement (in accordance with the Allocation of Loss Agreement as such term is defined in Section 22 below).

14.5 **Project Inspection and Status Reports; Correspondence.**

(a) MHDC will require the Mortgagor to comply with any regulatory agreement entered into by MHDC and Mortgagor (the “**Regulatory Agreement**”); such action to enforce the Regulatory Agreement may include a declaration of a Mortgagor Default;

(b) Each of MHDC and Participating Lender will, if and as soon as such information comes to either of their respective attention, promptly notify the other party of any material change in condition of the Development, any lack of repair to or other deterioration or waste suffered or committed with respect to the Development, any sale or transfer by the borrower of the legal or equitable title to the Development or any abandonment of the Development, and MHDC and Participating Lender will work together to determine a course of action to remedy the situation which the parties may deem necessary or appropriate;

(c) Each of MHDC and Participating Lender will promptly furnish the other party with copies of any material correspondence with the Mortgagor relating to the Mortgage Loan or the Development. Upon request by Participating Lender, MHDC shall also furnish Participating Lender with such other information relating to the Mortgage Loan, the Development or such servicing as Participating Lender may from time to time reasonably request; and

14.6 **MHDC's Authority with Respect to the Mortgage Loan.** Except as otherwise provided in this Agreement, all distributions of loan proceeds made pursuant to this Agreement shall be administered solely by MHDC and MHDC shall have the authority to administer and enforce Mortgage Loan in accordance with the Mortgage Loan Documents and the standards set forth in this Section 14. Subject to the terms and conditions of Section 16 hereof, MHDC will have the sole duty, along with the full power and authority, to determine whether, when and which actions may be necessary or desirable to administer, enforce and collect the Mortgage Loan, including any declaration of default under the Security Documents or acceleration of the Note, and may determine whether to exercise or refrain from exercising any rights or to take or refrain from taking any action which may be vested in MHDC or which MHDC may be entitled to take or assert under the Security Documents. Notwithstanding the foregoing, MHDC may not, without the prior written consent of Participating Lender: (a) change the terms of the payment of the principal, interest or fees on a Mortgage Loan; (b) extend the term (including without limitation, as a result of any casualty or condemnation) or increase the amount of a Mortgage Loan; (c) make or consent to any release of security for the Mortgage Loan; (d) voluntarily substitute, release, waive or discharge, in whole or in part, the obligation of the Mortgagor, guarantor or other obligor in connection with the Mortgage Loan; (e) alter, waive or amend the Mortgage Loan Documents in any material respect; (f) permit any liens or other encumbrances on the Development (except for any liens or encumbrances reflected in Schedule B of the final pro forma loan title policy approved by MHDC and Participating Lender at closing of the Construction Loan); (g) subordinate the lien or any right to payment under the Mortgage Loan; or (h) approve any subordinate debt against the Mortgagor or the Development (except for any subordinate debt reflected in Schedule B of the final pro forma loan title policy approved by MHDC and Participating Lender at closing of the Construction Loan). MHDC shall promptly forward to Participating Lender all requests for, and any waivers, modifications or consents granted by, MHDC and any related documentation.

14.7 **Advances by MHDC.** MHDC shall be permitted or required to make the following advances with respect to the Mortgage Loan:

(a) MHDC shall have no obligation to remit to Participating Lender principal or interest payments or any other sums payable by the Mortgagor under the Mortgage Loan unless and until such payments or sums are received by MHDC from Mortgagor; however, MHDC reserves the right, but is not obligated, to advance its own funds in amounts equal to the amount of delinquent payments of principal and interest. In the event MHDC elects to make such advances of the principal and interest, the total amount of a monthly advance shall be equal to the payment of principal and interest due to Participating Lender on the date such payment is due.

(b) After providing written notice to Participating Lender, MHDC may make advances from its own funds of all amounts necessary to continue or stabilize operations of the Development or for the payment of hazard insurance premiums, water rates, taxes, assessment or other public charges, or other items necessary for the protection of the security of the Mortgage Loan Documents to the extent funds held in mortgage escrows are insufficient to pay for such items.

(c) The advances made by MHDC pursuant to this Section 14.7 are reimbursable to MHDC from subsequent payments by the Mortgagor or other payments made on account of the Mortgage Loan, after application of such payments to amounts then otherwise due under the Mortgage Loan, and to the extent payments remitted by Mortgagor are insufficient to fully reimburse MHDC for such advances, Participating Lender shall be required to reimburse MHDC for its share all such remaining amounts to be reimbursed to MHDC (based on Participating Lender's Participation Interest) within five (5) Business Days of receiving written notice from MHDC of such reimbursements.

