

**Resolution finding the authorization and purchase of the properties by the Corpus Christi Housing Authority related to the apartment complexes of Armon Bay, Azure, Churchill Square, Ocean Palms Apartments, Sandcastle, Sawgrass, South Lake Ranch, Stoneleigh Apartment, The Icon, The Summit, The Veranda, Tuscany Bay South, Villas of Ocean Drive, Arts at Ocean Drive, Caspian Apartments, Gulf Breeze, Shadow Bend, Bay Vista, Bay Vista Point, Baypoint, and Solana Vista void by operation of law; and finding the related memorandum of understandings, ground leases, and operating agreements illegal; requesting the Corpus Christi Housing Authority to acknowledge the findings herein and to immediately terminate the void/illegal land acquisitions, related contracts, and actions.**

**Whereas**, Corpus Christi Housing Authority (herein after referred to as “CCHA”) engaged in a scheme to sell its tax-exempt status through an elaborate set of transactions and agreements with private entities, for the following existing apartment complexes: Armon Bay, Azure, Churchill Square, Ocean Palms Apartments, Sandcastle, Sawgrass, South Lake Ranch, Stoneleigh Apartment, The Icon, The Summit, The Veranda, Tuscany Bay South, Villas of Ocean Drive, Arts at Ocean Drive, Caspian Apartments, Gulf Breeze, Shadow Bend, Bay Vista, Bay Vista Pointe, Baypoint, and Solana Vista (Herein after referred to as “Apartment Complexes”);

**Whereas**, the Texas Open Meetings Act requires a governmental body to give written notice of the date, hour, place, and subject of each meeting held by the governmental body;

**Whereas**, the Court of Appeals, Thirteenth District, has found that in determining the adequacy of a notice under the Texas Open Meetings Act, courts consider if the notice informs the reader that some action will be considered regarding the topic for consideration; and a heightened standard for the notice is required regarding subjects slated for discussion that represent special interest to the public; and the required specificity of the notice is directly related to the level of public interest in the topic to be discussed and increases as the public’s level of interest increases;

**Whereas**, under the Texas Open Meetings Act, action taken by a governmental body in violation of the Act is voidable;

**Whereas**, under the CCHA Bylaws, “The CEO may not enter into contracts for the purchase or sale of Real Property without specific Commission Resolution so authorizing.”;

**Whereas**, Texas Local Government Code §392.053 requires the commissioners to hold a public meeting at the closest available facility to the site of the proposed housing project;

**Whereas**, Texas Local Government Code §392.054 requires, in addition to any other notice required by law, the commissioners of an authority to post notice of a meeting

for a proposed housing project before the 30th day before the date of the meeting on a bulletin board at a place convenient to the public in:

- (1) the county courthouse of the county in which the proposed site is located;
- (2) the city hall of the municipality in which the proposed site is located;
- (3) in a newspaper with, or in newspapers that collectively have, general circulation in the county in which the proposed project is located; and
- (4) At a location at the proposed site that is visible from a regularly traveled thoroughfare;

**Whereas**, Texas Local Government Code §392.055 provides that a housing authority may rent or lease housing only to persons of low income and only at rentals that persons of low income can afford;

**Whereas**, Texas Local Government Code §392.055 provides that a housing authority may not rent or lease housing to a tenant that consists of a greater number of rooms than the number the authority considers necessary to provide safe and sanitary housing to the proposed occupants without overcrowding;

**Whereas**, the CCHA creation of limited liability companies in Delaware pursuant to the Memorandum of Understanding(s) does not evade the legal requirements of Texas Local Government Code §392.055.

**Whereas**, each private owner of the apartment complex has the right to compel the transfer of the real property upon loss of the tax exemption, and said tax exemption cannot be granted for the issues identified in this resolution, and therefore each private apartment complex owner hold "equitable title" in the land and improvement there on;

**Whereas**, the Apartment Complexes provided rent at levels below 80% AMI prior to the transactions with the CCHA, and such transactions did not create any new affordable housing for low-income persons;

**Whereas**, the Texas Constitution Article III, Sec. 52 provides that "the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company."; and

**Whereas**, the CCHA failed to ensure that the agreements for the Apartment Complexes met industry best practices for analysis and operations of affordable housing including but not limited to conducting market analysis that compared existing rents to affordable rent limits to demonstrate need, providing compliance requirements and materials at the commencement of operations ensuring standard income verification processes and documentation requirements across the WHO portfolio, failing to include

tenant paid utilities in the affordable rent limits, and failed to include provisions for supportive services for those at the 60 percent area median income.

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS, THAT:**

**Section 1.** The City Council finds that the notices for the CCHA meetings (See **Exhibit A**) violate the Texas Open Meetings Act because they failed to adequately inform the public that some action would be considered regarding the purchase of real estate for the housing project related to the Apartment Complexes, and consequently the CCHA purchase of real estate for the housing project related to the Apartment Complexes and related contracts are void.

**Section 2.** The City Council finds that the CCHA commission did not give the CCHA CEO “specific authority” to purchase or sell real property for the housing project related to the Apartment Complexes (See sample Resolutions in **Exhibit B**) as required by the CCHA Bylaws (**Exhibit C**) and consequently the purchase of real estate for the housing project related to the Apartment Complexes was ultra vires act and is void (See sample Special Warranty Deed in **Exhibit D**).

**Section 3.** The City Council finds that the CCHA commission meetings (See **Exhibit E**) to approve the housing projects for Apartment Complexes failed to meet the meeting location and 30-day notice requirements of Texas Local Government Code Sec. 392.053 and 392.054, and consequently, such approvals are void.

**Section 4.** The City Council finds the memorandum of understandings (See sample MOU in **Exhibit F**), ground lease (See sample ground lease in **Exhibit G**), Regulatory Agreement (See sample regulatory agreement **Exhibit H**) operating agreements (See sample operating agreement in **Exhibit I**) do not limit all units of the Apartment Complexes to rent only to person of low income per CCHA Policy (**Exhibit J**) and rooms numbers necessary to provide safe and sanitary housing, therefore, such agreements exceed the powers and duties of the CCHA pursuant to Texas Local Government Code 392.055, and consequently such memorandum of understandings, ground leases, and operating agreements related to the Apartment Complexes are illegal.

**Section 5.** The City Council finds that the ground leases (See sample ground lease in **Exhibit G**) and operating agreements (See Sample operating agreement in **Exhibit I**) provide the non-public company an exclusive right to purchase the land for the Apartment Complexes, therefore, granting “equitable title” to the non-public owner and hence the land is not tax exempt under Texas Local Government Code §392.005.

**Section 6.** The City Council finds that the Grantor of real property for the Apartment Complexes retained equitable title to “ANY IMPROVEMENTS, STRUCTURES, BUILDINGS, OR FIXTURES PLACED, CONSTRUCTED, AND/OR INSTALLED UPON THE PROPERTY,” and therefore, such buildings are not tax exempt under Texas Local Government Code §392.005. (See sample Special Warranty Deed in **Exhibit D**)

**Section 7.** The City Council finds that the structure of the transactions for Apartment Complexes results in the lending credit of the CCHA, which violates Article III, Section 52 of the Texas Constitution and is therefore unconstitutional.

**Section 8.** The City Council requests that the CCHA take immediate action to acknowledge the findings herein.

**Section 9.** The City Council requests that the CCHA take immediate action to terminate the agreements related to the Apartment Complexes.

**Section 10.** The City Council requests that the CCHA take immediate action to revoke the property acquisitions for the Apartment Complexes and return the land for the Apartment Complexes to the prior owners.

**Section 11.** The City Council requests that the CCHA take immediate action to dissolve the CCHA subsidiaries formed in Delaware (See Sample Delaware LLC in **Exhibit K**) in furtherance of CCHA's attempt to sell its property tax exemption.

PASSED and APPROVED on the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

ATTEST:

\_\_\_\_\_  
Paulette Guajardo, Mayor

\_\_\_\_\_  
Rebecca Huerta, City Secretary



# **EXHIBIT A**

**CCHA AGENDAS APR 2024 THRU MARCH 2025**

BOARD OF COMMISSIONERS  
CORPUS CHRISTI HOUSING AUTHORITY  
ANNUAL BOARD MEETING  
April 24, 2024  
11:30 a.m.

**AGENDA**

**CALL TO ORDER**

Roll Call

**INSTALLATION OF BOARD MEMBERS: OATH OF OFFICE**

- a. Cathy Mehne: Reappointment
- b. Dr. Brian Tietje: Reappointment
- c. Richard Balli: Reappointment
- d. Christine Belin: New Appointment

**ELECTION OF OFFICERS**

**EXECUTIVE SESSION** (Scheduled 11:30a.m. - 12:30 p.m)

- a. Legal Matters (Texas Government Code Ann. Section 551.071) (Vernon 1994)
- b. Deliberations about Real Property (Texas Government Code Ann. Section 551.072)
- c. Personnel Matters (Texas Government Code Ann. Section 551.074)

**MINUTES**

Regular Board Meeting of March 20, 2024

Sea Breeze Board of Directors Meeting of March 20, 2024

Special Board Meeting of March 25, 2024

**PUBLIC COMMENTS**

**CONSENT AGENDA**

Write Offs: Tax Credit & BBG Properties for March

**ITEMS FOR CONSIDERATION**

- |                          |  |
|--------------------------|--|
| Action Item No. 24-HR-11 | Consider Approval of Changes to Personnel Policy                         |
| Action Item No. 24-EO-12 | Consider Ratification of Bylaws for the Corpus Christi Housing Authority |
| Action Item No. 24-EO-13 | Consider Ratification of Bylaws for Corpus Christi Finance Corporation   |
| Action Item No. 24-EO-14 | Consider Ratification of Bylaws for Bahia Properties                     |
| Action Item No. 24-EO-15 | Consider Ratification of Bylaws for Bluebonnet Gardens                   |
| Action Item No. 24-EO-16 | Consider Ratification of Bylaws for Royal Palm Gardens                   |
| Action Item No. 24-EO-17 | Consider Ratification of Bylaws for Thanksgiving Homes                   |
| Action Item No. 24-EO-18 | Consider Ratification of Bylaws for Sea Breeze                           |
| Action Item No. 24-EO-19 | Consider Letter of Support   |

**COMMENTS / REPORTS**

- Financial Report
- Chief Executive Officer Report
- Chair/Board Comments

**UPCOMING MEETINGS**

May 29, 2024

**ADJOURNMENT**

BOARD OF COMMISSIONERS  
CORPUS CHRISTI HOUSING AUTHORITY  
REGULAR BOARD MEETING  
June 12, 2024  
11:30 a.m.

AGENDA

CALL TO ORDER

Roll Call

EXECUTIVE SESSION (Scheduled 11:30a.m. - 12:30 p.m)

- a. Legal Matters (Texas Government Code Ann. Section 551.071) (Vernon 1994)
- b. Deliberations about Real Property (Texas Government Code Ann. Section 551.072)
- c. Personnel Matters (Texas Government Code Ann. Section 551.074)

MINUTES

Annual Board Meeting of April 24, 2024

PUBLIC COMMENTS

CONSENT AGENDA

Write Offs: Tax Credit & BBG Properties for April

ITEMS FOR CONSIDERATION

- Action Item No. 24-EO-20 Consider Memorandum of Understanding
- Action Item No. 24-EO-21 Consider Approval of Corpus Christi Housing Authority Annual PHA Plan

COMMENTS / REPORTS

- Financial Report
- Chief Executive Officer Report
- Chair/Board Comments

UPCOMING MEETINGS

July 24, 2024

ADJOURNMENT

this is what  
is on for  
may 29, 2024

BOARD OF COMMISSIONERS  
CORPUS CHRISTI HOUSING AUTHORITY  
REGULAR BOARD MEETING  
June 12, 2024  
11:30 a.m.

**AGENDA**

**CALL TO ORDER**

Roll Call

**EXECUTIVE SESSION** (Scheduled 11:30a.m. - 12:30 p.m)

- a. Legal Matters (Texas Government Code Ann. Section 551.071) (Vernon 1994)
- b. Deliberations about Real Property (Texas Government Code Ann. Section 551.072)
- c. Personnel Matters (Texas Government Code Ann. Section 551.074)

**MINUTES**

Annual Board Meeting of April 24, 2024

**PUBLIC COMMENTS**

**CONSENT AGENDA**

Write Offs: Tax Credit & BBG Properties for April

**ITEMS FOR CONSIDERATION**

- Action Item No. 24-EO-20      Consider Memorandum of Understanding
- Action Item No. 24-EO-21      Consider Approval of Corpus Christi Housing Authority Annual PHA Plan

**COMMENTS / REPORTS**

- Financial Report
- Chief Executive Officer Report
- Chair/Board Comments

**UPCOMING MEETINGS**

July 24, 2024

**ADJOURNMENT**

BOARD OF COMMISSIONERS  
CORPUS CHRISTI HOUSING AUTHORITY  
REGULAR BOARD MEETING

July 31, 2024  
11:30 a.m.

AGENDA

**CALL TO ORDER**

Roll Call

**EXECUTIVE SESSION** (Scheduled 11:30a.m. - 12:30 p.m)

- a. Legal Matters (Texas Government Code Ann. Section 551.071) (Vernon 1994)
- b. Deliberations about Real Property (Texas Government Code Ann. Section 551.072)
- c. Personnel Matters (Texas Government Code Ann. Section 551.074)

**MINUTES**

Regular Board Meeting June 12, 2024

**PUBLIC COMMENTS**

**CONSENT AGENDA**

Write Offs: Tax Credit & BBG Properties for May & June

**ITEMS FOR CONSIDERATION**

- Action Item No. 24-HCV-22: Consider Approval Amendments to Housing Choice Voucher Program Administrative Plan
- Action Item No. 24-FIN-23: Consider Approval of Organizational Restructure/Realignment
- Action Item No. 24-EO-24: Consider Approval of Bahia Properties, DBA, Coastal Housing Partners Bylaws
- Action Item No. 24-FIN-25: Consider Approval of Contractual Agreement for Road and Concrete Work Planned Unit Development at the corner of Aztec and Osage
- Action Item No. 24-FIN-26: Consider Approval of Contractual Agreement for the La Armada II HVAC Retrofit Upgrades
- Action Item No. 24-EO-27: Consider Approval of Memorandum of Understanding – Cameron County Housing Finance Corporation
- Action Item No. 24-EO-28: Consider Approval of Memorandum of Understanding Brixton Sawgrass, LLC et. Al
- Action Item No. 24-EO-29: Consider Approval of Memorandum of Understanding Brixton Everhart, TIC et. Al
- Action Item No. 24-EO-30: Consider Approval of Memorandum of Understanding 6533 Patti, LP
- Action Item No. 24-EO-31: Consider Approval of Memorandum of Understanding 802 Barry 3 LLC

**COMMENTS / REPORTS**

- Financial Report
- Chief Executive Officer Report
- Chair/Board Comments

**UPCOMING MEETINGS**

August 27, 2024

**ADJOURNMENT**

BOARD OF COMMISSIONERS  
CORPUS CHRISTI HOUSING AUTHORITY  
REGULAR BOARD MEETING  
August 28, 2024  
11:30 a.m.

**AGENDA**

**CALL TO ORDER**

Roll Call

**EXECUTIVE SESSION** (Scheduled 11:30a.m. - 12:30 p.m)

- a. Legal Matters (Texas Government Code Ann. Section 551.071) (Vernon 1994)
- b. Deliberations about Real Property (Texas Government Code Ann. Section 551.072)
- c. Personnel Matters (Texas Government Code Ann. Section 551.074)

**MINUTES**

Regular Board Meeting July 31, 2024

**PUBLIC COMMENTS**

**CONSENT AGENDA**

Write Offs: Tax Credit & BBG Properties

**ITEMS FOR CONSIDERATION**

- Action Item No. 24-HCV-32: Consider Approval of Amendment to Housing Choice Voucher Program Administrative Plan
- Action Item No. 24-HR-33: Consider Approval of Addendum to 2024 CCHA Personnel Policy – Sick Leave
- Action Item No. 24-AS-34: Consider Approval of Renewal of Interlocal Agreement with Texas Municipal League Intergovernmental Risk Pool
- Action Item No. 24-FIN-35: Consider Acceptance of 2023 CCHA Audit Fiscal Year Ended 09/30/2023
- Action Item No. 24-EO-36: Consider Approval of Memorandum of Understanding – TX Azure Apartments 1, LLC
- Action Item No. 24-EO-37: Consider Approval of Memorandum of Understanding – PRE Baypoint, LLC

**COMMENTS / REPORTS**

- Financial Report
- Chief Executive Officer Report
- Chair/Board Comments

**UPCOMING MEETINGS**

September 18<sup>th</sup> or 24<sup>th</sup>

**ADJOURNMENT**

BOARD OF COMMISSIONERS  
CORPUS CHRISTI HOUSING AUTHORITY  
REGULAR BOARD MEETING  
October 30, 2024  
11:30 a.m.