14.8 **Compliance with Law.** MHDC shall comply with all applicable federal, state and local law and regulations, as the same from time to time be amended, and promptly discharge all of the obligations of MHDC thereunder and under the Mortgage Loan Documents, including the timely giving of notices thereunder.

14.9 **Books and Records.** MHDC shall keep proper books of account and records relating to the Mortgage Loan, the Development, and the servicing relating thereto, reflecting the Participation Interest of Participating Lender in the Mortgage Loan, which books and records shall be available for inspection by Participating Lender at all reasonable times during normal business hours and shall be maintained in accordance with generally accepted accounting principles, consistently applied.

14.10 **MHDC is Independent Contractor.** MHDC's administration and servicing of the Mortgage Loan and performance of any of its other obligations hereunder shall be as an independent contractor.

14.11 **Liability Resulting from Regulatory Agreement and Management Agreement.** In connection with the Mortgage Loan, MHDC may enter into a Regulatory Agreement and Management Agreement (the "**Management Agreement**") with the Mortgagor. To the extent that any liability of any kind whatsoever arises from the enforcement of any Regulatory Agreement and/or any Management Agreement, MHDC will assume all responsibility and expense in connection therewith, including the defense of any litigation so associated with such issues, and shall not be subject to reimbursement hereunder by Participating Lender.

15. **Loan Subservicing.** MHDC shall, but only with the prior written consent of Participating Lender (which consent shall be in Participating Lender's reasonable discretion) be permitted to contract for the subservicing of the Mortgage Loan under this Agreement with a seller/servicer ("**Subservicer**") which agrees in writing to be bound by this Agreement as the interests, obligations and responsibilities of MHDC appear hereunder, provided that under any subservicing agreement entered into hereunder with a Subservicer ("**Subservicing Agreement**") MHDC shall (a) continue to hold legal title to the Mortgage Loan and (b) be responsible for all fees and expenses of

Subservicer under any such subservicing contract, and shall not be subject to reimbursement hereunder by Participating Lender.

16. **Mortgagor Default.**

16.1 In the event of a Mortgagor Default, MHDC will diligently pursue efforts to bring the Mortgage Loan to performing status. Those efforts may include, in MHDC's discretion, providing rental assistance, subordinate financing, grants and other subsidies (“**Subsidy**”); provided however that Participating Lender’s written consent must be obtained prior to MHDC making any offer of or commitment to provide any Subsidy to Mortgagor, and/or before entering into any such oral or written agreement to provide a Subsidy to the Mortgagor to the extent any such Subsidy takes the form of additional debt on the Development. In addition, MHDC may offer a proposal for work-out, forbearance or other relief or action (“**Work-Out Proposal**”) to Mortgagor in response to such Mortgagor Default; provided however, that MHDC may not agree to or implement any Work-Out Proposal or forbearance or other deferral of amounts due under the Mortgage Loan Documents without Participating Lender’s prior written consent. Notwithstanding the foregoing, in the event of a Mortgagor Default MHDC may, in addition to and/or in lieu of the options provided to MHDC under this Section, elect to pursue any other rights or remedies reserved to it under the Mortgage Loan Documents, including, but not limited to, the right to accelerate the debt evidenced by the Note and foreclose on the Development (“**Enforcement Action**” and referred to collectively with a “**Subsidy**” and a “**Work-Out Proposal**” as a “**Default Remedy**”). Prior to pursuing any Enforcement Action, however, MHDC will provide written notice to Participating Lender of its intention to take such action. Within ten (10) Business Days after Participating Lender has received from MHDC a request for approval of a Default Remedy, along with such other information as Participating Lender reasonably requires to evaluate the same, Participating Lender shall either: (a) confirm in writing to MHDC its approval of the Default Remedy, or (b) provide to MHDC a counterproposal for addressing the Mortgagor Default. If Participating Lender does not respond to MHDC’s request to approve the Default Remedy within such ten (10) Business Day period, the Default Remedy shall be deemed approved by Participating Lender.