AGENDA

CALL TO ORDER

Roll Call

EXECUTIVE SESSION (Scheduled 11:30a.m. - 12:30 p.m)

- a. Legal Matters (Texas Government Code Ann. Section 551.071) (Vernon 1994)
- b. Deliberations about Real Property (Texas Government Code Ann. Section 551.072)
- c. Personnel Matters (Texas Government Code Ann. Section 551.074)

MINUTES

Regular Board Meeting August 28, 2024

PUBLIC COMMENTS

CONSENT AGENDA

Write Offs: Tax Credit & BBG Properties

ITEMS FOR CONSIDERATION

Action Item No. 24-HCV-38:	Consider Approval of CLEAR Program
Action Item No. 24-EO-39:	Consider Memorandum of Understanding – Churchill Square Apartments
Action Item No. 24-EO-40:	Consider Memorandum of Understanding – Caspian Apartments
Action Item No. 24-FIN-41:	Consider Ratifying Purchase of Real Property
Action Item No. 24-FIN-42:	Consider Ratifying Purchase of HVAC Equipment
Action Item No. 24-FIN-43:	Consider Approval of CCHA & CHP 2024-2025 Budget
Action Item No. 24-FIN-44:	Consider Ratifying Installation of HVAC Equipment – CC Breeze Heating
Action Item No. 24-FIN-45:	Consider Approval Installation of HVAC Equipment – J.A.G. Heating & Cooling
Action Item No. 24-FIN-46:	Consider Approval Installation of HVAC Equipment – 681 Contactors, LLC

COMMENTS / REPORTS

- Financial Report
- Chief Executive Officer Report
- Chair/Board Comments

UPCOMING MEETINGS

December Retreat

ADJOURNMENT

# CORPUS CHRISTI HOUSING AUTHORITY

---



## TO THE COMMISSIONERS OF THE CORPUS CHRISTI HOUSING AUTHORITY PUBLIC NOTICE

### TAKE NOTICE THAT THE SPECIAL BOARD MEETING OF THE

Commissioners of the Corpus Christi Housing Authority will be held at the Corpus Christi Housing Authority located at 3701 Ayers Street, Corpus Christi, Texas, 78415 commencing on Wednesday, November 6, 2024 at 10:00 a.m.

#### Action Items:

- Action Item No. 24-EO-47: Consider Memorandum of Understanding – South Lake Ranch
- Action Item No. 24-EO-48: Consider Memorandum of Understanding – Villas of Ocean Drive
- Action Item No. 24-EO-49: Consider Memorandum of Understanding – The Icon
- Action Item No. 24-EO-50: Consider Memorandum of Understanding – Tuscany Bay South

DATED: November 1, 2024

---

Gary Allsup, Secretary





# ***CORPUS CHRISTI HOUSING AUTHORITY***

---



BOARD OF COMMISSIONERS  
CORPUS CHRISTI HOUSING AUTHORITY  
REGULAR BOARD MEETING  
December 9, 2024  
2:00 p.m.

AGENDA

CALL TO ORDER

Roll Call

EXECUTIVE SESSION

- a. Legal Matters (Texas Government Code Ann. Section 551.071) (Vernon 1994)
- b. Deliberations about Real Property (Texas Government Code Ann. Section 551.072)
- c. Personnel Matters (Texas Government Code Ann. Section 551.074)

PUBLIC COMMENTS

CONSENT AGENDA

Write Offs: Tax Credit & BBG Properties

ITEMS FOR CONSIDERATION

Restatement

Action Item No. 24-EO-51: Consider Resolution for MOU - Arts at Ocean Drive

Action Item No. 24-EO-52: Consider Resolution for MOU - Azure

Action Item No. 24-EO-53: Consider Resolution for MOU - Churchill Square

New

Action Item No. 24-EO-54: Consider Resolution for MOU- GWR Armon Bay

Action Item No. 24-EO-55: Consider Resolution for MOU- Breakers

Action Item No. 24-EO-56: Consider Resolution for MOU- Sandcastle

Action Item No. 24-EO-57: Consider Resolution for MOU – The Summit

Action Item No. 24-EO-58: Consider Resolution for MOU – The Veranda

Action Item No. 24-EO-59: Consider Resolution for MOU – Bay Vista

Action Item No. 24-EO-60: Consider Resolution for MOU – Bay Vista Pointe

Action Item No. 24-EO-61: 2025 BOC Meeting Dates

COMMENTS / REPORTS

- Financial Report (Included in Packet)
- Chief Executive Officer Report
- Chair/Board Comments

ADJOURNMENT

BOARD OF COMMISSIONERS  
CORPUS CHRISTI HOUSING AUTHORITY  
REGULAR BOARD MEETING  
January 22, 2025  
11:30 p.m.

**AGENDA**

CALL TO ORDER

Roll Call

EXECUTIVE SESSION

- a. Legal Matters (Texas Government Code Ann. Section 551.071) (Vernon 1994)
- b. Deliberations about Real Property (Texas Government Code Ann. Section 551.072)
- c. Personnel Matters (Texas Government Code Ann. Section 551.074)

MINUTES

Regular Board Meeting of October 30, 2024  
Special Zoom Meeting of November 6, 2024  
Regular Board Meeting of December 9, 2024

PUBLIC COMMENTS

CONSENT AGENDA

Write Offs: Tax Credit & BBG Properties for Nov. & Dec., 2024

ITEMS FOR CONSIDERATION

Action Item No. 25-FIN-01: Approval of 2025 Tax Credit Properties Budget Plan  
Action Item No. 25-AS-02: Approval of 457(B) Deferred Compensation Plan

COMMENTS / REPORTS

- Financial Report
- Chief Executive Officer Report
- Chair/Board Comments

UPCOMING MEETING(S)

February 26, 2025

ADJOURNMENT

BOARD OF COMMISSIONERS  
CORPUS CHRISTI HOUSING AUTHORITY  
REGULAR BOARD MEETING  
February 21, 2025  
3:00 p.m.

AGENDA

CALL TO ORDER

Roll Call

EXECUTIVE SESSION

- a. Legal Matters (Texas Government Code Ann. Section 551.071) (Vernon 1994)
- b. Deliberations about Real Property (Texas Government Code Ann. Section 551.072)
- c. Personnel Matters (Texas Government Code Ann. Section 551.074)

PUBLIC COMMENTS

ITEMS FOR CONSIDERATION

Action Item No. 25-EO-03: Consider Resolution for MOU – Shadow Bend

Action Item No. 25-EO-04: Consider Resolution for MOU – Ocean Palms Apartments

COMMENTS / REPORTS

- Housing Choice Voucher Presentation
- Chief Executive Officer Report
- Chair/Board Comments

ADJOURNMENT

BOARD OF COMMISSIONERS  
CORPUS CHRISTI HOUSING AUTHORITY  
REGULAR BOARD MEETING  
March 25, 2025  
11:30 p.m.

**AGENDA**

**CALL TO ORDER**

Roll Call

**EXECUTIVE SESSION**

- a. Legal Matters (Texas Government Code Ann. Section 551.071) (Vernon 1994)
- b. Deliberations about Real Property (Texas Government Code Ann. Section 551.072)
- c. Personnel Matters (Texas Government Code Ann. Section 551.074)
  - Including Annual CEO Performance Evaluation

**MINUTES**

Regular Meeting of January 22, 2025

Regular Meeting of February 21, 2025

**PUBLIC COMMENTS**

**CONSENT AGENDA**

Write Offs: Tax Credit & BBG Properties – January & February 2025

**ITEMS FOR CONSIDERATION**

Action Item No. 25-EO-05: Consider Resolution for MOU – Stoneleigh Apartment

Action Item No. 25-AS-06: Consider Approval of Contractual Agreement for Construction  
Of CHP Administrative Building & Warehouse

**COMMENTS / REPORTS**

- Financials
- Chief Executive Officer Report
- Chair/Board Comments

**UPCOMING MEETING**

April 23, 2025

**ADJOURNMENT**

# **EXHIBIT B**

## **SAMPLE CCHA RESOLUTIONS**

## RESOLUTIONS OF CORPUS CHRISTI HOUSING AUTHORITY

**RESOLVED**, that the Board of Commissioners of the Corpus Christi Housing Authority ("CCHA") hereby authorizes and directs **GARY ALLSUP**, its Chief Executive Officer ("CEO"), to negotiate and enter into a Memorandum of Understanding with TX Azure Apartments 1, LLC, and thereafter carry out and perform the terms and conditions of such Memorandum, including organizing an entity owned by CCHA (the "**CCHA Sub Entity**") for the purpose of developing and financing a mixed income, multi-family development in Corpus Christi, Texas, the "Corpus Christi Project", same being the multifamily project known as Azure Apartments located at **7221 S. Staples Ocean Drive, Corpus Christi, Texas 78413**, through TX Azure Apartments 1, LLC, a Texas limited liability company (the "**Azure Apartments Borrower Entity**"), the Managing Member of which is **Azure Apartments-CCHA, LLC**, a Delaware limited liability company, being a CCHA-Sub Entity owned by CCHA.

**RESOLVED FURTHER**, that CCHA shall own the Corpus Christi Project subject to a 99 year ground lease between CCHA, as Landlord, and the **Azure Apartments Borrower Entity**, as Tenant.

**RESOLVED FURTHER**, that **Azure Apartments-CCHA, LLC**, as Managing Member of the **Azure Apartments Borrower Entity**, shall execute and deliver all documents and instruments and perform all acts necessary or reasonably requested to obtain funding of a refinance of the existing financing for the Corpus Christi Project.

**RESOLVED FURTHER**, that CCHA and **Azure Apartments-CCHA, LLC**, shall execute and deliver all documents and instruments and perform all acts necessary or reasonably requested to obtain, and retain indefinitely, a tax exempt status for ad valorem taxes for the Corpus Christi Project.

**RESOLVED FURTHER**, that the Board authorizes and directs **GARY ALLSUP**, acting in his capacity as CEO and Secretary of CCHA, to execute and deliver all documents and instruments, and to perform all acts necessary, or reasonably requested, to carry out the instructions, terms and authorization of the foregoing Resolutions, pursuant to all applicable local, state and federal laws.

  
CATHY MEHNE, Chair  
CCHA Board of Commissioners

  
GARY ALLSUP, Secretary  
CCHA Board of Commissioners

**A RESOLUTION OF THE CORPUS CHRISTI HOUSING AUTHORITY**  
**Memorandum of Understanding**

**BE IT RESOLVED**, that the Board of Commissioners of the Corpus Christi Housing Authority hereby authorizes the CEO to negotiate and enter into a Memorandum of Understanding with TX Azure Apartments 1, LLC for the purpose of developing and financing mixed income, multi-family development(s) in Corpus Christi. Such authorization to be contingent upon successful legal review by CCHA General Counsel.

The Board of Commissioners authorizes and directs the Secretary/Chief Executive Officer to take the actions required to implement this Resolution, and to do such acts and /or execute such documents as necessary commensurate with instructions and authorizations of this resolution, and pursuant to all local, state and federal laws.



Gary Allsup, Secretary  
CCHA Board of Commissioners



Cathy Mehne, Chair  
CCHA Board of Commissioners



# **EXHIBIT C**

## **CCHA BYLAWS**

# **CORPUS CHRISTI HOUSING AUTHORITY**

## **BY-LAWS**

### **ARTICLE I - THE AUTHORITY**

- SECTION 1. NAME OF THE AUTHORITY: The name of the Authority shall be the Housing Authority of the City of Corpus Christi.
- SECTION 2. ABOUT THE AUTHORITY: Pursuant to Chapter 392 of the Texas Local Government Code the Authority is for all purposes a unit of government and its functions are essential governmental functions.
- SECTION 3. NATURE OF BUSINESS CONDUCT: It shall be the Policy of the Authority that all business of the Authority shall be conducted in a professional, transparent, and legal manner. Specifically, all actions and activities shall be consistent with federal, state, and or local regulations.
- SECTION 4. SEAL OF THE AUTHORITY: The seal of the Authority shall be in the form of a circle and shall bear the name of the Authority.
- SECTION 5. OFFICE OF THE AUTHORITY: The offices of the Authority shall be at the Administrative Building, 3701 Ayers Street, Corpus Christi, Texas. Such other auxiliary offices and locations may be designated from time to time as needed.

### **ARTICLE II – BOARD OF COMMISSIONERS**

- SECTION 1. AUTHORITY: Pursuant to Chapter 392 of the Texas Local Government Code all powers of the Authority are vested in the Board of Commissioners.
- SECTION 2. BOARD OF COMMISSIONERS: The Authority shall be governed by a Board of five Commissioners. Each Commissioner is to be appointed by the Mayor to a two-year term. A Commissioner of the Authority may not be an officer or employee of the City. At least one Commissioner shall be a tenant of public housing over which the Authority has jurisdiction.

When a quorum of the Board is present the Authority may take action on a vote of a majority of the Commissioners present.

The Commission may delegate a power or duty to an agent or employee as it considers proper.

Commissioners may not receive compensation for service as a Commissioner but are entitled to receive reimbursement for the necessary expense, including traveling expenses, incurred in the discharge of duties as a Commissioner.

**SECTION 3. OFFICERS:** The Board shall be comprised of the following officers: a Chairperson, a Vice-Chairperson, a Secretary and an Assistant Secretary. The Secretary and Assistant Secretary are not appointed Commissioners, but shall be non-voting officers, and are not included in determining a quorum.

**SECTION 4. CHAIRPERSON:** The Chairperson shall preside at all meetings of the Authority. At each meeting, the Chairperson shall call the roll and note the presence or absence of the Commissioners, and conduct the meeting in accordance with the items on the agenda. The Chairperson shall submit such recommendations and information as the Chairperson may consider proper concerning the business affairs and policies of the Authority.

**SECTION 5. VICE-CHAIRPERSON:** The Vice-Chairperson shall perform the duties of the Chairperson in the absence or incapacity of the Chairperson. In the event of the resignation or death of the Chairperson, the Vice-Chairperson shall perform such duties as are imposed on the Chairperson for the remainder of the Chairperson's term or until such time as the Authority elects by majority vote of the remaining members, a new Chairperson.

**SECTION 6. SECRETARY:** The Chief Executive Officer (CEO) shall serve as the Secretary. The duties of the Secretary shall be:

- a. to maintain the records of the Board of Commissioners;
- b. to prepare the agendas and minutes of the Board of Commissioners proceedings;
- c. to post all required notices;
- d. to sign and attest to the accuracy and validity of the Board documents and actions;
- e. to account for the Secretary's duties as the Board may require;
- f. to perform duties incidental to the office or as may be assigned by the Board;
- g. to perform such required duties as Secretary without compensation.

The Secretary shall keep in safe custody the seal of the Authority and shall have power to affix such seal to all contracts and instruments authorized by the Authority. "Seal" shall be mean for all purposes a signature, and does not require that a metal or rubber seal also be affixed to bind the Authority.

SECTION 7. ASSISTANT SECRETARY: The Assistant Secretary shall perform the duties as assigned by the Secretary, but shall not have, nor shall it be construed to have, the authority to perform the duties assigned to the Secretary by the Board. The assistant secretary shall be the legal counsel of the Authority.

SECTION 8. ADDITIONAL DUTIES: The officers of the Board shall perform such other duties and functions as may, from time to time, be required by the Board, by these By-Laws, by the Rules and Regulations of the Authority, or as required by federal, state or local laws or regulations under which the Authority operates.

SECTION 9. ELECTION OR APPOINTMENT: The Chairperson or Vice-Chairperson shall be elected at the annual meeting of the Board.

SECTION 11. VACANCIES: Should the office of the Vice-Chairperson become vacant, the Board shall elect a successor from its membership at the next regular meeting, and such election shall be for the unexpired term of said office. It is the intent of the Board that the office of Vice-Chairperson not be vacant for more than a one-month period.

### **ARTICLE III - MEETINGS**

SECTION 1. ANNUAL MEETING: The Annual Meeting of the Board shall be held during the month of April at a time, date and location to be designated by the Chairperson.

SECTION 2. REGULAR MEETING: The regular meeting(s) of the Board shall be held on the date(s) determined by the Board at its annual meeting, normally the fourth Tuesday of each month.

SECTION 3. SPECIAL MEETING: The Chairperson may, when deemed expedient or in case of emergency, call a Special Meeting. Upon the request of two Commissioners, the Chairperson shall call a Special Meeting. Special Meetings are called for the purpose of transacting business designated in the agenda.



SECTION 4. LOCATION: The location of the meeting shall be at the Authority's central office at 3701 Ayers Street, Corpus Christi, Texas 78415, or at such other location as the Board designates in its agenda.

SECTION 5. QUORUM: At all meetings of the Board, a majority of the Commissioners shall constitute a quorum for the purpose of transacting business. Non-voting Officers shall not be counted for the purpose of determining a quorum.

Commissioners may participate in Regular or Special Meeting via telephone or other electronic communication. Commissioners who participate via telephone or other election means shall be counted for the purposes of determining a quorum.

SECTION 6. ORDER OF BUSINESS: At a Regular Meeting of the Board the following shall normally consist of:

- a. Roll Call
- b. Approval of the Minutes of the previous meeting
- c. Open forum for public comment
- d. Consent Agenda
- e. Items for Consideration
- f. CEO's Report
- g. Chairperson Report / Comments
- h. Commissioner Comments
- i. Executive Session (as needed)
- j. Adjournment

All Resolutions of the Board shall be executed by the Chairperson or Vice-Chairperson, or, in the event neither is available, any Commissioner may sign in addition to the Secretary. The Secretary shall sign and attest the accuracy of Board documents,

SECTION 7. MINUTES: The Secretary shall record minutes of actions and decisions of the Board. The Secretary shall present draft minutes of each Board Meeting for the Board's consideration and approval at the following Regular meeting.

SECTION 8. MANNER OF VOTING: The voting on all questions coming before the Board shall be by voice unless the vote is not unanimous, in which event a roll call vote will be taken and the vote of each member indicated. For a roll call vote the yeas and nays may be entered upon the minutes of the meeting as a "majority", unless a member requests each member's vote be recorded individually.

- SECTION 9. EXPENSE OF MEETING: Reasonable expenses incurred in connection with the Annual, Regular and Special Meetings of the Board are authorized for payment by the Board.
- SECTION 10. AMENDMENTS TO THE BY-LAWS: The By-Laws of the Authority shall be amended only with the approval of at least four of the members of the Board. No such amendment shall be adopted unless at least seven days written notice thereof has been previously given to all of the members of the Board.
- SECTION 11. RATIFICATION: Each year at its Annual Meeting, the Board shall review and ratify these Bylaws for their continued use.

#### **ARTICLE IV – DELEGATION OF AUTHORITY**

- SECTION 1. AUTHORITY: Pursuant to Chapter 392 of the Texas Local Government Code all powers of the Authority are vested to the Board of Commissioners. Further, Chapter 392 authorizes the Board of Commissioners to delegate any power or duty as the Board deems appropriate.
- SECTION 2. CHIEF EXECUTIVE OFFICER: The Chief Executive Officer (the "CEO") of the Authority shall have authority and responsibility over the administration and operation of all business affairs of the Authority and its affiliated entities, subject to the direction of the Board. The CEO shall at all times ensure Authority compliance with HUD and/or other federal, state, and local regulation.

Specific duties and responsibilities of the CEO include, but are not limited to:

- a. care and custody of all funds, including all receipts and expenditures of the Authority;
- b. deposit of funds in the name of the Authority;
- c. execution of all contracts and orders of the Authority;
- d. disbursement of all monies owed by the Authority;
- e. reporting of Authority operational and financial activity, conditions, and results to the Board at each meeting or as directed;

The CEO shall be designated as the Contracting Officer of the Authority and shall be authorized to execute contracts on behalf of the Authority and its affiliates and to designate others, in his absence, to act on behalf of the CEO, as needed.



The CEO may make routine purchases and expenditures up to the Federal Small Purchase Threshold as set by HUD and/or OMB (currently \$250,000.00) and may bind the Authority to act without specific Commission Resolution. The Board may authorize by Resolution, the CEO or other officer to execute documents on behalf of the Authority.

The CEO may, subject to budget authority, employ such employees, either permanent or temporary, as he considers necessary and shall determine the qualifications, duties, and compensation of the persons employed.

The CEO may not enter into contracts for the sale or purchase of Real Property without specific Commission Resolution so authorizing.

#### **ARTICLE V - AFFILIATES AND SUBSIDIARIES**

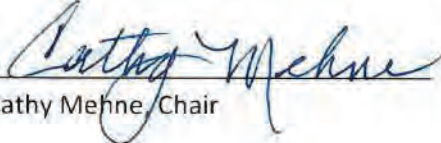
SECTION 1. CREATION OF LEGAL ENTITIES: Affiliates, subsidiaries and other legal entities of the Authority may be created, dissolved or disbanded by the Authority by Resolution of the Board, as the Board deems. All operating documents of the appropriate entities shall expressly require that upon dissolution, the assets of said entity will be distributed as required by the Internal Revenue Code for Section 501(c)(3) tax-exempt charitable entities.

SECTION 2. AUTHORITY APPROVAL OF ACTIONS OF OTHER ENTITIES: Through its Board Meetings, the Authority Board shall act on behalf of its affiliates and other legal entities without the necessity of a separate Board Meeting or distinct Resolution of such affiliate or other legal entity.

The Secretary shall be authorized to attest to the validity and accuracy of any Board Action on behalf of an affiliate or to make and execute other certificates or resolutions as evidence of Board Action.

#### **ARTICLE VI – APPROVAL**

These Bylaws Approved this 27<sup>th</sup> day of April, 2022 per Resolution 22-EO-04-960.

  
Cathy Mehne, Chair

  
Gary Allsup, Secretary

# **EXHIBIT D**

**SAMPLE SPECIAL WARRANTY DEED**



## SPECIAL WARRANTY DEED

This conveyance is made and accepted subject to those matters set forth on Exhibit B attached hereto and made a part hereof (the "**Permitted Encumbrances**").

TO HAVE AND TO HOLD the Property, subject to the Permitted Encumbrances, unto Grantee and Grantee's successors and assigns forever; and Grantor does hereby bind itself and its successors to warrant and forever defend the Property unto Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise.

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS SPECIAL WARRANTY DEED, THE PROPERTY IS BEING SOLD "AS IS," "WHERE IS," AND "WITH ALL FAULTS" AS OF THE DATE OF THIS SPECIAL WARRANTY DEED, WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER AS TO ITS CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. GRANTOR SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY, OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE PROPERTY. UPON ACCEPTANCE OF THIS SPECIAL WARRANTY DEED, GRANTEE ACKNOWLEDGES THAT GRANTEE IS PURCHASING THE PROPERTY BASED SOLELY UPON GRANTEE'S OWN INDEPENDENT INVESTIGATIONS AND FINDINGS AND NOT IN RELIANCE UPON ANY INFORMATION PROVIDED BY GRANTOR OR GRANTOR'S AGENTS OR CONTRACTORS.

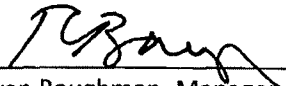
[Signature page follows]

EXECUTED on the date set forth in the acknowledgment below to be effective as of the 30 day of December, 2024.

**Grantor:**

TX AZURE APARTMENTS 1, LLC,  
a Delaware limited liability company

By: Sundance Bay Income and Growth Fund GP, LLC  
a Delaware limited liability company, General Partner

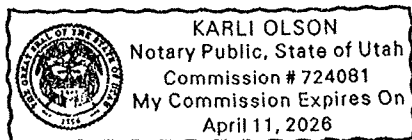
By:   
Ryan Baughman, Manager

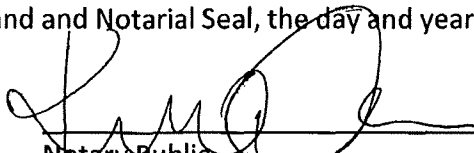
STATE OF Utah §

COUNTY OF Salt Lake §

I HEREBY CERTIFY that on or about this 11 day of December 2024, before me, a Notary Public for the state aforesaid, personally appeared Ryan Baughman, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing, who acknowledged that he is the Manager of the General Partner of TX Azure Apartments 1, LLC, that he has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth; and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.



  
Notary Public

My commission expires on 4-11-26

**EXHIBIT A**

**Legal Description of the Property**

Lot One (1), Block One (1), SAN MARIN, a subdivision situated in the City of Corpus Christi, Nueces County, Texas, commonly known as San Marin Apartments, as shown by the map or plat thereof, recorded in Volume 57, Page 193, Map Records of Nueces County, Texas and being more particularly described by metes and bounds as follows, to-wit:

All that certain tract, piece or parcel of land containing 9.5316 acres (415,196 sq. ft.) of land, more or less, and being portion of that certain 90.043 acre tract deeded to Tristar Development, Inc., recorded in Volume 1919, Page 216, Deed Records of Nueces County, Texas:  
BEGINNING at a found 5/8th inch iron rod being the most Easterly corner of Lot 1, Block 1, of said San Marin, same being a point in the Northwest line of South Staples Street (F.M. 2444) (100 feet wide);

THENCE South 28 degrees 56 minutes 00 seconds West, along said Northwest line of South Staples Street, a distance of 150.00 feet to a found 5/8th inch iron rod for corner of the herein described tract, said corner also being the most Easterly corner of Lot 2, Block 1, of said San Marin;

THENCE North 61 degrees 04 minutes 00 seconds West, departing said line along the Northeasterly line of said Lot 2, a distance of 150.00 feet to a found 5/8th inch iron rod for corner of the herein described tract;

THENCE South 28 degrees 56 minutes 00 seconds West, along the Northwesterly line of said Lot 2, a distance of 200.00 feet to a set 5/8th inch iron rod for corner of the herein described tract;

THENCE South 61 degrees 04 minutes 00 seconds East, along the Southwesterly line of said Lot 2, a distance of 150.00 feet to a found 5/8th inch iron rod returning to said Northwest line of South Staples Street for corner of the herein described tract, said corner also being the most southerly corner of said Lot 2;

THENCE South 28 degrees 56 minutes 00 seconds West, along said Northwest line of South Staples Street, a distance of 433.23 feet to a set 5/8th inch iron rod for corner, a point of curvature of a curve to the right;

THENCE in a Southwesterly direction, around a curve to the right whose radius equals 15.00 feet, having a central angle of 89 degrees 58 minutes 35 seconds, an arc length of 23.56 feet, a chord bearing South 73 degrees 56 minutes 43 seconds West, 21.21 feet to a set 5/8th inch iron rod for corner in the Northeast line of Henderson Street (60 feet wide), the most Southerly corner of the herein described tract;

THENCE North 61 degrees 02 minutes 35 seconds West, along the Northeast line of said Henderson Street, a distance of 627.27 feet to a set 5/8th inch iron rod for corner, a point of curvature of a curve to the right;

THENCE in a Northwesterly direction, around a curve to the right whose radius equals 10.00 feet, having a central angle of 90 degrees 00 minutes 15 seconds, an arc length of 15.71 feet, a chord bearing North 16 degrees 02 minutes 42 seconds West, 14.14 feet to a set 5/8th inch iron rod for corner, the most Westerly corner of the herein described tracts;

THENCE North 28 degrees 57 minutes 10 seconds East, along the Northwest line of said San Marin, a distance of 557.29 feet to a found 5/8th inch iron rod for corner of the herein described tract, same being a point in the Southwesterly line of said Stonehenge Unit 1 Subdivision;

THENCE South 61 degrees 02 minutes 50 seconds East, along said Southwesterly line, a distance of 326.00 feet to a found 5/8th inch iron rod for corner of the herein described tract;

THENCE North 28 degrees 57 minutes 10 seconds East, along said Southwesterly line, a distance of 230.89 feet to a found 5/8th inch iron rod for corner of the herein described tract;

THENCE South 61 degrees 02 minutes 50 seconds East, along a Southwesterly line, a distance of 326.00 feet returning the POINT OF BEGINNING of the herein described tract containing 9.5316 acres (415,196 sq. ft.) of land, more or less.

**EXHIBIT B**

**Permitted Encumbrances**

- (a) Any and all liens not yet delinquent for real property and personal property taxes and for general and special assessments;
- (b) All matters of record;
- (c) All applicable zoning and land use regulations;
- (d) All matters which would be disclosed by a current survey of the Property; and
- (e) Interests of parties in possession, and any existing leases or tenancies.

# **EXHIBIT E**

**CCHA NOTICES POSTED AT CITY HALL**

**APRIL 2024 THRU MARCH 2025**



POSTED  
4/19/2024 4:23:23 PM  
Rebecca Huerta  
City Secretary

Gary Allsup  
President & Chief Executive Officer

Affiliates

Bahia  
Properties

Bluebonnet  
Gardens

Thanksgiving  
Homes

Corban  
Townhomes

Hampton  
Port  
Apartments

Sea Breeze  
Apartments

Corpus  
Christi  
Finance  
Corporation

***TO THE COMMISSIONERS OF THE  
CORPUS CHRISTI HOUSING AUTHORITY***

**PUBLIC NOTICE**

**TAKE NOTICE THAT THE ANNUAL BOARD MEETING OF THE**

Commissioners of the Corpus Christi Housing Authority will be held at the Corpus Christi Housing Authority located at 3701 Ayers Street, in the City of Corpus Christi, Texas, 78415 commencing on Wednesday, April 24, 2024 at 11:30 a.m.

DATED: April 19, 2024

  
\_\_\_\_\_  
Gary Allsup, Secretary



POSTED  
5/24/2024 2:17:06 PM  
Rebecca Huerta  
City Secretary

Gary Allsup  
President & Chief Executive Officer

Affiliates

Bahia  
Properties

Bluebonnet  
Gardens

Thanksgiving  
Homes

Corban  
Townhomes

Hampton  
Port  
Apartments

Sea Breeze  
Apartments

Corpus  
Christi  
Finance  
Corporation

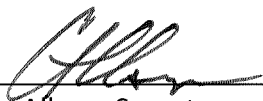
***TO THE COMMISSIONERS OF THE***  
**CORPUS CHRISTI HOUSING AUTHORITY**

**PUBLIC NOTICE**

**TAKE NOTICE THAT THE REGULAR BOARD MEETING OF THE**

Commissioners of the Corpus Christi Housing Authority will be held at the Corpus Christi Housing Authority located at 3701 Ayers Street, in the City of Corpus Christi, Texas, 78415 commencing on Wednesday, May 29, 2024 at 11:30 a.m.

DATED: May 24, 2024

  
\_\_\_\_\_  
Gary Allsup, Secretary



Corpus Christi  
**HOUSING**  
Authority & Affiliates

POSTED  
6/7/2024 2:25:57 PM  
Rebecca Huerta  
City Secretary

Gary Allsup  
President & Chief Executive Officer

Affiliates

Bahia  
Properties

Bluebonnet  
Gardens

Thanksgiving  
Homes

Corban  
Townhomes

Hampton  
Port  
Apartments

Sea Breeze  
Apartments

Corpus  
Christi  
Finance  
Corporation

***TO THE COMMISSIONERS OF THE***  
**CORPUS CHRISTI HOUSING AUTHORITY**

**PUBLIC NOTICE**

**TAKE NOTICE THAT THE REGULAR BOARD MEETING OF THE**

Commissioners of the Corpus Christi Housing Authority will be held at the Corpus Christi Housing Authority located at 3701 Ayers Street, in the City of Corpus Christi, Texas, 78415 commencing on Wednesday, June 12, 2024 at 11:30 a.m.

DATED: June 7, 2024

  
\_\_\_\_\_  
Gary Allsup, Secretary

# ***CORPUS CHRISTI HOUSING AUTHORITY***



POSTED  
10/25/2024 9:10:35 AM  
Rebecca Huerta  
City Secretary

## ***TO THE COMMISSIONERS OF THE CORPUS CHRISTI HOUSING AUTHORITY PUBLIC NOTICE***

### **TAKE NOTICE THAT THE REGULAR BOARD MEETING OF THE**

Commissioners of the Corpus Christi Housing Authority will be held at the Corpus Christi Housing Authority located at 3701 Ayers Street, Corpus Christi, Texas, 78415 commencing on Wednesday, October 30, 2024 at 11:30 a.m.

DATED: October 25, 2024

  
\_\_\_\_\_  
Gary Allsup, Secretary



# CORPUS CHRISTI HOUSING AUTHORITY



POSTED  
11/1/2024 12:12:04 PM  
Rebecca Huerta  
City Secretary

## TO THE COMMISSIONERS OF THE CORPUS CHRISTI HOUSING AUTHORITY PUBLIC NOTICE


### TAKE NOTICE THAT THE SPECIAL BOARD MEETING OF THE

Commissioners of the Corpus Christi Housing Authority will be held at the Corpus Christi Housing Authority located at 3701 Ayers Street, Corpus Christi, Texas, 78415 commencing on Wednesday, November 6, 2024 at 10:00 a.m.

#### Action Items:

- Action Item No. 24-EO-47: Consider Memorandum of Understanding – South Lake Ranch
- Action Item No. 24-EO-48: Consider Memorandum of Understanding – Villas of Ocean Drive
- Action Item No. 24-EO-49: Consider Memorandum of Understanding – The Icon
- Action Item No. 24-EO-50: Consider Memorandum of Understanding – Tuscany Bay South

DATED: November 1, 2024

  
\_\_\_\_\_  
Gary Allsup, Secretary



# CORPUS CHRISTI HOUSING AUTHORITY



POSTED  
12/6/2024 1:18:38 PM  
Rebecca Huerta  
City Secretary

## TO THE COMMISSIONERS OF THE CORPUS CHRISTI HOUSING AUTHORITY PUBLIC NOTICE

### TAKE NOTICE THAT THE REGULAR BOARD MEETING OF THE

Commissioners of the Corpus Christi Housing Authority will be held at the Corpus Christi Housing Authority located at 3740 S. Port Street, Corpus Christi, Texas, 78415 commencing on Monday, December 9, 2024 at 2:00p.m.

DATED: December 6, 2024

Gary Allsup, Secretary





POSTED  
1/17/2025 1:49:44 PM  
Rebecca Huerta  
City Secretary

**TO THE COMMISSIONERS OF THE  
CORPUS CHRISTI HOUSING AUTHORITY  
PUBLIC NOTICE**

**TAKE NOTICE THAT THE REGULAR BOARD MEETING OF THE**

Commissioners of the Corpus Christi Housing Authority will be held at the Corpus Christi Housing Authority located at 3701 Ayers Street, Corpus Christi, Texas, 78415 commencing on Wednesday January 22, 2025 at 11:30 a.m.