16.2 In the event Participating Lender will not consent to a Default Remedy proposed by MHDC pursuant to Section 16.1, and the parties cannot otherwise agree on an acceptable course of action to cure the Mortgagor Default under the Mortgage Loan Documents, MHDC may, at its option, repurchase the Participating Lender’s Participation Interest by remitting to Participating Lender the outstanding principal balance of the Participation Interest along with all interest accrued thereon. Immediately upon receipt of such payment, Participating Lender will return the Participation Certificate to MHDC, at which point Participating Lender will have no further rights or obligations under this Agreement except for those rights and obligations which are expressly stated herein as surviving the termination of this Agreement. Notwithstanding anything else to the contrary in this Section 16.2 or elsewhere in this Agreement, if, in the event of Mortgagor Default, either Participating Lender or MHDC desires to accelerate the debt evidenced by the Note and to foreclose under the Mortgage Loan Documents, and the other party will not consent to pursuing foreclosure, the party desiring to foreclose on the Development shall have the right to purchase the non-consenting party’s participation interest in the Mortgage Loan by remitting to such non-consenting party the outstanding principal balance of the non-consenting party’s participation interest in the Mortgage Loan along with all interest accrued thereon. Immediately upon receipt of such payment, the party whose participation interest in the Mortgage Loan is being purchased must immediately surrender all rights and interests it holds in the Mortgage Loan, and from that point forward the party whose participation interest in being purchased will have no further rights or obligations under this Agreement except for those rights and obligations which are expressly stated herein as surviving the termination of this Agreement.

16.3 If foreclosure of the Development has been elected by MHDC with Participating Lender’s prior written approval pursuant to Section 16.1, then the foreclosure shall be conducted in accordance with all applicable Laws, provided however that the foreclosure shall be conducted by MHDC, and MHDC is irrevocably authorized to bid at such sale, itself or through a nominee, on behalf of MHDC and Participating Lender. Any bid made by MHDC at the foreclosure sale shall be made on behalf of MHDC and Participating Lender, in accordance

with the terms approved in writing by Participating Lender. If such bid is the winning bid at the foreclosure sale, title to the Development shall be held by MHDC in its own name (or in the name of a nominee), and on behalf of Participating Lender to the extent of the Participation Interest. Prior to MHDC (or its nominee) taking title to the Development, Participating Lender and MHDC shall have entered into an agreement evidencing the Participation Interest and granting Participating Lender certain approval and consent rights concerning the disposition of such Mortgaged Property, in form and content mutually satisfactory to both parties. If Participating Lender and MHDC cannot agree on the terms of such agreement, title to the Development shall be held in the form of a co-tenancy between Participating Lender (or any affiliate of Participating Lender which Participating Lender shall designate) and MHDC. Participating Lender's interest in the Development (in the event of a co-tenancy) shall be in the same percentage as its Participation Interest. After any foreclosure sale of the Development, MHDC shall keep Participating Lender reasonably informed and generally advised as to the status of the Development by periodic reports, to be delivered to Participating Lender no less than every ninety (90) days, and MHDC shall undertake reasonable efforts to sell the Development in a manner approved by Participating Lender.

17. **Successors and Assigns.** This Agreement and any undertakings by Participating Lender pursuant hereto are not binding upon any of the directors or officers of Participating Lender personally. No member, officer, agent or employee of MHDC or its successors and assigns shall be liable personally concerning any matters arising out of or in relation to the undertakings or obligations of MHDC set forth in this Agreement. This Agreement shall be binding upon, and inure to the benefit of, the successors and permitted assigns of MHDC and Participating Lender. Except as expressly permitted herein, this Agreement shall not be assigned without the prior written consent of MHDC and Participating Lender; provided, however, that succession to either MHDC's or Participating Lender's position under this Agreement by a surviving corporation or entity upon merger, consolidation or other reorganization of MHDC or Participating Lender shall not be deemed to constitute an assignment under this paragraph.

18. **Transfer by Participating Lender.**

18.1 Subject to MHDC's approval as required pursuant to the preceding Section 17 of this Agreement, Participating Lender may assign, transfer, convey, or otherwise dispose of all or, subject to the limitations specified in this Section 18, a fractional interest of the Participation Interest and to assign its rights and obligations under this Agreement, to a transferee that agrees to be bound by this Agreement by executing and delivering to MHDC an Assignment and Assumption Agreement in form and content acceptable to Participating Lender and MHDC. No such transfer, sale, pledge or other disposition of the Participation Interest or any interest therein shall be made unless that disposition is made pursuant to an effective registration statement under the 1933 Act and effective registration or qualification under applicable state securities laws, or unless the Participation Interest itself or such transfer, sale, pledge or other disposition does not require such registration or qualification. In the event that a disposition is to be made without registration or qualification, MHDC may require that Participating Lender and the proposed transferee establish to the reasonable satisfaction of MHDC that registration or qualification is not required, including, at MHDC's request, the delivery to MHDC of an opinion of counsel satisfactory to MHDC that the disposition may be made without such registration or qualification, which shall not be an expense of MHDC. MHDC is not obligated to register or qualify the Participation Interest under the 1933 Act or any other securities law.

18.2 No transfer, sale, pledge or other disposition of the Participation Interest shall be made to an employee benefit plan that is subject to the ERISA, in violation thereof. The proposed transferee of Participating Lender shall certify that it is acquiring its interest in the Participation Interest with its general corporate assets and not directly with the plan assets (the "**Plan Assets**") of either an "employee benefit plan" within the meaning of Section 3(3) of ERISA, as amended, or a "plan" as defined in Section 4975(e)(1) of the Code, other than a "governmental plan," as defined in Section 414(d) of the Code, with respect to which it is a "party in interest" within the meaning of Section 3(14) of ERISA or 4975(e)(2) of the Code; or if Participating Lender is purchasing said Participation Interest with such Plan Assets, MHDC may require Participating Lender to provide, at Participating Lender's expense, an opinion of counsel satisfactory to MHDC either that the purchase of the Participation Interest by it and the

transactions contemplated by this Agreement would not constitute a prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or the rules or regulations issued thereunder, or that a statutory exemption or administrative exemption from such prohibited transaction provision is available.

18.3 MHDC shall effect or cause the appropriate registrar empowered pursuant to a registration of the Participation Interest pursuant to the 1933 Act (if applicable) to effect the transfer of the Participation Interest, in whole or (consistent with Section 18.1 hereof) in part, to one or more transferees, pursuant to the request of Participating Lender, upon receipt of an assignment and assumption in the form and content reasonably acceptable to MHDC and Participating Lender and executed by Participating Lender and each assignee of any of Participating Lender's rights and obligations under this Agreement, together with the Participation Certificate previously issued to Participating Lender, provided the conditions to such transfer set forth in this Section 18 hereof have been fully satisfied. Upon receipt of the surrendered Participation Certificate and instrument of transfer, and compliance with the restrictions of this Section 18, MHDC shall cancel the Participation Certificate and issue one or more new Participation Certificates to and in the name of each assignee, representing the assignee's Participation Interest in the Mortgage Loan, and to the extent of the Participation Interest transferred, MHDC shall be deemed to have released Participating Lender from its obligations hereunder, except for any obligations that may have accrued prior to such transfer and which remain undischarged or obligations which by the terms of this Agreement survive termination.

18.4 It is understood and agreed that the percentage of the Participation Interest transferred by Participating Lender may be less than 100%; provided, however, MHDC shall have no obligation to re-register or exchange the Participation Certificate.

19. **Default by MHDC.**

19.1 The occurrence of any of the following shall be an "MHDC Default":

(a) MHDC (i) fails to make any remittance due under Section 14 hereof from payments actually received from Mortgagor for such purpose on the date such remittance is due and such failure continues for three (3) Business Days after notice; (ii) fails to make any other remittance due under this Agreement on the date such payment is due and such failure continues for three (3) Business Days after notice; (iii) has received within a period of twelve (12) months three (3) notices of the type described in clause (i) or clause (ii) above regardless of whether such late remittances have been cured or corrected; or (iv) fails to perform any of its other duties hereunder or shall fail to comply fully with any term or condition of this Agreement and fails within thirty (30) days after written notice from Participating Lender to correct or cure such failure;

(b) MHDC assigns, hypothecates, pledges or transfers in any manner this Agreement or any of MHDC's rights hereunder, or suffers the creation of any lien upon, or security interest in, or the transfer of, any of MHDC's rights hereunder, by operation of law or otherwise in favor of an assignee, transferee, pledgee, or secured party; or MHDC delegates any of its duties, responsibilities or obligations hereunder, without the express written consent of Participating Lender.

(c) MHDC is responsible for the occurrence of a Termination Event (as such term is defined in Section 20.1 below).

19.2 In the event of an MHDC Default pursuant to Section 19.1(a)(i), (ii) or (iii) above, MHDC may cure such default by entering into a Subservicing Agreement acceptable to Participating Lender pursuant to Section 15. In the event MHDC declines to enter into such a Subservicing Agreement, and/or in the event of any other MHDC Default, Participating Lender may require MHDC to buy-back its Participation Interest as provided for in Section 20 below.

20. **Termination of Agreement.**

20.1 **Causes of Termination.** Upon the happening of any one or more of the following events (each a “**Termination Event**”), each of MHDC or Participating Lender may, subject to the provisions of Section 20.2 below, terminate this Agreement (but not MHDC’s obligation to administer the Mortgage Loan) and shall have the right to exercise any of the other remedies specified herein:

(a) The occurrence of an MHDC Default, subject to the terms and conditions set forth under Section 19.2 of this Agreement;

(b) The failure of MHDC or Participating Lender to timely fund or continue to fund its respective pro rata portion of its respective share of the Mortgage Loan;