DATED: January 17, 2025

Gary Allsup, Secretary



# CORPUS CHRISTI HOUSING AUTHORITY



POSTED  
2/14/2025 1:40:51 PM  
Rebecca Huerta  
City Secretary

## TO THE COMMISSIONERS OF THE CORPUS CHRISTI HOUSING AUTHORITY PUBLIC NOTICE

### TAKE NOTICE THAT THE REGULAR BOARD MEETING OF THE

Commissioners of the Corpus Christi Housing Authority will be held at the Corpus Christi Housing Authority located at 3740 S. Port Street, Corpus Christi, Texas, 78415 commencing on Friday, February 21, 2025 at 3:00 p.m.

DATED: February 14, 2025

  
\_\_\_\_\_  
Gary Allsup, Secretary



# CORPUS CHRISTI HOUSING AUTHORITY



POSTED  
3/21/2025 3:18:43 PM  
Rebecca Huerta  
City Secretary

## TO THE COMMISSIONERS OF THE CORPUS CHRISTI HOUSING AUTHORITY PUBLIC NOTICE

TAKE NOTICE THAT THE REGULAR BOARD MEETING OF THE

Commissioners of the Corpus Christi Housing Authority will be held at the Corpus Christi Housing Authority located at 3701 Ayers Street, Corpus Christi, Texas, 78415 commencing on Tuesday, March 25, 2025 at 11:30 a.m.

DATED: March 21, 2025

  
\_\_\_\_\_  
Gary Allsup, Secretary





BOARD OF COMMISSIONERS  
CORPUS CHRISTI HOUSING AUTHORITY  
REGULAR BOARD MEETING  
March 25, 2025  
11:30 p.m.

**AGENDA**

**CALL TO ORDER**

Roll Call

**EXECUTIVE SESSION**

- a. Legal Matters (Texas Government Code Ann. Section 551.071) (Vernon 1994)
- b. Deliberations about Real Property (Texas Government Code Ann. Section 551.072)
- c. Personnel Matters (Texas Government Code Ann. Section 551.074)
  - Including Annual CEO Performance Evaluation

**MINUTES**

Regular Meeting of January 22, 2025

Regular Meeting of February 21, 2025

**PUBLIC COMMENTS**

**CONSENT AGENDA**

Write Offs: Tax Credit & BBG Properties – January & February 2025

**ITEMS FOR CONSIDERATION**

Action Item No. 25-EO-05: Consider Resolution for MOU – Stoneleigh Apartment

Action Item No. 25-AS-06: Consider Approval of Contractual Agreement for Construction  
Of CHP Administrative Building & Warehouse

**COMMENTS / REPORTS**

- Financials
- Chief Executive Officer Report
- Chair/Board Comments

**UPCOMING MEETING**

April 23, 2025

**ADJOURNMENT**

# **EXHIBIT F**

**SAMPLE MOU FOR APARTMENT COMPLEXES**

MEMORANDUM OF UNDERSTANDING

BETWEEN

CORPUS CHRISTI HOUSING  
AUTHORITY

AND

TX AZURE APARTMENTS 1, LLC,

"AZURE APARTMENTS"

THIS MEMORANDUM OF UNDERSTANDING (this "**MOU**") is between CORPUS CHRISTI HOUSING AUTHORITY (the "Agency"), a public housing authority organized under Chapter 392 of the Texas Local Government Code, and TX Azure Apartments 1, LLC, ("Owner"), a Delaware limited partnership, and is dated and effective as of September 3, 2024.

Owner is an owner of low and moderate income housing in the State of Texas. Agency is a public, nonprofit housing authority whose mission is to provide safe, decent and sanitary housing for persons of low and moderate income. Owner and Agency hereby agree to work cooperatively to finance an approximately 220-unit multifamily housing community located at 7221 S Staples St. in the City of Corpus Christi, Texas (the "**Project**"), in accordance with the terms of this MOU. The Project will be a mixed-income multifamily rental housing project with the rent schedule set forth herein:

In order to accomplish this purpose, the parties agree as follows:

AGREEMENTS

A. OWNERSHIP STRUCTURE

1. Owner (or its affiliate) will form a limited liability company (the "**Company**") for the purpose of owning the Project. A single-purpose entity that is wholly-owned by Agency will be admitted into the Company at Closing (as hereinafter defined) as the sole Managing Member ("**Managing Member**").

2. Owner may designate an affiliate to serve as a special limited member of the Company ("**Special Limited Member**"), with certain oversight and approval rights. Any such rights must be agreed to by Agency and may not, in the opinion of Agency's counsel, result in Special Limited Member being deemed a Managing Member for exercising its rights under the Company Agreement (as hereinafter defined).

3. The duties of Managing Member and Special Limited Member shall be set forth in a limited liability company agreement (the "**Company Agreement**") to be entered into among Managing Member, Special Limited Member, and an equity investor comprised of investors

selected by Owner (or its affiliate) as the investor member (the "*Investor Member*"). The Company Agreement will contain such usual and customary terms for limited liability companies formed for the financing, ownership, management, leasing and sale of the Project, including, without limitation, provisions for limitation on transfer of member interests as mutually agreed upon by Managing Member, Special Limited Member and Investor Member. The Company Agreement shall further contain terms providing for the delivery of periodic financial and other reports as may be reasonably required by the Agency or its affiliates.

The Managing Member's execution of the Company Agreement shall be subject to the following terms:

(i) The Managing Member's representations shall be limited to those within Managing Member's actual knowledge and in no case shall due inquiry be required, it being understood and agreed that Managing Member will not be looked upon by Special Limited Member or the Investor Member to conduct Project-related diligence, and any such diligence conducted by Agency is solely for its own benefit.

(ii) The Managing Member shall be indemnified by Special Limited Member, the Owner, and Company for any actual damages and/or actual liabilities in connection with or arising out of any default or material breach by the Owner or any of its or their respective affiliates thereof under the Company Agreement, except for liabilities incurred as a result of the direct acts, actions, or omissions of Managing Member and/or as a result of Managing Member's gross negligence or willful misconduct and in no event shall such indemnification be contingent upon a ruling of a court of law, all as shall be more specifically set forth in the Company Agreement;

(iii) Agency shall be indemnified by Company, Special Limited Member, and the Owner for any actual damages and/or actual liabilities incurred in connection with the Project arising out of any default or material breach by the Owner or any of its or their respective affiliates thereof, except for liabilities incurred as a result of the direct acts, actions, or omissions of Agency and/or as a result of the gross negligence or willful misconduct of Agency, as applicable, and in no event shall such indemnification be contingent upon a ruling of a court of law, all as shall be more specifically set forth in the Company Agreement.

(iv) Reserved.

(v) The Managing Member shall not be required to covenant to undertake actions or obligations that Special Limited Member will be required to take under the Company Agreement.

(vi) The Company Agreement shall contain a provision wherein Special Limited Member and Investor Member acknowledge that the obligations of Managing Member under the Company Agreement are obligations solely of Managing Member and not the owner of Managing Member or Agency; and

(vii) Agency and its affiliates with the Project will be included as additional insured on all applicable insurance policies which are to be preapproved by Agency.



4. Title to the land for the Project shall be taken in the name of Agency ("**Ground Lessor**"). and Ground Lessor shall then enter into a long-term ground lease ("**Ground Lease**") with Company, as tenant, holding a fee interest in the improvements that constitute the Project. Funding for the acquisition of the land will come from the financing of the Project and will be paid to the Ground Lessor in the form of an up-front Ground Lease payment. Upon the expiration of the 99-year term of the Ground Lease, or as set forth in the Company Agreement, ownership of the improvements constituting the Project shall revert to the Ground Lessor. In the event that the Project is sold in compliance with this MOU, the Ground Lease shall provide for a transfer of title to the land to a purchaser upon payment of \$100.00.

5. Neither party may assign this MOU without the prior written consent of the other parties, except as may otherwise be provided herein. Special Limited Member's right to assign its interests in the Company shall be more specifically set forth in the Company Agreement, but shall be subject to the consent of the Managing Member.

#### B. DUE DILIGENCE

As a condition to Agency's participation in the financing and ownership of the Project, Agency requires the Owner to provide within a reasonable time, all reasonable due diligence information on the Project and its proposed financing and operations as is reasonably requested by Agency or its counsel. Failure of the Owner to deliver to Agency due diligence items acceptable to Agency shall be grounds for Agency to terminate this MOU in its discretion.

#### C. FINANCING

1. Owner will apply for financing (the "**Loan**") on behalf of the Company. Owner shall be responsible for selecting the lender and negotiating the terms on behalf of the Company.

2. On behalf of the Company, the Owner will facilitate and negotiate the terms of an equity investment in the Project (the "**Equity**"). The Equity financing documents are expected to include the Company Agreement. The Special Limited Member will serve as "Company Representative" under the Company Agreement.

3. Owner shall pay all costs and fees associated with applying for the Loan and facilitating the Equity investment, which costs may be reimbursed at Closing (as defined herein) from any proceeds of the Loan and Equity. In the event this MOU is terminated, or the transaction fails to close as contemplated herein, the Owner shall be solely responsible for all costs described above and Agency and its affiliates shall have no responsibility for payment or reimbursement of such costs.

4. The Managing Member will have the right to consent to a refinancing of the Project, which consent shall not be unreasonably withheld, conditioned, or delayed so long as (i) neither Agency nor any affiliate thereof is required to serve as a guarantor, key member, or key person, (ii) Agency and Managing Member are not subject to springing member provisions, (iii) the LTV is not greater than 90%, (iv) the DSCR is not less than 1.15x and (v) the refinancing documents do not impose any new material obligations on Agency or Managing Member.



5. Owner and its affiliates shall provide any guarantees of operating expenses, return on Equity investment, and the like that may be required in conjunction with the Loan financing or the Equity financing. NEITHER AGENCY, MANAGING MEMBER, NOR ANY OF ITS AFFILIATES WILL PROVIDE ANY GUARANTEES OR INDEMNITIES IN CONNECTION WITH THE FINANCING OF THE PROJECT.

D. INTENTIONALLY OMITTED.

E. MANAGEMENT AND OPERATION

1. RPM Management will serve as the property manager (the "*Manager*") for the Project, which will be memorialized in a management agreement (the "*Management Agreement*") in form and substance acceptable to Agency.

2. Notwithstanding anything to the contrary, the Management Agreement will automatically renew upon its scheduled termination other than upon a termination for cause unless either party gives ninety (90) days' notice to renegotiate the terms or terminate the Management Agreement.

3. The Management Agreement shall include a requirement for the Property Manager to deliver such reports as may from time to time be reasonably requested in writing by the Managing Member, provided that such reports are of the kind and nature that are kept in the ordinary course of business of property managers operating similarly situated projects.

F. COMMUNITY SUPPORT

Agency and the Owner shall be jointly responsible for interfacing with local government officials in connection with support for the Project, so long as such communication which occurs outside of the regular board meetings of Agency is approved by Owner. The parties will consult with each other and coordinate the response to any media inquiries and/or public opposition to the Project that may arise.

G. AD VALOREM TAX EXEMPTION

The ownership structure contemplated herein is expected to generate 100% ad valorem tax exemption for the Project (the "*Exemption*"). Agency, on behalf of the Company, shall work with the Owner and the Nueces Central Appraisal District to obtain confirmation of the availability of such exemption after Closing. At Closing, the Owner shall cause an opinion of counsel to be delivered with respect to the Exemption. In the event the Exemption is lost for any reason other than (i) a legislative change or adverse court ruling related to the Exemption or (ii) the action or inaction of Owner or its affiliates, Agency shall have one (1) year from the date of any notice relating to a loss of the Exemption to cause the Exemption to be reinstated. Agency and the Managing Member will at all times act in good faith to preserve, maintain, and/or reinstate the Exemption. If the Exemption is not reinstated within said one (1) year timeframe, then the fee estate in the land shall (at Special Limited Member's option) be conveyed to the Company at a nominal cost to the Company, the Ground Lease shall be terminated to allow the Company to establish an exempt structure in the future, and Special Limited Member shall have the right to purchase from Agency, Agency's ownership interest in Company for the sum of \$100.00 plus all



unpaid fees and unreimbursed expenses earned by Agency. Notwithstanding the foregoing, in the event that the ad valorem exemption is lost, but reinstatement of the Exemption is reasonably anticipated after the aforementioned one year period, so long as Agency continues to pursue such reinstatement diligently and in good faith and for so long as the reinstatement of the Exemption can continue to be reasonably anticipated, Agency shall be afforded such additional extensions as may be necessary to accomplish the reinstatement of the Exemption, subject to the consent of the Special Limited Member, which consent shall not be unreasonably withheld, conditioned, or delayed. Any advance payment of Annual Rent (as defined in H(i) below) in a year in which the Exemption is lost and ad valorem property taxes are payable by the Company shall be repaid to the Company prorated to the date of loss of Exemption.

#### H. FEES AND EXPENSES

##### **Managing Member/Agency Fees:**

(i) **Ground Lease Fees.** In addition to the initial lease payment amounting to \$132,500, paid at Closing, the Company shall pay to the Ground Lessor an annual lease payment ("Annual Rent") initially in an amount equal to \$82,229 (the "Initial Annual Rent Payment"), which Annual Rent payment shall increase by 3% per year. The Initial Annual Rent Payment shall be due and payable on or prior to the first day of the second Lease Year (as such term shall be defined in the Ground Lease) but shall be refunded, along with the initial lease payment, to the Company upon a denial of the Exemption based on the initial application therefor. All Annual Rent shall be due and payable for each Lease Year in advance on the first day of each applicable Lease Year in lawful currency of the United States of America, to Ground Lessor by delivering or mailing it to the Ground Lessor's address, or such other address or in such other manner as Ground Lessor from time to time specifies by written notice to Company; provided, however, that the Annual Rent shall be prorated for any partial Lease Year based on the number of days in the year that the Ground Lease is in effect. At Company's option, Company may prepay the Annual Rent for the entire Term or any portion thereof at any time. All payment of Annual Rent is subordinate to debt service, such amounts shall accrue and be payable in conjunction with subsequent rent payments.

(ii) **Disposition Fee.** The Managing Member shall be entitled to receive a fee equal to 1.5% of the gross sales price in connection with a sale or disposition of the Project.

(iii) **Asset Management Fee.** The Managing Member shall be entitled to receive an annual asset management fee in the amount of \$10,000, to be increased annually by 3%.

(iv) **Agency/Managing Member Costs.** All reasonable expenses incurred by Agency in connection with this MOU, including but not limited to costs for staff time to review the proposed Project, third-party reports, Agency's legal counsel, counsel to Managing Member and the Company, special real estate counsel, financial advisor and other expenses incurred by Agency in connection with the proposed Project (collectively, the "Costs"), shall be reimbursed by the Company to Agency or to such third parties concurrently with the closing on the Loan (the "Closing") however the total sum for the



Costs shall not exceed \$15,000.00 ("**Maximum Costs Amount**"). If this MOU or the Project is terminated before the Closing and Agency has unreimbursed out-of-pocket Costs, Agency shall invoice the Owner for such Costs and the Owner shall reimburse Agency or the applicable third party for no more than the Maximum Costs Amount within thirty (30) days of receipt of said invoice.

(v) **Advisor and Counsel Fees.** In addition to the fees set forth above, expenses of the Agency in connection with Closing will be reimbursed to the Agency by the Company at Closing. The parties acknowledge that the Agency and its affiliates will be represented in this transaction by the Agency's Counsel, Anderson, Lehrman, Barre & Maraist, LLP, whose fees will be \$5,000.

(vi) Owner acknowledges and agrees that it is the intent of the parties hereto that Agency shall bear no out-of-pocket costs or expenses in connection with the Project.

(vii) In the event this MOU is terminated or the transaction fails to close as contemplated herein, Owner shall be solely responsible for all costs expended by Agency and/or its affiliates in connection with the transaction, including but not limited to payment of legal fees in an amount of up to \$40,000, payment of Agency's owner representative in an amount of up to \$35,000, and reimbursement of costs in an amount of up to \$5,000. Agency and its affiliates shall have no responsibility for payment or reimbursement of such costs.