(c) The failure of MHDC or Participating Lender to duly observe or perform, in any material respect, any other covenant, condition or agreement in this Agreement for a period of thirty (30) days after notice is provided to such non-performing party specifying such failure and requesting it to be remedied, unless MHDC or Participating Lender, as the case may be, shall agree in writing to an extension of such time for performance; provided, however, if the failure stated in the notice cannot be corrected within the applicable cure period, MHDC or Participating Lender, as the case may be, will not unreasonably withhold its consent to an extension of such cure period if corrective action has been instituted by the non-performing party within the applicable cure period and provided the non-performing party continues to diligently pursue corrective action until the default is corrected;

(d) A decree or order of a court, or agency or a supervisory authority having jurisdiction in the matter where the appointment of a conservator or receiver or liquidator in any insolvency, readjustment or debt, marshaling of assets and liabilities or similar proceedings, or for the winding-up or liquidation of its affairs, shall have been entered against MHDC or Participating Lender, as the case may be, and such decree or order shall have remained in force undischarged or unstayed for a period of sixty (60) days;

(e) MHDC or Participating Lender shall have consented to the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debts, marshaling of assets and liabilities or similar proceedings of or relating to them or either of them or of or relating to all or substantially all of their property; or,

(f) MHDC or Participating Lender shall admit in writing to its respective inability to pay its respective debts generally as they become due, file a petition to take advantage of any applicable insolvency or reorganization statute, make an assignment for the benefit of its respective creditors, or voluntarily suspend payment of its respective obligations.

20.2 **Remedies.** Notwithstanding anything else in this Agreement to the contrary, whenever any Termination Event shall have occurred and/or be continuing, MHDC or Participating Lender, as the case may be, may take any one or more of the following remedial actions:

(a) By notice in writing to the other party, MHDC or Participating Lender, as the case may be, may, subject to applicable state and federal law, and subject to the buy-back rights set forth in Section 21 below, terminate this Agreement as to all future rights and obligations of MHDC or Participating Lender, as the case may be, to make or participate in the Mortgage Loan as contemplated hereunder (but not the right of MHDC or Participating Lender to receive its pro rata share of the undivided principal and interest due it or either of them from any portion of the Mortgage Loan made prior to termination of this Agreement); and,

(b) MHDC or Participating Lender, as the case may be, may take any other action at law or in equity which it may deem necessary or desirable under this Agreement in order to enforce the performance and observance of any obligation, agreement or covenant under this Agreement with respect to which such an event has occurred.

21. **Buy-Back of Participation Interest.**

21.1 **Buy-Back Option on the Mortgage Loan.** In the event that either (a) there is a disagreement between MHDC and Participating Lender concerning any matter which requires mutual consent of both parties under this Agreement and MHDC and Participating Lender are unable to reach an agreeable resolution, (b) an uncured Mortgagor Default occurs and MHDC desires to pursue a Default Remedy in which Participating Lender does not reasonably agree, (c) a casualty or condemnation of the Development is suffered and MHDC desires to permit repair or restoration that would not be complete prior to the maturity of the Mortgage Loan (unless Participating Lender approves an extension of such maturity date), or (d) Participating Lender is responsible for the occurrence of a Termination Event, MHDC may, at its option, repurchase the Participating Lender's Participation Interest for a purchase price equal to 100% of the unpaid balance of such Participation Interest and the interest thereon at the Participation Interest Rate through the date of payment to Participating Lender, within fifteen (15) days after notice is given by Participating Lender.

21.2 **MHDC Buy-Back Obligation Upon Event of MHDC Default.** In the event of any MHDC Default (except for a default under Sections 19.1(a)(i), (ii) or (iii) unless MHDC declines to enter into a Subservicing Agreement) where MHDC fails to cure such default within thirty (30) days, MHDC shall have the obligation to repurchase the Participation Interest from Participating Lender for a purchase price equal to 100% of the unpaid balance of the Participation Interest plus the interest accrued thereon at the Participation Interest Rate through the date of payment to Participating Lender, within fifteen (15) days after notice is given by Participating Lender. Participating Lender shall immediately thereafter transfer the Participation Interest to MHDC by assigning and returning the Participation Certificate to MHDC.

22. **Additional Agreements.**

22.1 **Allocation of Loss Agreement.** In the event of a foreclosure sale of the Development, a deed in lieu thereof, or application of any other prepayment (including without limitation, as a result of any casualty or condemnation) (each, a "**Prepay Event**"), MHDC and Participating Lender will divide any gains and losses proportionate to their respective Participation Percentages (the "**Allocation of Loss Agreement**").

22.2 **Construction Guaranty.** With respect to the Construction Loan, MHDC provides the following guaranties to Participating Lender (collectively, the "**Construction Guaranty**"):

(a) MHDC guarantees, for the benefit of Participating Lender and each and every present and future holder or holders of the Participation Certificate, that it will obtain completion assurance on the Development in the form of either (i) a performance and payment bond in the amount of one hundred percent (100%) of the value of the construction contract for the Development or (ii) an unconditional, irrevocable, non-documentary letter of credit in the face amount of fifteen percent (15%) of the value of the construction contract for the Development (the "**Completion Assurance Documents**") to help ensure that all construction obligations of the Mortgagor for completion of the Development (referred to herein as "**Construction Obligations**") are completed prior to the maturity of the Construction Loan (as the same may be extended by MHDC to the extent permitted by the Participating Lender), free and clear of any and all liens, charges, security interests and claims of any kind and nature whatsoever, except as otherwise approved by MHDC and Participating Lender.

(b) In the event of a Mortgagor Default, MHDC agrees to pursue all rights and remedies available to it under the Completion Assurance Documents in order to secure the performance of the Construction Obligations and to diligently pursue performance thereof to completion, as described below. In pursuing completion of the Development, MHDC assumes no responsibility for and will not be liable to Participating Lender for any errors or omissions of Mortgagor, the contractors, the architect, any subcontractor, or any agent or employee of any of them in design, supervision or performance of the work.

(c) For purposes of this Section 22, the Construction Obligations shall be deemed to be completed upon receipt by Participating Lender of (i) a certificate of completion from the Development architect attesting to substantial completion of the Construction Obligations, (ii) issuance of a final certificate of occupancy with respect to the Development issued by the applicable governmental authority, and (iii) construction date-down and interim mechanics' lien endorsements to the Title Policy, insuring the continuing validity and priority of the Mortgage Loan Documents for the full amount of the Mortgage Loan theretofore disbursed, excepting only such items as shall be permitted under the Mortgage Loan Documents, and insuring over mechanics' and materialmen's liens arising (or which may arise) from work performed and materials supplied in connection with the construction of the Construction Obligations prior to the date of satisfaction of the conditions described in this Section 22.

(d) Without in any way limiting the above obligations of MHDC, Participating Lender agrees to make the undisbursed proceeds of the purchase of its Participation Interest available to MHDC (subject to the terms and conditions of this Agreement) for the purposes of completing the Development and fulfilling MHDC's other obligations under this Construction Guaranty, provided that MHDC cures any Mortgagor Defaults which are susceptible to cure by Mortgagor or MHDC.

22.3 MHDC's Duties and Liabilities. MHDC makes no representations and assumes no responsibility with respect to the validity, collectability or enforceability of the Mortgage Loan or any of the Collateral therefore, or as to the truth, correctness, validity or enforcement of any provision contained in the Security Documents or in any instrument, certificate, opinion or other document delivered or to be delivered to MHDC in connection with the Mortgage Loan. So long as MHDC acts in good faith, MHDC will incur no liability to Participating Lender and will be responsible only for gross negligence or willful misconduct by MHDC. Participating Lender hereby appoints MHDC to administer and service the Mortgage Loan, to give and receive all notices required under this Agreement and Under the Security Documents, and to collect all funds due and owing by the Mortgagor under the terms of any of the Mortgage Loan Documents. MHDC will promptly notify Participating Lender of any default by Mortgagor under the Mortgage Loan Documents upon MHDC first acquiring knowledge of such default(s).

22.4 Limitation on Liability. Except as otherwise provided for under this Agreement, all obligations of MHDC and Participating Lender incurred hereunder shall be limited obligations of MHDC and Participating Lender, payable solely out of the proceeds derived by MHDC and Participating Lender from the Mortgage Loan (including earnings thereon, fees therefrom, insurance and condemnation proceeds with respect thereto and certain reserve funds established in connection therewith). Nothing contained hereunder shall create any indebtedness or be construed to create any moral obligation on the part of MHDC or Participating Lender to fund any portion of its respective interest in the Mortgage Loan. No provision hereof shall be construed to impose any personal pecuniary liability upon any director, official, commissioner or employee of MHDC or Participating Lender. Furthermore, nothing in this Agreement shall be deemed to create any liability upon MHDC or Participating Lender for failure of the Mortgage Loan to close, both parties hereto understanding that this Agreement is being entered into without any express or implied representation or guarantee that the Borrower will ultimately fulfill all requirements necessary to allow MHDC and Participating Lender to close on the Mortgage Loan

22.5 Title to Security Documents. Legal title and physical possession of the original Security Documents will be held by and in the name of MHDC. MHDC will, upon Participating Lender's request, provide

Participating Lender with copies of such executed Security Documents after the same have been fully executed and acknowledged.