#### I. PURCHASE OPTION/RIGHT OF FIRST REFUSAL

1. In order to secure the Exemption, Managing Member or Agency shall have a right of first refusal to acquire the Project for a price equal to the terms of a bona fide third party offer which Company and/or Special Limited Member intends to accept. In addition, on terms to be more explicitly set forth in the Ground Lease, Ground Lessor will receive an option (the "**Option**") to acquire the Project during the term of the Ground Lease, including without limitation Company's leasehold interest in the Land (collectively, the "**Tenant's Property**"), (i) on any date thirty (30) days after Ground Lessor delivers written notice to Company of Ground Lessor's intent to exercise the Option (the "**Option Exercise Notice**"), and (ii) upon the Company's receipt of the Purchase Price (as hereinafter defined). The "**Purchase Price**" for the Tenant's Property pursuant to the Option shall be set forth hereinbelow:

(a) **Price Formula.** An amount, determined by MAI appraisers mutually agreed to by Ground Lessor and Investor Member, equal to (i) the fair market value of the Tenant's Property as determined in accordance with subsection (b) below, plus (ii) an amount, on an after tax basis, equal to the diminution of economic value to the Investor Member (or Successor Member) as a result of the purchase of the Tenant's Property by Ground Lessor, which shall include (A) all capital contributions of any members of the Controlling Entity from the date of initial acquisition, (B) the outstanding balance of all loans (and any accrued interest thereon and yield maintenance) made to the Controlling Entity by its members and the Lender (as hereinafter defined), which will not otherwise be repaid at the time of the purchase, (C) a 14% IRR (as hereinafter defined) on the capital contributions of any members in the Controlling Entity and on Investor Member's capital



contributions, and (D) all costs and expenses incurred by or on behalf of the Controlling Entity's members with respect to (1) admission to the Controlling Entity, (2) such member's activities with respect to the Project prior to Ground Lessor's purchase of the Tenant's Property under this Option, and (3) an amount to distribute to the Controlling Entity's members cash proceeds sufficient to enable its members to pay, after any and all federal, state and local taxes imposed on such distribution, the taxes projected to be imposed on the members as a result of the sale pursuant to the Option.

(b) Fair Market Value. Fair market value of the Tenant's Property for purposes of this Section shall be calculated as follows: As soon as practicable following the delivery of the Option Exercise Notice, Ground Lessor and the Investor Member (or an affiliate thereof) shall select a mutually acceptable Independent Appraiser (as defined in the Ground Lease) to prepare an appraisal of the Land, Project and all assets owned by both the Controlling Entity and Company used in conjunction with the Project that are available for disposition. In the event that the parties are unable to agree upon an Independent Appraiser within 15 business days following the date of delivery of the Option Exercise Notice, Ground Lessor and the Investor Member each shall select an Independent Appraiser within the next succeeding five business days. If either party fails to select an Independent Appraiser within such time period, the determination of the other Independent Appraiser shall control. If the difference between the appraised fair market values set forth in the two appraisals is not more than 10% of the appraised fair market value set forth in the lower of the two appraisals, the fair market value for purposes of this Section shall be the average of the two appraisals. If the difference between the two appraisals is greater than 10% of the lower of the two appraisals, then the two Independent Appraisers shall jointly select a third Independent Appraiser whose determination of appraised fair market value shall be deemed to be binding on all parties as long as the third determination is between the other two determinations. If the third determination is either lower or higher than both of the other two appraisers, then the average of all three appraisals shall be the appraised fair market value for purposes of this Section. Ground Lessor and the Company shall each pay one-half of the fees and expenses of any Independent Appraiser(s) selected pursuant to this subsection (b). All calculations of fair market value shall take into consideration the Affordability Restrictions and the Exemption, provided, however, that if the Exemption is eliminated or modified due to a change in law, the appraisal shall take into account such elimination or modification of the Exemption.

2. Guarantors' Repurchase Option-Default. Subject to all applicable rights to cure, if (i) Managing Member takes any action (or omits to take an action that is explicitly required by the Company Agreement) within its sole and exclusive control and such action or inaction results in an event of default under any of the financing documentation, the Project obligations, or the Company Agreement; or (ii) the Managing Member takes any action (or omits to take an action that is explicitly required by the Company Agreement) within its sole and exclusive control and such action or inaction causes any guarantors any quantifiable liability which such guarantor actually pays under its guaranty agreement(s) ((i) and (ii) are referred to as "*Repurchase Events*") then each of the guarantors, and/or their respective successors and assigns or designees, shall have the sole and exclusive option (with the consent of the Investor Member) to purchase either from Agency its ownership interest in the Managing Member (the "*HA Ownership Interest*") or from the Managing Member its managing member interest in the Company (the "*MM Ownership*").



*Interest*") for the sum of \$100.00, plus all unpaid fees and unreimbursed expenses earned by the Managing Member to the date of the Repurchase Event, which shall be exercisable by any one or more of the guarantors, their successors and assigns or designees, upon 15 business days written notice by guarantors to the Agency and the Managing Member (the "**Repurchase Option**") and the other guarantors. It shall not be a Repurchase Event and this Repurchase Option will not apply if the event of default or the cause of guarantor's liability is caused in whole or part by a matter or item over which guarantors or an affiliate has full control or for which it is otherwise responsible. For purposes of this paragraph, the term "caused" shall only include matters within the full or partial control of the application person or entity. In the event that the Repurchase Option is exercised, the fee estate shall be transferred to Company for a nominal cost.

#### J. SALE.

In the event Special Limited Member desires to sell or refinance the Project (any such sale may take the form of a sale of a majority of the ownership interest in both the managing member and the other members and/or a sale of the fee interest in the land), Agency and the Managing Member shall cooperate with the Special Limited Member in connection with such efforts. In the event either Agency or the Managing Member do not cooperate, the Special Limited Member shall have the right to require or compel such cooperation through all available relief and remedies that may be available at law or in equity. Nothing contained in this Section shall affect, limit, or impair any purchase option or right of first refusal that either Agency or the Managing Member may be entitled to exercise. Notwithstanding the foregoing, no transfer of the property shall be permitted to another governmental entity or its affiliate, other than Agency or its any of its affiliates, so long as the Exemption has not been lost by either inaction or action by the Agency.

#### K. REGULATORY RESTRICTIONS

Owner and Agency agree that the Project will be a mixed income rental housing development restricted at the following rent schedule:

- At least forty percent (40%) of the units in the Project (the "**80% AMI Affordable Units**") will be reserved for occupancy by individuals and families earning at or below eighty percent (80%) of the area median family income, adjusted for household size and taking in account, for this purpose, the combined incomes of each unit occupant residing in an 80% AMI Affordable Unit within the meaning of Section 303.042 of the Texas Local Government Code. 80% median family income shall be established annually by the US Department of Housing and Urban Development ("**HUD**") and calculated using the Novogradac Rent and Income Limit Calculator for the Nueces County - Corpus Christi, Texas HUD MSA and the applicable year with rent calculations based on "Other non-LIHTC" and "50% VLI" income limits, "80%" and Imputed Persons Per Bedroom for Rent Limited Calculations set to "1 Person/1 Bedroom + 1" without regard to utility allowances (the "**80% Rent Restriction**") and the applicable family size selected for the respective Low-Income Household leasing a particular Low Income Unit (the "**80% Applicable Median Income**").
- At least ten percent (10%) of the units in the Project (the "**60% AMI Affordable Units**") will be reserved for occupancy by individuals and families earning at or below



sixty percent (60%) of the area median family income, adjusted for household size and taking into account, for this purpose, the combined incomes of each unit occupant residing in a 60% AMI Affordable Unit. 60% median family income shall be established annually by the US Department of Housing and Urban Development ("HUD") and calculated using the Novogradac Rent and Income Limit Calculator for the Nueces County – Corpus Christi, Texas HUD MSA and the applicable year with rent calculations based on "Other non-LIHTC" and "50% VLI" income limits, "60%" and Imputed Persons Per Bedroom for Rent Limited Calculations set to "1 Person/1 Bedroom + 1" without regard to utility allowance (the "60% Rent Restriction") and the applicable family size selected for the respective Low Income Household leasing a particular Low Income Unit (the "60% Applicable Median Income"). Notwithstanding, if a 60% AMI Affordable Unit becomes vacant and a household with 60% Applicable Median Income does not apply to rent such unit in the two (2) weeks after the date of vacancy, the Company is not required to hold the unit open and may rent to a household that otherwise qualifies for an 80% AMI Affordable Unit and will strive to rent the next vacant unit to a household at 60% Applicable Median Income under the same terms.

- For the avoidance of doubt, the Affordability Restrictions and rental limitations shall apply solely to shelter rents be adjusted based upon family size.
- No greater than fifty percent (50%) of the units in the Project will be unrestricted as to resident incomes and may be rented at market rates (the "Market Units").
- The unit mix at the Project shall be as follows:

Unit	60% AMI	80% AMI	Market	Totals
1 Bedroom	9	36	43	88
2 Bedroom	11	43	54	108
3 Bedroom	2	9	13	24
Totals	22	88	110	220
Percentages	10%	40%	50%	100%

Income shall be verified by the Owner pursuant to a review of the tenants' federal income tax returns or other commercially reasonable method acceptable to Agency. Owner and Agency will enter into a Regulatory Agreement at Closing to be recorded in the Nueces County land records that will set forth the income restrictions and describe the methodology for income verification and reporting.

#### L. MISCELLANEOUS

1. This MOU reflects the entire understanding between the parties and may only be amended in writing, signed by both parties. This MOU is a contract and not merely an "agreement to agree."

2. Each party hereto is prohibited from assigning any of its interests, benefits or responsibilities hereunder to any third party or related third party, without the prior written consent of the other party, such consent not to be unreasonably withheld, conditioned, or delayed.

3. The parties agree to execute such documents and do other such reasonable things as may be necessary or appropriate to facilitate the consummation of the agreements set forth herein.

4. This MOU may be executed in several counterparts, each of which shall be deemed to be an original and all of which together shall constitute one contract binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

5. THIS MOU SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUSIVE OF CONFLICT OF LAWS PRINCIPLES.

6. In case any one or more of the provisions contained in this MOU for any reason is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision hereof, and this MOU will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

7. The parties hereto submit exclusively to the jurisdiction of the state and federal courts of Nueces County, Texas, and venue for any cause of action arising hereunder shall lie exclusively in the state and federal courts of Nueces County, Texas.

8. Should any party employ an attorney or attorneys to enforce any of the provisions hereof, to protect its interest in any manner arising under this MOU, or to recover damages for the breach of this MOU, the non-prevailing party in any action pursued in courts of competent jurisdiction (the finality of which is not legally contested) agrees to pay to the prevailing party all reasonable costs, damages and expenses, including specifically, but without implied limitation, attorneys' fees, expended or incurred by the prevailing party in connection therewith.

9. The subject headings contained in this MOU are for reference purposes only and do not affect in any way the meaning or interpretation hereof.

10. This MOU shall continue until terminated upon the occurrence of any one of the following conditions:

(a) Agency and the Owner sign a mutual consent to terminate this MOU;

(b) If the terms of the Loan for the Project are unacceptable to Agency, in its sole discretion, and Agency provides the Owner notice of such fact and a 30-day opportunity to provide financing terms that are acceptable to Agency and the Owner, but the Owner does not do so;



(c) Agency's Board of Directors takes action to disapprove of the participation of Agency in the financing of the Project as described in this MOU at any time prior to the Closing;

(d) Either party breaches its obligations under this MOU, the non-breaching party provides the breaching party notice of such fact and a 15-day opportunity to cure, and the breaching party fails to do so;

(e) Either party files for bankruptcy protection, makes an assignment for the benefit of creditors, has a receiver appointed as to its assets, or generally becomes insolvent;

(f) Prior to the Closing it is determined that the Project will not qualify for the Exemption; or

(g) Owner is not awarded a contract for purchase of the Project.

Upon termination of this MOU for any of the reasons cited above, neither party shall have any ongoing obligation to the other with respect to this MOU nor the Project. In addition, the provisions of this MOU with respect to the Project will be terminated when Managing Member is admitted to the Company and Agency and the Owner and their affiliates, as applicable, enter into definitive agreements with respect to the governance of the Company and the financing and operation of the Project as contemplated herein.

11. The parties acknowledge that the Managing Member, Agency and its affiliates will be represented in this transaction by Anderson, Lehrman, Barre & Maraist, LLP ("*Company Counsel*") in a legal capacity. Owner, Special Limited Member and their affiliates will be represented by separate counsel and will not be entitled to rely on Company Counsel for representation in this matter and acknowledges that no financial advisory relationship will exist among the Owner, Special Limited Member and their affiliates.

[Remainder of Page Intentionally Left Blank]

EXECUTED to be effective as of the date above shown.

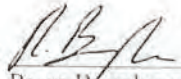
**AGENCY:**

CORPUS CHRISTI HOUSING AUTHORITY

  
\_\_\_\_\_  
Title: Chief Executive Officer

**OWNER:**

TX Azure Apartments 1, LLC,  
a Delaware limited liability company

By:   
\_\_\_\_\_  
Ryan Baughman, Manager

# **EXHIBIT G**

**SAMPLE GROUND LEASE FOR APARTMENT COMPLEXES**

**Execution Version**

**AZURE APARTMENTS**

**GROUND LEASE**

**between**

**CORPUS CHRISTI HOUSING AUTHORITY,  
as Landlord**

**and**

**TX AZURE APARTMENTS 1, LLC,  
as Tenant**

**Dated as of December 30, 2024**



Section 1.	DEFINITIONS.....	2
1.1	<u>Specific</u> .....	2
1.2	<u>General</u> .....	8
Section 2.	TERM.....	8
2.1	<u>Length</u> .....	8
2.2	<u>Surrender</u> .....	8
2.3	<u>Holding Over</u> .....	9
2.4	<u>Title to and Alterations of Improvements</u> .....	10
Section 3.	RENT.....	10
3.1	<u>Amount</u> .....	10
3.2	<u>Tax on Lease</u> .....	10
3.3	<u>Security Deposit</u> .....	10
3.4	<u>Net Lease</u> .....	10
3.5	<u>Condition of the Property</u> .....	11
Section 4.	USE OF PROPERTY.....	11
4.1	<u>Nature of Use</u> .....	11
4.2	<u>Compliance with Law and Covenants</u> .....	11
4.3	<u>Restrictions Applicable to Units</u> .....	12
4.4	<u>Landlord Control</u> .....	12
Section 5.	TAXES AND OPERATING EXPENSES.....	13
5.1	<u>Property Tax Exemption</u> .....	13
5.2	<u>Tenant to Pay</u> .....	14
5.3	<u>Taxes - Defer Payment</u> .....	14
5.4	<u>Delivery of Bills and Notices</u> .....	14
5.5	<u>Operating Expenses</u> .....	14
5.6	<u>Right to Pay Taxes</u> .....	15
5.7	<u>Landlord's Payment of Certain Impositions</u> .....	15
Section 6.	INSURANCE AND INDEMNIFICATION.....	15
6.1	<u>Insurance to be Maintained by Tenant</u> .....	15
6.2	<u>Insureds</u> .....	15
6.3	<u>Evidence</u> .....	15
6.4	<u>Indemnification of Landlord</u> .....	16
6.5	<u>Increase in Risk</u> .....	18
Section 7.	MORTGAGES.....	18
7.1	<u>Future Fee Estate Mortgages</u> .....	18
7.2	<u>Foreclosure Rights of Permitted Leasehold Mortgagee</u> .....	18
7.3	<u>Permitted Leasehold Mortgage</u> .....	18
Section 8.	IMPROVEMENTS TO PREMISES; PERMITTED LEASEHOLD MORTGAGE.....	20



8.1	<u>Improvements</u>	20
8.2	<u>Mechanics' or Other Liens</u>	20
8.3	<u>Fixtures</u>	21
8.4	<u>Joinder</u>	21
8.5	<u>Signs</u>	21
Section 9.	REPAIRS AND MAINTENANCE	21
9.1	<u>Repairs</u>	21
9.2	<u>Maintenance</u>	22
Section 10.	LANDLORD'S RIGHT OF ENTRY	22
10.1	<u>Inspection and Repair</u>	22
10.2	<u>Exhibiting the Property</u>	22
Section 11.	FIRE AND OTHER CASUALTIES	22
11.1	<u>Restoration</u>	22
11.2	<u>Application of Proceeds on Termination</u>	22
11.3	<u>Rights of Permitted Leasehold Mortgagee</u>	23
11.4	<u>Termination upon Non-Restoration</u>	23
Section 12.	CONDEMNATION	23
12.1	<u>Notice of Taking</u>	23
12.2	<u>Condemnation Awards</u>	23
12.3	<u>Total Taking</u>	23
12.4	<u>Partial Taking; Procedures and Criteria for Course of Action</u>	24
12.5	<u>Restoration</u>	24
12.6	<u>Restoration</u>	24
12.7	<u>Termination Upon Non-Restoration</u>	24
12.8	<u>Rights of Permitted Leasehold Mortgagee</u>	25
Section 13.	TRANSFERS	25
13.1	<u>Tenant</u>	25
13.2	<u>Landlord</u>	26
13.3	<u>Right of First Refusal</u>	26
Section 14.	DEFAULT	27
14.1	<u>Definition</u>	27
14.2	<u>Notice to Tenant; Grace Period</u>	27
14.3	<u>Landlord's Rights on Event of Default</u>	28
14.4	<u>No Release</u>	30
14.5	<u>Reserved</u>	30
14.6	<u>Reimbursement</u>	30
14.7	<u>No Action</u>	30
14.8	<u>Landlord Event of Default</u>	31