22.6 **Collateral.** To the extent applicable, legal title and physical possession of any Collateral will be held by and in the name of MHDC at all times herein. Participating Lender, to the extent of its undivided Participation Interest in the Mortgage Loan, will be entitled to the benefit of any such Collateral and shall be deemed to have an equitable ownership interest therein, equal to its ownership percentage in the Mortgage Loan as described herein.

22.7 **Fees and Expenses.** During the term of the Mortgage Loan, Participating Lender will not be required to pay MHDC for any servicing fees or expenses related to the Mortgage loan; provided, however, MHDC and Participating Lender shall be entitled to retain any servicing fees, funding fees, commitment fees, modification fees, late charge payments, extension fees or similar fees to be paid by Mortgagor pursuant to the Mortgage Loan Documents, pro rata as to their respective participation interests in the Mortgage Loan. Participating Lender will reimburse MHDC in accordance with its undivided Participation Interest in the Mortgage Loan for all reasonable out-of-pocket costs and expenses, attorney's fees, trustees' fees, publication and title costs, court costs and collection expenses, which are incurred by MHDC in enforcing any right or remedy under the Security Documents. If, after a default, such out-of-pocket costs and expenses have not otherwise been recovered by MHDC from Mortgagor, or from Participating Lender's pro rata share of its undivided interest in the collected funds, then at the time of any distributions thereof, MHDC is hereby authorized to Participating Lender's share of any such expenses from any sums payable to MHDC hereunder.

23. **Conditions for Conversion to Permanent Loan; Conversion Date.** Without Participating Lender's written approval (which may be withheld in Participating Lender's reasonable discretion), in no event may the Construction Loan be converted to a Permanent Loan if (a) a default exists under the Construction Loan, or (b) any requirements imposed on Mortgagor by Participating Lender have not been satisfied.

24. **Notices.** Any notices or requests required or permitted hereunder shall be in writing, and may be delivered by hand, first class, registered or certified mail, express delivery, or telecopy or other telecommunication device capable of confirmation of receipt, to the address provided in Exhibit "B" (as such address maybe updated by the requesting party in writing).

25. **Miscellaneous.**

25.1 This Agreement cannot be modified, extended or terminated except by a written instrument signed by the parties hereto, nor may any of its provisions be waived except by an instrument in writing signed by the party waiving its rights under this Agreement.

25.2 Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than Participating Lender and MHDC, any right, remedy or claim under or by any reason of this Agreement or any covenant, condition or stipulation hereof.

25.3 This Agreement shall survive the closing of the Mortgage Loan.

24.4 If any one or more of the terms or conditions set forth in this Agreement is waived by a party hereto, such waiver shall in no way affect the validity or effectiveness of the remaining terms and conditions in this Agreement. If any one or more of the covenants, agreements, provisions or terms of this Agreement shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement. No waiver by a party of any obligation or

forbearance to exercise any right hereunder shall be deemed to be binding on such party in future instances where such right may be available to it.

25.5 Neither party may assign this Agreement without the prior written consent of the other party hereto. MHDC shall not sell, pledge, assign or otherwise transfer all or any portion of the remaining undivided beneficial ownership interest in the Mortgage Loan, directly or indirectly, without the prior written approval of Participating Lender.

25.6 This Agreement shall be governed by the laws of the State of Missouri. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

25.7 MHDC and Participating Lender shall each be liable for their own expenses, including legal expenses, relating to the execution and performance of this Agreement.

25.8 Neither the execution of this Agreement, nor any sharing in the benefits and burdens by MHDC and Participating Lender in respect of the Mortgage Loan or in the proceeds thereof, is intended nor shall be construed to constitute the formation of a partnership or joint venture between MHDC and Participating Lender, nor shall it be construed to be an extension of credit or a loan by Participating Lender to MHDC. It is agreed that Participating Lender shall be the holder of the Participation Interest and a beneficial owner of the Mortgage Loan.

25.9 In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

25.10 To the extent permitted by law, MHDC and Participating Lender agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Agreement.

25.11 MHDC and Participating Lender agree that this Agreement contains the entire understanding and agreement of MHDC and Participating Lender, subject to the covenants, terms and agreements herein, and that this Agreement may not be changed, modified, amended, altered or terminated, except by agreement in writing, signed by the party against whom such change, modification, amendment, alteration or termination is sought.

25.12 In the event MHDC or Participating Lender should fail to perform any of its respective obligations under any of the provisions of this Agreement wherein either party must institute legal action to compel the non-performing party to fulfill its obligations hereunder, MHDC and Participating Lender agree that the non-prevailing party in any such legal action will pay or reimburse the prevailing party on demand for the prevailing party's reasonable costs and attorney's fees incurred as a result of instituting the legal action necessary to enforce the terms of this Agreement.