Section 15.	ESTOPPEL CERTIFICATE; SHORT FORM.	31
15.1	<u>Estoppel Certificate</u>	31
Section 16.	CONDITION OF TITLE AND PROPERTY.	32
16.1	<u>Quiet Enjoyment</u>	32
16.2	<u>Limitation on Liability</u>	32
16.3	<u>Title to Personal Property</u>	32
Section 17.	NOTICES	33
Section 18.	REPRESENTATIONS AND WARRANTIES.	33
18.1	<u>Landlord's Representations and Warranties</u>	33
18.2	<u>Tenant's Representations and Warranties</u>	34
Section 19.	Purchase Option	34
19.1	<u>Option</u>	34
19.2	<u>Sale of Leasehold Interest</u>	35
19.3	<u>Automatic Termination of Option</u>	36
19.4	<u>Subordination to Permitted Leasehold Mortgages</u>	36
Section 20.	GENERAL	36
20.1	<u>Effectiveness</u>	36
20.2	<u>Complete Understanding</u>	36
20.3	<u>Amendment</u>	36
20.4	<u>Waiver</u>	36
20.5	<u>Applicable Law</u>	36
20.6	<u>Time of Essence</u>	37
20.7	<u>Headings</u>	37
20.8	<u>Construction</u>	37
20.9	<u>Exhibits</u>	37
20.10	<u>Severability</u>	37
20.11	<u>Disclaimer of Partnership Status</u>	37
20.12	<u>Commissions</u>	37
20.13	<u>Prevailing Party</u>	37
20.14	<u>Limited 3<sup>rd</sup> Party Rights</u>	38
20.15	<u>Conflict</u>	38
20.16	<u>No Subordination of Leasehold Estate</u>	38
20.17	<u>Non-Merger</u>	38
20.18	<u>Approvals, Etc</u>	38
20.19	<u>Force Majeure</u>	38
20.20	<u>Subordinate to Permitted Leasehold Mortgage</u>	39
20.21	<u>Contest Proceedings</u>	39
20.22	<u>Landlord Not Entitled to Proceeds</u>	39
20.23	<u>Easements</u>	39
20.24	<u>Zoning</u>	39

20.25	<u>Memorandum of Ground Lease</u> .....	40
20.26	<u>No Personal Liability</u> .....	40
20.27	<u>Benefit and Burden</u> .....	40
20.28	<u>Access</u> .....	40
20.29	<u>Special Conveyance Right</u> .....	40

#### **Exhibits**

- A -- Description of Land
- B -- Schedule of Permitted Encumbrances
- C -- Notice Addresses



## **GROUND LEASE**

**THIS GROUND LEASE** (this "**Lease**") is dated to be effective as of December 30, 2024, by and between **CORPUS CHRISTI HOUSING AUTHORITY**, a public nonprofit housing authority organized under Chapter 392 of the Texas Local Government Code, having the address as set forth on Exhibit C, attached hereto ("**Landlord**"), and **TX AZURE APARTMENTS 1, LLC**, a Delaware limited liability company having the address as set forth on Exhibit C ("**Tenant**"). Landlord and Tenant also being referred to herein individually as a "**Party**" and together as the "**Parties**").

## **RECITALS.**

A. Concurrently herewith, Tenant has transferred the Premises to Landlord by Special Warranty Deed and retained the Improvements and Equipment.

B. Landlord has agreed, under the terms and conditions hereof, to lease the Premises to Tenant for Tenant's operation upon the Premises of the Improvements, consisting of a multi-family housing community known as "Azure Apartments" and comprised of approximately 220 rental units (collectively, the "**Units**"). Capitalized terms utilized herein shall have the meanings assigned to such terms in Section 1.1 below.

C. Tenant has agreed to lease the Premises from Landlord, and Landlord has agreed to lease the Premises to Tenant, for purposes herein stated.

## **AGREEMENT**

**IN CONSIDERATION** of the covenants and agreements of the Parties hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the tract of land located in Corpus Christi, Nueces County, Texas, described in Exhibit A attached hereto (the "**Land**"); and

**TOGETHER WITH** any and all easements, rights, alleys, right-of-ways, privileges, appurtenances, and advantages belonging to or in any way appertaining to the Land (all of which, together with the Land, are collectively referred to as the "**Premises**"), excluding any and all Improvements and Equipment (each hereinafter defined) now or hereafter located thereon; and

**TO HAVE AND TO HOLD** the Premises unto Tenant, its successors and assigns, on the terms and subject to the conditions hereinafter set forth, and subject to the operation and effect of the Permitted Encumbrances.



## **Section 1. DEFINITIONS.**

**1.1 Specific.** As used herein, the following terms have the following meanings:

**"Applicable Law"** means all laws, statutes, codes, acts, constitutions, ordinances, judgments, decrees, injunctions, orders, resolutions, rules, regulations, permits, licenses, authorizations, administrative orders and other requirements of any Governmental Authority applicable to the particular subject matter, including without limitation, all Housing Requirements.

**"Bankruptcy"** is deemed, for any Person (hereinafter defined), to occur either:

(a) If and when such Person (i) applies for or consents to the appointment of a receiver, trustee or liquidator of such Person or of all or a substantial part of its assets, (ii) files a voluntary petition in bankruptcy or admits in writing its inability to pay its debts as they come due, (iii) makes an assignment for the benefit of its creditors, (iv) files a petition or an answer seeking a reorganization or an arrangement with its creditors or seeks to take advantage of any insolvency law, (e) performs any other act of bankruptcy, or (v) files an answer admitting the material allegations of a petition filed against such Person in any bankruptcy, reorganization or insolvency proceeding; or

(b) If (i) an order, judgment or decree is entered by any court of competent jurisdiction adjudicating such Person a bankrupt or an insolvent, approving a petition seeking such an adjudication or a reorganization, or appointing a receiver, trustee or liquidator of such Person or of all or a substantial part of its assets, or (ii) there otherwise commences with respect to such Person or a substantial part of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or similar law; and such order, judgment, decree or proceeding continues unstayed for a period of ninety (90) consecutive days after the expiration of any stay thereof.

**"CCHA"** means Corpus Christi Housing Authority, a public housing authority organized under Chapter 392 of the Texas Local Government Code.

**"Claim"** has the meaning given it in Section 6.5.9.

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

**"Commencement Date"** has the meaning given it in Section 2.1.1.

**"Costs"** has the meaning given it in Section 6.5.9.

**"Environmental Cleanup Work"** has the meaning given it in Section 18.1.12.

**"Environmental Laws"** means any and all Applicable Law pertaining to health, safety, or the environment now or at any time hereafter in effect, and any judicial or administrative



interpretation thereof (including, but not limited to, any judicial or administrative order, consent decree or judgment relating to the environment or Hazardous Substances (hereinafter defined), or exposure to Hazardous Substances), including without limitation, and all as may hereafter be amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource, Conservation and Recovery Act of 1976, the Clean Air Act, the Federal Water Pollution Control Act, the Oil Pollution Act of 1990, the Safe Drinking Water Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, and any other environmental or health conservation or protection laws, all as amended from time to time.

**"Equipment"** means all of Tenant's right, title, and interest in and to all apparatus, machinery, devices, fixtures, appurtenances, equipment and personal property now or hereafter located on or within the Project and necessary or desirable for the proper operation and maintenance of the Project, including without limitation, any and all awnings, shades, screens and blinds; asphalt, vinyl, composition and other floor, wall and ceiling coverings; partitions, doors and hardware; elevators, escalators and hoists; heating, plumbing and ventilating apparatus; gas, electric and steam fixtures; chutes, ducts and tanks; oil burners, furnaces, heaters, incinerators and boilers; air-cooling and air-conditioning equipment; washroom, toilet and lavatory fixtures and equipment; engines, pumps, dynamos, motors, generators, electrical wiring and equipment; tools, building supplies, lobby decorations and window washing hoists and equipment; garage equipment, security systems, and gardening and landscaping equipment; swimming pool, recreational furniture and equipment; refrigerators, dishwashers, disposals, ranges, washers, dryers, and other kitchen appliances and all additions thereto and replacements thereof; but specifically excluding all equipment owned by third parties, whether or not brought onto the Project, and whether or used in connection with the services provided at or in the Project.

**"Event of Default"** has the meaning given it in Section 14.1.

**"Exemption"** has the meaning given it in Section 5.1.

**"Fee Estate"** means Landlord's fee simple interest in the Premises, subject to the operation and effect of this Lease and the Permitted Encumbrances.

**"First Permitted Leasehold Mortgage"** means the first lien Permitted Leasehold Mortgage encumbering the Leasehold Estate or any portion thereof at any time during the Term, which is senior in priority to all other Permitted Leasehold Mortgages encumbering the Leasehold Estate or such portion thereof, and the other documents governing, securing and/or evidencing said first lien.

**"First Permitted Leasehold Mortgagee"** means an individual or financial institution that provides loans to the Tenant from time to time, their successors and/or assigns, together with its successors and/or assigns, and each Person from time to time serving as the beneficiary of the First Permitted Leasehold Mortgage.



**"Governmental Authority"** means any nation, country, commonwealth, territory, government, state, county, parish, municipality, agency, or other political subdivision and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government.

**"Hazardous Materials Contamination"** has the meaning given to it in Section 18.1.12.

**"Hazardous Substances"** means any and all substances regulated by Environmental Laws and any other substance affecting the health and/or welfare of persons or adversely affecting the environment.

**"Holdover Rent"** has the meaning given it in Section 2.3.2.

**"Housing Requirements"** means at least fifty percent (50%) of the residential units will be restricted for rent to Qualifying Tenants. As used herein "Qualifying Tenants" means one or more natural persons or a family, irrespective of race, creed, religion, color, national origin, familial status, mental or physical handicap, or gender, whose current annual family income does not exceed eighty percent (80%) of the area median gross income (within the meaning of section 142(d) of the Internal Revenue Code of 1986, as amended (the "Code")) calculated using the Novogradac Rent and Income Limit Calculator for the applicable year, under the "Other Federal, State, or Local Program" category for Nueces County – Corpus Christi, TX HUD Metro FMR Area for families of four or more persons, which calculation is based on the HUD Published Income Limit for 50% VLI, or such other reliable compilation of income statistics as Landlord may determine to employ, as adjusted by Landlord according to the most recent Consumer Price Index statistics (the "*Area Median Gross Income*"). Rent will not be calculated with regard to utility allowances; provided, however, that the rents shall not exceed 35% of 0.8 (or 0.6, as applicable) multiplied by the Area Median Gross Income, divided by twelve (12) for the Qualifying Tenants.

In addition, at all times:

(i) 88 units will be income restricted for rent to individuals and households whose aggregate adjusted gross incomes do not exceed eighty percent (80%) of Area Median Gross Income;

(ii) 22 units will be income restricted for rent to individuals and households whose aggregate adjusted gross incomes do not exceed sixty percent (60%) of Area Median Gross Income; and

(iii) 110 units will be market rate.



**"Independent Appraiser"** means a firm which is generally qualified to render opinions as to the fair market value of assets such as those owned by the Tenant, which is mutually acceptable to the Landlord and the Tenant and which satisfies the following criteria:

- (i) such firm is not a partner, or an affiliate of the Landlord or the Tenant;
- (ii) such firm (or a predecessor in interest to the assets and business of such firm) has been in business for at least five (5) years, and at least one of the principals of such firm has been in the active business of appraising substantially similar assets for at least (10) years;
- (iii) such firm has regularly rendered appraisals of substantially similar assets for at least five (5) years on behalf of a reasonable number of unrelated clients, so as to demonstrate reasonable market acceptance of the valuation opinions of such a firm;
- (iv) one or more of the principals or appraisers of such firm are partners in good standing of an appropriate professional association or group which establishes and maintains professional standards for its partners; and
- (v) such firm renders an appraisal to the Tenant only after entering into a contract that specifies the compensation payable for such appraisal.

**"Improvements"** means any and all buildings, structures, alterations, improvements, fixtures and non-movable Equipment now located or at any time in the future located on the Land, and all subsequent alterations, additions and/or replacements thereto and/or thereof.

**"Initial Lease Payment"** has the meaning given it in Section 3.1.1.

**"Investor Member"** means Sundance Bay Income and Growth OP, LP, a Delaware limited partnership, together with its successors and assigns admitted to, or to be admitted to, Tenant as the investor member. Landlord, by execution of this Lease, consents to such Person as Investor Member.

**"Land"** has the meaning given it on Page 1 of this Lease.

**"Landlord"** means Landlord and its successors and assigns as owner of the Fee Estate.

**"Landlord Event of Default"** has the meaning given it on Section 14.8

**"Landlord's Related Parties"** has the meaning given it in Section 6.5.4.

**"Land Records"** means the Real Property Records of Nueces County, Texas.



**"Lease Year"** means (a) for the calendar year 2024, the period commencing on the Commencement Date and terminating on December 31, and (b) for each calendar year thereafter the successive period of twelve (12) calendar months during the Term.

**"Leasehold Estate"** means the leasehold estate in the Premises held by Tenant under this Lease.

**"Managing Member"** means Azure Apartments-CCHA, LLC, a Delaware limited liability company, together with its successors and assigns, admitted to, or to be admitted to, Tenant. Landlord, by execution of this Lease, consents to such Person as Managing Member.

**"Mortgage"** means any mortgage or deed of trust at any time encumbering any or all of the Property, and any other security interest therein existing at any time under any other form of security instrument or arrangement, including without limitation, any such other form of security arrangement arising under any deed of trust, sale-and-leaseback documents, lease-and-leaseback documents, security deed or conditional deed, or any financing statement, security agreement, or other documentation used pursuant to the UCC (hereinafter defined), provided that such mortgage, deed of trust or other form of security instrument, and any instrument evidencing any such other form of security arrangement, has been recorded in the Land Records or in such other place as is, under Applicable Law, required for such instrument to give constructive notice of the matters set forth therein.

**"Mortgagee"** means the holder or beneficiary of a Mortgage.

**"Operating Agreement"** means the Operating Agreement of the Tenant, dated as of even date herewith as such agreement may be modified or replaced from time to time.

**"Partial Taking"** has the meaning assigned to such term in Section 12.4.

**"Party"** and **"Parties"** have the meanings given to such terms on Page 1 of this Lease.

**"Permitted Encumbrances"** means the instruments and matters listed in Exhibit B, attached hereto and made part hereof, and matters permitted in Section 7, and including without limitation, any liens or encumbrances securing any financing made to Tenant, at Tenant's request, in connection with the Property, and matters permitted by Permitted Leasehold Mortgagee.

**"Permitted Leasehold Mortgage"** means, collectively whether one or more, the Mortgages that are permitted by the terms of this Lease, including without limitation, the First Permitted Leasehold Mortgage, that are obtained by Tenant for the purpose of financing the Leasehold Estate, together with the instruments governing, securing, and/or evidencing any such Mortgage, and all renewals, extensions, modifications, consolidations, and replacements thereof.

**"Permitted Leasehold Mortgagee"** means, collectively whether one or more, the beneficiary of a Permitted Leasehold Mortgage. Landlord, by execution of this Lease, consents



to the First Permitted Leasehold Mortgagee as a Permitted Leasehold Mortgagee under this Lease.

**"Person"** means a natural person, a trustee, a corporation, a partnership, a limited liability company and any other form of legal entity.

**"Premises"** has the meaning given it hereinabove; provided that if at any time hereafter any portion of the Premises is no longer subject to this Lease, **"Premises"** shall thereafter mean so much thereof as remains subject to this Lease.

**"Project"** means, collectively, the Premises and the Improvements.

**"Property"** means, collectively, the Premises, the Improvements, and the Equipment.

**"Required Insurance"** has the meaning given it in Section 6.1.

**"Restoration Criteria"** has the meaning given it in Section 12.4.1.

**"Rent"** means the rent payments payable in accordance with Section 3.1.1.

**"Resident"** means a tenant occupying a Unit pursuant to a Tenancy Agreement.

**"Social Services"** shall mean public and charitable services made available by Landlord and/or its sponsor, CCHA, directly or through other governmental and nonprofit partners as part of Landlord's and CCHA's joint mission to provide safe, decent, sanitary and affordable housing to low income individuals and families in Corpus Christi, Texas, including the provision of homeownership programs, tenant educational programs, job training programs, personal debt/credit repair and management, public and community health programs, research initiatives, childcare and child development programs, and/or youth sports and programs.

**"Taking"** has the meaning given it in Section 12.1.

**"Taxes"** has the meaning given it in Section 5.2.

**"Tenancy Agreement"** means the form of lease agreement between Tenant and a Resident under the terms of which such Resident is entitled to enjoy possession of a Unit.

**"Tenant"** means Tenant and its successors and assigns as holder of the Leasehold Estate.

**"Tenant's Related Parties"** has the meaning given it in Section 6.5.4.

**"Term"** has the meaning given it in Section 2.1.1.

**"Termination Date"** has the meaning given it in Section 2.1.1.

**"Termination Deliverables"** means, collectively, (i) a special warranty deed, in form reasonably satisfactory to Tenant, (ii) a blanket conveyance and bill of sale relating to any tangible



or intangible personal property, (iii) a termination of this Lease, (iv) a title affidavit in form required to delete any pre-printed exception, and any gap in coverage, (v) a "Firpta" affidavit, if applicable, (vi) any transfer tax forms which may be required, (vii) any authority documents that may be required by the title company issuing the title policy described in the next subsection and (viii) a Texas form Owner's Title Policy from a nationally recognized title insurer, in the amount of the purchase price, subject to the liens, encumbrances and other exceptions existing as of the date hereof or otherwise approved by Tenant.