25.13 Unless otherwise expressly provided for herein, no remedy conferred upon MHDC and/or Participating Lender under this Agreement is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to the other remedies given under this Agreement or otherwise available at law or in equity.

25.14 The descriptive headings contained in this Agreement are for convenience only, and are not to be used in the construction of the content of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written

Participating Lender:

PARTICIPATING LENDER BANK

By: _____

Name: _____

Title: _____

MHDC:

MISSOURI HOUSING DEVELOPMENT COMMISSION

By: _____
Tina Beer, Director of Operations

EXHIBIT A
Legal Description

EXHIBIT B

Participation Loan Details

Construction Loan Participation Interest: \$ _____ / _____% of the total construction loan

Construction Loan Buy-Down: \$ _____

Permanent Loan Participation Interest: \$ _____ / _____% of the total permanent loan

Interest Rate for Permanent Loan Participation Interest: _____%

Construction Loan Commitment Fee: \$ _____

Permanent Loan Commitment Fee: \$ _____

Participating Lender Commitment Fee: \$ _____

Late Fee: \$ _____

Notices:

Notices for MHDC shall be sent to:

Missouri Housing Development Commission
920 Main Street, Suite 1400
Kansas City, Missouri 64105
Attn: Legal Department

Notices for Participating Lender shall be sent to:

Attention: _____

EXHIBIT C

Form of Participation Certificate

THIS PARTICIPATION CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE. ANY RESALE OR TRANSFER OF THIS PARTICIPATION CERTIFICATE WITHOUT REGISTRATION THEREOF UNDER THE ACT AND SUCH LAWS MAY ONLY BE MADE IN A TRANSACTION EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE ACT AND SUCH LAWS AND IN ACCORDANCE WITH THE PROVISIONS OF THE PARTICIPATION AGREEMENT REFERRED TO HEREIN.

PARTICIPATION CERTIFICATE

Evidencing a participation interest in the mortgage loan described below (the "**Mortgage Loan**") in the original principal amount of \$_____ with respect to [Project name].

Date of Mortgage Loan:

Funding Date:

Permanent Loan Rate: _____%

Construction Loan Rate: _____%

THIS CERTIFIES THAT [Participating Lender Name] ("**Participating Lender**") is the registered owner of a participation interest in the Mortgage Loan in the amount of \$_____ (which amount has been advanced by Participating Lender or will be advanced up to such amount after the date hereof), currently held by the Missouri Housing Development Commission ("**MHDC**") as mortgagee of record and servicer, pursuant to the Loan Participation Agreement, dated as of _____, _____, between Participating Lender and MHDC, as the same may be modified or amended from time to time (the "**Participation Agreement**"). This Participation Certificate is issued under and is subject to the terms, provisions and conditions of the Participation Agreement and cannot be assigned or transferred except in accordance with the Participation Agreement.

MHDC certifies to Participating Lender that the full original principal amount of the Mortgage Loan has been or will be (pursuant to the Participation Agreement) advanced to the Borrower, that the Mortgage Loan Commitment, as of the Funding Date, is the amount shown below, and all the specific information below concerning the Mortgage Loan are true, complete and accurate, to the best of its knowledge, belief and information:

Name of Mortgaged Property:

MHDC Project Number:

Project Address:

Project Description:

Identity of Borrower:

	NAME AND ADDRESS	TAXPAYER I.D. #
Borrower:		
General partner or Managing Member(s):		

Tax Credit Limited Partner or Member(s):		
Key Principals:		

Current principal balance (as of the Funding Date): \$ _____ / \$ _____ upon conversion

Participating Lender's participation percentage in the Mortgage Loan: _____ %

Participation Principal Amount: \$ _____ / \$ _____ upon conversion

Mortgage Loan Term: ____ months Construction / ____ months Permanent

Amortization Period: ____ months

Description of Secondary Financing, if any: See Attached Addendum

Special Terms and Conditions, if any: See Attached Addendum

The Participation Certificate represents an obligation of MHDC to the extent provided in the Participation Agreement. This Participation Certificate is limited in right of payment to certain collections and recoveries respecting the Mortgage Loan, and pursuant to the Amortization Schedule attached as Exhibit A hereto and all other matters set forth in the Participation Agreement, all as more specifically set forth in the Participation Agreement.

IN WITNESS WHEREOF, MHDC has caused this Participation Certificate to be duly executed.

MISSOURI HOUSING DEVELOPMENT COMMISSION

By: _____

Printed Name: _____

Title: _____

EXHIBIT A

AMORTIZATION SCHEDULE

See Attached