"**Total Taking**" has the meaning given it in Section 12.3.

"**Transfer**" has the meaning given it in Section 13.1.1.

"**UCC**" means the Uniform Commercial Code as codified in the State of Texas, as amended and any successor statute.

"**Units**" has the meaning given it in Recital A above.

**1.2 General.** Any other term to which meaning is expressly given in this Lease shall have such meaning.

## **Section 2. TERM.**

### **2.1 Length.**

**2.1.1 Original Term.** This Lease shall be for a term ("**Term**") commencing on the date of this Lease ("**Commencement Date**"), and terminating at 11:59 P.M. (CST) on the day immediately before the ninety-ninth (99th) anniversary of the first (1st) day of the first (1st) full calendar month following the Commencement Date, or such earlier date (the "**Termination Date**," except that if the date of such termination is changed to an earlier date or postponed to a later date, the date to which it is changed or postponed shall thereafter be the "**Termination Date**" for all purposes of this Lease). Nothing in this Lease shall be deemed to extend or permit the extension of the Term beyond said ninety-ninth (99th) anniversary.

**2.1.2 Confirmation of Commencement and Termination.** Upon either Party's request, the Parties will confirm the Commencement Date and Termination Date, or any earlier termination of this Lease.

**2.1.3 [Reserved].**

### **2.2 Surrender.**

**2.2.1** On the Termination Date occurring as a result of the exercise by Landlord of an Acquisition Right, Tenant shall, at its expense and subject to Section 2.4, (a) promptly yield up the Property to Landlord, and (b) upon Landlord's written request, remove Tenant's personal property from the Property. Upon the expiration or termination of this Lease, neither Tenant nor its representatives shall thereafter have any right to any of the Property



(including without limitation, the Improvements) or to repossess any of same, or in, to or under this Lease, and Landlord shall automatically be deemed to have succeeded to all of the same, free and clear of any Person's right, title and interest therein (but subject to the rights of any Person under the Permitted Exceptions, any Mortgagee then holding a lien, right, title or interest in or to the Leasehold Estate, and all Residents).

**2.2.2** Notwithstanding the foregoing, if the Termination Date occurs as a result of the activities described in Sections 2.1.3, 13.1.2 or 13.1.3, Landlord shall promptly yield up the Premises to Tenant.

## **2.3** Holding Over.

**2.3.1** Month-to-Month Tenancy. Nothing in this Lease shall be deemed to permit Tenant to use or occupy the Property after a Termination Date described in Section 2.2 or the final Termination Date described in Section 2.1 (a "**Landlord Termination Date**"); however, if Tenant continues to occupy the Property after the Landlord Termination Date, after obtaining Landlord's written consent thereto,

(a) Such occupancy shall (unless the Parties agree otherwise in writing) be deemed to be a month-to-month tenancy, which shall continue until either Party notifies the other in writing, by at least thirty (30) days before the end of any calendar month, that the Party giving such notice elects to terminate such tenancy at the end of such calendar month, in which event such tenancy shall so terminate;

(b) Subject to the provisions of Section 2.3.1(c), but notwithstanding anything in the remaining provisions of this Section to the contrary, the Rent payable with respect to each such monthly period shall equal one-twelfth (1/12) of \$100, and the Rent shall continue to be payable under Section 3; and

(c) Such month-to-month tenancy shall be on the same terms and conditions as those set forth in this Lease, unless Landlord gives Tenant written notice, at least thirty (30) days before the end of any calendar month during such month-to-month tenancy, that such terms and conditions (including any related to the amount and payment of Rent) shall, after such month, be modified in the manner specified in such notice, then such tenancy shall, after such month, be on said terms and conditions as so modified.

**2.3.2** Holdover Rent. If Tenant continues to occupy the Premises after the Landlord Termination Date without having obtained Landlord's written consent thereto, then without altering or impairing any of Landlord's other rights under this Lease or Applicable Law, Tenant hereby agrees to pay to Landlord, as holdover rental for the Premises a sum equal to the Rent plus \$50.00, adjusted on an annual basis, as of each January 1, to account for inflation, with the adjustment to be made on the basis of the consumer price index for Galveston County, Texas, for each day of such holdover occupancy, prorated based upon the number of days Tenant holds over ("**Holdover Rent**"). Nothing in this Lease shall be deemed to give Tenant the



right to remain in possession of the Premises after the Landlord Termination Date, regardless of whether Tenant has paid the Holdover Rent to Landlord, without Landlord's written approval.

**2.4 Title to and Alterations of Improvements.** At all times during the Term, the Improvements and the Equipment shall be owned by Tenant and Tenant alone shall be entitled to all of the tax attributes of such ownership, including without limitation, the right to claim depreciation or cost recovery deductions. Additionally, Tenant shall have the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Property. Upon the Landlord Termination Date, the Improvements and the Equipment, or any portion thereof so terminated, shall become the sole property of Landlord at no cost to Landlord, and shall be free of all liens and encumbrances (other than the Permitted Encumbrances and as otherwise provided in this Lease). For state real property tax purposes or to the extent otherwise required under Applicable Law to maintain the Exemption for the Property, Landlord shall be treated as the owner of the Property. It is the parties' intent that Landlord hold title to the Land at all relevant times and to the extent it does not, Landlord can compel legal title to the Land to be conveyed to Landlord during the Term, if necessary, and by automatic operation of law pursuant to this Lease at the termination of this Lease.

### **Section 3. RENT.**

**3.1 Amount.** As rent for the Premises, Tenant shall pay to Landlord:

**3.1.1 Rent.** Rent ("**Rent**"), in an amount equal to 10% of the ad valorem property tax savings for the Project based on the final, non-appealable resolution of any contest of the ad valorem tax values for the Project for 2024, such tax values to be increased annually by 3%. The first payment of Rent shall be made on or before January 1, 2025, pro-rated for the number of days remaining in the calendar year following the effective date hereof. Thereafter, Rent shall be paid no later than January 1 of each following year. Notwithstanding anything herein to the contrary the payment of Rent shall be subordinate to the payment of any debt service owed by the Tenant with respect to any loans made to finance or refinance the acquisition of the Project.

**3.2 Tax on Lease.** If Applicable Law now or hereafter imposes any tax, assessment, levy, or other charge (other than any income tax) directly on Landlord with respect to (a) this Lease or the value thereof, (b) Tenant's use or occupancy of the Premises, (c) the Rent or any other sum payable under this Lease, or (d) this transaction, Tenant shall pay Landlord the amount thereof as Rent unless Tenant is prohibited by Applicable Law from doing so, provided Tenant shall not be obligated to pay any tax which is solely attributable to Landlord's ownership interest as owner of the Land.

**3.3 Security Deposit.** None.

**3.4 Net Lease.** Other than as expressly set forth in this Lease (and except for fees of attorneys and third-party consultants retained by Landlord, and Landlord's own personnel costs), all reasonable costs, expenses, liabilities, charges, and/or other deductions whatsoever with



respect to the Property and the ownership, leasing, operation, marketing, maintenance, repair, rebuilding, use, occupation of, and/or conveyance of any or all of Tenant's Leasehold Estate shall be the sole responsibility of and payable by Tenant, including any reasonable costs, expenses, charges or other sums incurred by Landlord in connection with this Lease that are Tenant's responsibility pursuant to the terms hereof; all of which costs, expenses, liabilities and charges shall be deemed Rent.

**3.5 Condition of the Property. TENANT ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE, THE PREMISES SHALL BE LEASED TO TENANT AND TENANT SHALL ACCEPT THE PREMISES, "AS IS, WHERE IS, AND WITH ALL FAULTS." LANDLORD HEREBY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE OR ANY OTHER DISCLAIMER SET FORTH HEREIN, LANDLORD AND TENANT HEREBY AGREE THAT LANDLORD HAS NOT MADE AND IS NOT MAKING ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, AS TO (A) THE NATURE OR CONDITION, PHYSICAL OR OTHERWISE, OF THE PREMISES OR ANY ASPECT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF HABITABILITY, SUITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE; (B) THE SOIL CONDITIONS, DRAINAGE CONDITIONS, TOPOGRAPHICAL FEATURES, ACCESS TO PUBLIC RIGHTS-OF-WAY, AVAILABILITY OF UTILITIES OR OTHER CONDITIONS OR CIRCUMSTANCES WHICH AFFECT OR MAY AFFECT THE PREMISES OR TENANT'S USE THEREOF; (C) ANY CONDITIONS AT, OR WHICH AFFECT OR MAY AFFECT, THE PREMISES WITH RESPECT TO ANY PARTICULAR PURPOSE, USE, DEVELOPMENT POTENTIAL OR OTHERWISE; (D) ANY ENVIRONMENTAL, GEOLOGICAL, METEOROLOGICAL, STRUCTURAL OR OTHER CONDITION OR HAZARD, OR THE ABSENCE THEREOF, AFFECTING THE PREMISES ON, PRIOR TO, OR AFTER THE DATE HEREOF, INCLUDING WITHOUT LIMITATION, THE ABSENCE OF ASBESTOS, LEAD PAINT, OR ANY OTHER ENVIRONMENTALLY HAZARDOUS SUBSTANCE ON, IN, UNDER OR ADJACENT TO THE PREMISES, AND (E) THE COMPLIANCE OF THE PREMISES OR THE OPERATION OR USE THEREOF WITH ANY APPLICABLE LAW (INCLUDING WITHOUT LIMITATION, ANY ZONING LAWS OR REGULATIONS, ANY BUILDING CODES, ANY ENVIRONMENTAL LAWS, AND THE AMERICANS WITH DISABILITIES ACT OF 1990, ALL AS AMENDED FROM TIME TO TIME).**

#### **Section 4. USE OF PROPERTY.**

**4.1 Nature of Use.** Tenant shall throughout the Term use and operate the Property only for residential rental apartments and related uses, which may include commercial tenants and uses. Tenant shall have the right to sublease all or any portion of the Property for residential rental apartments and related uses.

**4.2 Compliance with Law and Covenants.** Throughout the Term and at its sole expense, Tenant shall, in all material respects:

**4.2.1** Comply with (a) all Applicable Law, (b) the requirements imposed by the Required Insurance, and (c) the Permitted Encumbrances;



**4.2.2** Keep all licenses, consents, and permits in force that are required by Applicable Law to permit the Property to be used in accordance with this Lease;

**4.2.3** Not impair Landlord's right, title, or interest in and to the Fee Estate;  
and

**4.2.4** Not negligently or knowingly do any of the following at the Property other than in accordance with the Environmental Laws (a) cause or permit the escape, disposal, or release of any Hazardous Substances, (b) allow the storage or use of Hazardous Substances, or (c) allow any Hazardous Substances to be brought onto the Property. If any Permitted Leasehold Mortgagee or Governmental Authority reasonably requires testing to ascertain whether or not there has been any release of Hazardous Substances on, in, or under the Property while this Lease is in effect, then Tenant shall reimburse, on demand and as Rent, the reasonable costs incurred by Landlord in connection thereto. Tenant shall, upon Landlord's request, execute affidavits, representations, and the like concerning Tenant's best knowledge and belief regarding the presence of Hazardous Substances on, in, or under the Property. Notwithstanding the foregoing, the use and storage of office supplies (e.g., copier toner, white-out correction fluid, etc.), cleaning supplies, gasoline, and other Hazardous Substances in such amounts as are found in connection with the use of similar projects shall be permitted.

**4.3** Restrictions Applicable to Units.

**4.3.1** The Restricted Units are subject to and benefit from the terms and conditions of the Housing Requirements. Except as otherwise provided therein, all Housing Requirements applicable to the Restricted Units shall be binding upon Landlord and Tenant and each of their respective successors and assigns.

**4.3.2** Reserved.

**4.3.3** Tenant shall comply with the provisions of the Legal Requirements prohibiting discrimination in housing on the grounds of race, color, creed, national origin, sex, marital status, sexual orientation, or a physical or mental handicap, including without limitation, Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and Title VIII of the Civil Rights Act of 1968 (Public Law 90-284) and the Fair Housing Act (42 U.S.C. §§3601-3620).

**4.3.4** Tenant shall ensure that no tenant or potential tenant is discriminated against based on source of income. For the purpose of this Section 4.3.4, "source of income" means lawful, verifiable in-come paid directly to a tenant or paid to a representative of a tenant, or paid to a housing owner or landlord on behalf of a tenant, including federal, state, or local public assistance and federal, state, or local housing subsidies, including, but not limited to, federal housing assistance vouchers under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f).

**4.4** Landlord Control. Notwithstanding anything to the contrary set forth in this Lease, Landlord shall have no control or participation in the control or operation of the Property and



shall not be entitled to any benefits from or uses thereof except for the Rent required hereunder or the provision of Social Services made available to tenants or potential tenants of the Restricted Units. Landlord shall assume sole responsibility for the cost or expense related to the provision of any Social Services. Prior to provision of any Social Services, Tenant and Landlord shall enter into an agreement memorializing such Social Services and providing that Landlord shall assume responsibility for any claims or causes of action that might arise from or in connection with the provision of any Social Services.

## **Section 5. TAXES AND OPERATING EXPENSES.**

### **5.1 Property Tax Exemption.**

**5.1.1** The Property is anticipated to qualify for exemption from all state and local government real estate taxes (the "**Exemption**"). Landlord represents, warrants, and covenants that Landlord, and/or Landlord's successors, will use commercially reasonable efforts to (i) entitle the Property to qualify and (ii) maintain such qualification, for the Exemption. Landlord agrees (a) except as pursuant to the terms of a Permitted Leasehold Mortgage, not to convey any portion of either the Premises or the Fee Estate, and (b) except as pursuant to the terms of this Lease, not to take any action within its reasonable control that would jeopardize the Exemption. Landlord further agrees to take such commercially reasonable action as Tenant or Investor Member may request (at Tenant's expense) to preserve the Exemption, unless such action is otherwise prohibited by Applicable Law. In order to qualify for the Exemption under Section 392 of the Texas Local Government Code, Tenant agrees that at least fifty percent (50%) of the residential units will be restricted for rent to Qualifying Tenants (the "**Restricted Units**").

**5.1.2** In the event (i) the Exemption is lost due to a change in law, (ii) the Nueces County Appraisal District issues a notice denying the Exemption to the Property or (iii) the Exemption is not reflected in the first property tax bill issued the Nueces County Appraisal District after the date hereof, the Landlord shall have a period of 60 days following such event to propose to Tenant in writing either a plan to restore the Exemption or an alternative 100% ad valorem tax exemption available under Texas law that is reasonably acceptable to Tenant (the "**Proposal Period**"). Landlord shall have no more than 120 days following the Proposal Period to obtain such restoration of the Exemption or alternative 100% ad valorem tax exemption available under Texas law (the "**Restoration Period**"). If either (i) at the end of the Proposal Period, Landlord has not presented a plan that is reasonably acceptable to Tenant or (ii) at the end of the Restoration Period the Exemption has not been restored or an alternative 100% ad valorem exemption has not been implemented (confirmation of which may be had in writing or electronic mail by Nueces County Appraisal District or verified through public records), and if Landlord has not exercised its rights under the Option or Refusal Right by the end of the Restoration Period, Tenant may direct Landlord to cooperate with Tenant to promptly terminate this Lease and surrender the Premises to Tenant. In the event of termination of this Lease pursuant to this Section 5.1.2 Landlord shall deliver to Tenant the Termination Deliverables. Any rent accruing during the Proposal Period and the Restoration Period ("**Restoration Period Rent**") shall be forgiven at the end of the Restoration Period,



provided, however, that if the Exemption has been restored or replaced by an alternative 100% ad valorem exemption by the end of the Restoration Period, the Restoration Period Rent that remains accrued and payable shall be due within thirty (30) days of the date that the Nueces County Appraisal District has restored or replaced the Exemption in writing. Notwithstanding the foregoing, any Restoration Period Rent payable in accordance with the preceding sentence shall be reduced by any property tax payments made by Tenant during the Restoration Period. If at the end of the Restoration Period the Exemption has been restored or an alternative ad valorem tax exemption has been implemented, this Section 5.1.2 shall no longer be applicable unless the Exemption or any replacement ad valorem exemption is lost again due to a change in law.

**5.2 Tenant to Pay.** Subject to Section 5.7, Tenant shall (a) bear the full expense of all real property and other taxes, charges, and assessments levied against any of the Property, including without limitation all payments in lieu of taxes (if applicable), that are payable with respect to any period falling within the Term ("Tax" or "Taxes," as the context dictates); except that if any Tax is levied with respect to a period beginning before the Commencement Date or ending after the Termination Date, Tenant shall only pay the portion falling within the Term; (b) pay the same before past due and incurring penalties (subject to Section 5.3); and (c) deliver to Landlord a copy of the receipted bill for such Taxes within fifteen (15) days of its receipt of Landlord's written request.

**5.3 Taxes - Defer Payment.** Notwithstanding the terms in Section 5.2, Tenant may contest the payment of any Tax provided that Tenant (a) is doing so in good faith and by appropriate proceedings; (b) pays to Landlord promptly after the demand therefor all reasonable costs and expenses incurred by Landlord in connection with such contest; and (c) timely pays any amount adjudged by a Governmental Authority to be due, with all costs, penalties and interest thereon, after such judgment becomes final and non-appealable. Landlord shall, upon written request by Tenant, cooperate with Tenant in any such contest, provided that Tenant reimburses Landlord for all reasonable out-of-pocket expenses incurred by Landlord in connection thereto.

**5.4 Delivery of Bills and Notices.** Each Party shall deliver to the other, promptly after its receipt thereof, copies of all bills for Taxes and notices of assessments or reassessments made or to be made for the purpose of levying any Taxes, to the extent such Taxes are to be paid by the other Party. If the Land is not now treated as a separate tax lot by the assessing authority, Landlord shall use its reasonable efforts to promptly hereafter have the Premises so treated.

**5.5 Operating Expenses.** Subject to Tenant's legal rights to dispute expenses, Tenant will pay (or cause to be paid), directly to the providers of such services, all costs and expenses incurred by Tenant in connection with the construction, development, marketing, leasing, maintenance, management, use and occupancy of the Property, including without limitation (a) energy sources such as propane, butane, natural gas, steam, electricity, solar energy and fuel oil; (b) water, sewer and trash disposal services; (c) maintenance, repair, replacement and rebuilding of the Improvements, including without limitation, all Equipment; (d) landscaping and the maintenance, repair and striping of all parking areas; (e) premiums for the Required Insurance;



and (f) capital improvements or repairs (whether structural or non-structural) required to maintain the Improvements in accordance with the terms of this Lease and Applicable Law.

**5.6 Right to Pay Taxes.** Any Permitted Leasehold Mortgagee and Investor Member shall have the right (but not the obligation) to pay any taxes payable by Landlord or Tenant with respect to the Property, and to cure any monetary or non-monetary default by Landlord or Tenant under any Permitted Leasehold Mortgage (other than such Permitted Leasehold Mortgagee's own Permitted Leasehold Mortgage) or other encumbrance on the Property which has priority over this Lease, but only to the extent permitted by the applicable Permitted Leasehold Mortgage. If a Permitted Leasehold Mortgagee or Investor Member does so pay or cure, Landlord or Tenant, as applicable, agrees that it will reimburse Permitted Leasehold Mortgagee or Investor Member, as applicable, for the amount thereof promptly following request by such Permitted Leasehold Mortgagee or Investor Member, as applicable, therefor, unless Landlord or Tenant, as applicable, is protesting such taxes or other payments in good faith.

**5.7 Landlord's Payment of Certain Impositions.** Notwithstanding anything to the contrary set forth in this Lease, it is expressly understood and agreed that Tenant shall not be required to pay or reimburse Landlord for (a) any of Landlord's franchise tax, gross receipts tax, revenue tax, premium tax, income tax or profits tax, or any such tax imposed after the date hereof by any Governmental Authority or jurisdiction if such tax is determined on the basis of the general assets, or the general net income or net revenue, of Landlord; or (b) any estate, inheritance, devolution, succession, transfer, stamp, legacy or gift tax which may be imposed upon or with respect to a transfer of Landlord's interest in the Property.

## **Section 6. INSURANCE AND INDEMNIFICATION.**

**6.1 Insurance to be Maintained by Tenant.** Tenant shall maintain, or cause to be maintained, at its expense throughout the Term the insurance specified in the First Permitted Leasehold Mortgage, as the same may be modified from time to time due to changes in such insurance (the "**Required Insurance**").

**6.2 Insureds.** Each policy for Required Insurance shall (a) have waiver of subrogation provisions reasonably acceptable to Landlord and Tenant, (b) be issued by companies of recognized responsibility licensed to issue such policies and otherwise transact business in the State of Texas, and (c) name as insureds thereunder (i) Tenant, (ii) as additional insureds, Landlord, each designee of Landlord and/or Tenant, including without limitation, Investor Member, and Permitted Leasehold Mortgagee. Notwithstanding anything to the contrary set forth in this Lease, Landlord's entitlement to proceeds from Tenant's insurance policies is subordinate to the rights of Investor Member, all Permitted Leasehold Mortgagees, and Tenant.

**6.3 Evidence.** Upon Landlord's request, Tenant shall deliver a copy of each insurance policy to Landlord. All public liability, property damage liability, and casualty policies maintained by Tenant will be written as primary policies, not contributing with and not in excess of coverage that Landlord may carry.



#### **6.4     Indemnification of Landlord.**

**6.4.1            TENANT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS LANDLORD AND LANDLORD'S RELATED PARTIES FROM THIRD PARTY CLAIMS NOT ATTRIBUTABLE TO SUCH PARTIES AGAINST AND FROM ALL LIABILITY, CLAIM OF LIABILITY, OR REASONABLE EXPENSE INCURRED BY LANDLORD ARISING OUT OF (A) THE USE, OCCUPANCY, CONDUCT, OPERATION, OR MANAGEMENT OF THE PROPERTY DURING THE TERM, (B) ANY WORK OR THING WHATSOEVER DONE OR NOT DONE ON THE PROPERTY DURING THE TERM, (C) ANY EVENT OF DEFAULT BY TENANT UNDER THIS LEASE, (D) ANY NEGLIGENT, INTENTIONALLY TORTUOUS, OR OTHER ACT OR OMISSION DURING THE TERM OF TENANT OR ANY OF TENANT'S RELATED PARTIES, OR (E) ANY INJURY TO OR DEATH OF ANY PERSON, OR DAMAGE TO ANY PROPERTY, OCCURRING ON THE PREMISES DURING THE TERM, AND FROM AND AGAINST ALL REASONABLE EXPENSES AND LIABILITIES INCURRED IN CONNECTION WITH ANY SUCH THIRD PARTY CLAIM OR ANY ACTION OR PROCEEDING BROUGHT THEREON (INCLUDING BUT NOT LIMITED TO THE REASONABLE FEES OF ATTORNEYS, INVESTIGATORS, AND EXPERTS), ALL REGARDLESS OF WHETHER SUCH CLAIM IS ASSERTED DURING OR AFTER THE EXPIRATION OF THE TERM OR ANY EARLIER TERMINATION OF THIS LEASE, BUT EXCLUDING, HOWEVER, THE PORTION OF ANY LIABILITY, CLAIM OF LIABILITY, OR EXPENSE CAUSED WHOLLY AND DIRECTLY BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR ANY OF LANDLORD'S RELATED PARTIES. THIS SECTION 6.5.1 SHALL SURVIVE THE TERMINATION OF THIS LEASE.**

**6.4.2            TENANT AGREES THAT LANDLORD AND LANDLORD'S RELATED PARTIES SHALL NOT BE LIABLE FOR ANY DAMAGE OR LIABILITY OF ANY KIND OR FOR ANY INJURY TO OR DEATH OF PERSONS OR DAMAGE TO PROPERTY OF TENANT OR ANY OTHER PERSON FROM ANY CAUSE WHATSOEVER BY REASON OF ANY WORK, LABOR, OR MATERIALS PERFORMED OR DELIVERED TO, OR CONNECTED TO THE USE, OCCUPANCY, OR ENJOYMENT OF, THE PREMISES BY TENANT OR ANY PERSON ON THE PREMISES OR HOLDING ALL OR ANY PART OF THE PREMISES UNDER TENANT, BUT EXCLUDING, HOWEVER, THE PORTION OF ANY SUCH DAMAGE CAUSED WHOLLY AND DIRECTLY BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR ANY OF LANDLORD'S RELATED PARTIES.**

**6.4.3            Tenant acknowledges that Landlord is not required to provide security for persons or property in or about the Property. Tenant hereby waives and releases any claim against Landlord for injury to or death of any person and any property damage arising out of or attributable to any criminal activity in or about the Property, specifically including, but not limited to, vandalism, theft, burglary, robbery, rape, murder and assault.**

**6.4.4            TENANT HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND AND HOLD LANDLORD AND LANDLORD'S RELATED PARTIES HARMLESS FROM ANY AND ALL CLAIMS, CAUSES OF ACTIONS AND SUITS FOR INJURY TO OR DEATH OF ANY OF TENANT'S RELATED PARTIES OR RESIDENTS RESULTING FROM CRIMINAL ACTIVITIES IN OR ABOUT THE PREMISES, INCLUDING ALL REASONABLE OUT-OF-POCKET COSTS, ATTORNEYS' FEES AND EXPENSES INCURRED BY LANDLORD. TENANT SHALL DEFEND ANY THIRD PARTY CLAIM,**



CAUSE OF ACTION OR SUIT MADE OR BROUGHT AGAINST LANDLORD OR LANDLORD'S RELATED PARTIES AT TENANT'S SOLE, REASONABLE EXPENSE, BY COUNSEL REASONABLY SATISFACTORY TO LANDLORD. AS USED HEREIN, "LANDLORD'S RELATED PARTIES" MEANS LANDLORD'S OFFICERS, DIRECTORS, AFFILIATES, AGENTS, CONTRACTORS, VOLUNTEERS, AND EMPLOYEES, AND THEIR RESPECTIVE HEIRS AND PERSONAL REPRESENTATIVES (BUT EXCLUDING MANAGING MEMBER). AS USED HEREIN, "TENANT'S RELATED PARTIES" MEANS TENANT'S AGENTS, CONTRACTORS, EMPLOYEES, PATRONS, BUSINESS INVITEES, AND GUESTS.

**6.4.5** SUBJECT TO THE LIMITATIONS SET FORTH BELOW, TENANT HEREBY AGREES TO INDEMNIFY LANDLORD AND LANDLORD'S RELATED PARTIES AND HOLD LANDLORD AND LANDLORD'S RELATED PARTIES HARMLESS FROM AND AGAINST ANY AND ALL LOSS, DAMAGES, LIABILITIES, DIRECT, REASONABLE OUT-OF-POCKET EXPENSE AND REASONABLE OUT-OF-POCKET COST, INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES, PAID, INCURRED OR SUFFERED BY LANDLORD AND/OR ANY OF LANDLORD'S RELATED PARTIES AS A DIRECT OR INDIRECT RESULT OF THE PRESENCE ON OR UNDER, OR THE ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, EMISSION, DISCHARGE, MIGRATION OR RELEASE FROM THE PROPERTY OF ANY HAZARDOUS SUBSTANCE. THE FOREGOING INDEMNITY SHALL BE LIMITED TO MATTERS WHICH ARE NOT CAUSED BY ACTS OF GOD AND NOT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR ANY OF LANDLORD'S RELATED PARTIES. THE FOREGOING SHALL NOT BE CONSTRUED TO LIMIT THE LIABILITY OF TENANT FOR SUCH MATTERS WHICH OCCUR DURING THE TERM AND WHICH ARE CAUSED BY TENANT'S USAGE OF THE PROPERTY, BUT WHICH ARE DISCOVERED SUBSEQUENT TO THE EXPIRATION OF THE TERM.

**6.4.6** NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS LEASE, NO PARTY, TENANT RELATED PARTY, OR LANDLORD RELATED PARTY SHALL, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES CLAIMED BY ANY PERSON UNDER THE TERMS OF OR DUE TO ANY BREACH OF THIS LEASE, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR INCOME (OTHER THAN RENT), COST OF CAPITAL, OR LOSS OF BUSINESS REPUTATION OR OPPORTUNITY.

**6.4.7** Notwithstanding anything to the contrary set forth in this Lease, it is the Parties' intent to look first to the Required Insurance for the payment of all applicable losses, damages, expenses, judgments, settlements, and defense costs, including all reasonable attorneys' fees, witness fees, costs of investigation and court costs (all of the foregoing are hereinafter collectively referred to as "**Costs**") arising in connection with any claim or allegation asserted with regard to the Property (hereinafter collectively, a "**Claim**"), without regard to the indemnification provisions set forth in this Lease. Therefore, notwithstanding any indemnification provisions set forth in this Lease, the Required Insurance shall take precedence over such indemnification provisions and, in the event a Claim arises which is covered by the Required Insurance, Tenant shall cause all Costs associated with the Claim to be paid in accordance with the Required Insurance, and to the extent of such payment the indemnification provisions set forth in this Lease shall not apply. To the extent a Claim is either denied or



otherwise not covered by the Required Insurance or the Costs of a covered claim are not fully paid by the Required Insurance, the Parties agree that the indemnification provisions set forth in this Lease shall apply. As to any Claims paid by the Required Insurance, the Parties agree to waive all rights of subrogation, provided that such waiver does not invalidate any insurance policy, or materially increase the premium rates for such insurance.

**6.5 Increase in Risk.** Tenant shall not do or permit to be done any act or thing as a result of which would void or suspend any policy of insurance of any kind covering any or all of the Property or any liability of Landlord in connection therewith, unless such policy is replaced.

## **Section 7. MORTGAGES.**

**7.1 Future Fee Estate Mortgages.** Other than Permitted Encumbrances and any restrictive covenants, Landlord shall not consent to any future Mortgages against the Fee Estate without the prior written consent of Permitted Leasehold Mortgagee and Investor Member. Additionally, Tenant shall not subordinate its Leasehold Estate nor its interest in any Tenancy Agreement and/or rents thereunder to any future Mortgage of the Fee Estate. Landlord agrees not to convey, transfer, assign, mortgage, or encumber the Fee Estate during the Term of this Lease without the prior written consent of Tenant, Permitted Leasehold Mortgagee, and Investor Member.

**7.2 Foreclosure Rights of Permitted Leasehold Mortgagee.** Permitted Leasehold Mortgagee shall have the right to foreclose the Leasehold Estate, or transfer the Leasehold Estate in lieu of foreclosure, and upon such foreclosure or assignment in lieu of foreclosure of the Leasehold Estate, the First Permitted Leasehold Mortgagee shall have the right to acquire this Lease in its own name or the name of a nominee or an affiliated designee. In the event that the Leasehold Estate is acquired by Permitted Leasehold Mortgagee, or its nominee or affiliated designee, then such Permitted Leasehold Mortgagee or nominee or affiliated designee shall also have the right to further assign or sublet the Leasehold Estate to third parties without Landlord's consent.

### **7.3 Permitted Leasehold Mortgage.**

**7.3.1** Landlord hereby agrees that Tenant has the ongoing unrestricted right to (a) obtain financing secured by one or more Mortgages, including without limitation, the Permitted Leasehold Mortgage, encumbering Tenant's rights, title, and interest in and to this Lease and the Leasehold Estate, and (b) grant a security interest in Tenant's real and personal property. Landlord hereby agrees to subject and subordinate Landlord's interest in this Lease and its Fee Estate to the lien of the Permitted Leasehold Mortgage; provided, however, notwithstanding anything herein to the contrary, all Mortgages, including a Permitted Leasehold Mortgage, shall be non-recourse to Landlord and Landlord shall not be required to incur any personal liability in connection with such financing or Mortgage, or be liable for any costs or expenses thereof, including attorneys' fee, or any other indebtedness or liability of Tenant thereunder.



**7.3.2** With respect to a Permitted Leasehold Mortgage, the following provisions shall apply:

(a) Landlord shall provide notice of Tenant's default under this Lease to Permitted Leasehold Mortgagee and Investor Member at the addresses set forth in Exhibit C as a condition to the validity of Landlord's exercise of any remedies related to such default.

(b) Landlord agrees to accept payment and performance of this Lease by Permitted Leasehold Mortgagee and/or Investor Member as though Tenant had done the same.

(c) For so long as a Permitted Leasehold Mortgage is in effect, and without confirming any right of Landlord to terminate this Lease other than as expressly set forth in this Lease, if Landlord elects to terminate this Lease due to the existence of an Event of Default by delivery to Tenant, Investor Member, and Permitted Leasehold Mortgagee of a written notice of termination, then Permitted Leasehold Mortgagee shall have the right to nullify any such notice of termination within ninety (90) days after its receipt thereof by either (i) curing such Event of Default; or (ii) initiating action to acquire or sell Tenant's interest in this Lease by foreclosure of the Permitted Leasehold Mortgage or otherwise and prosecuting the same to completion.

(d) Notwithstanding anything to the contrary set forth in this Lease, Permitted Leasehold Mortgagee shall not be obligated or required to cure a default or an Event of Default of Tenant that is uniquely specific to Tenant, such as Bankruptcy, and Landlord shall not terminate this Lease based on any such default or Event of Default, provided Permitted Leasehold Mortgagee has cured any other non-specific default or Event of Default of Tenant.

(e) Permitted Leasehold Mortgagee may enter upon and take possession of the Property as may be necessary to cure a default or an Event of Default of Tenant, to the extent permitted by the terms of the Permitted Leasehold Mortgage, but shall not be obligated to do so.

(f) Permitted Leasehold Mortgagee shall have the right to assume this Lease as tenant in its own name or in the name of a designee upon foreclosure or assignment in lieu of foreclosure of the applicable Permitted Leasehold Mortgage.

(g) Permitted Leasehold Mortgagee shall not be liable hereunder unless and until it has expressly assumes such liability in writing. Furthermore, no assumption of liability hereunder shall be inferred from Permitted Leasehold Mortgagee's foreclosure or other appropriative proceedings in lieu thereof.



(h) If Landlord delivers any notice to Tenant, other than rent and other periodic billing notices, it shall deliver such notice to Permitted Leasehold Mortgagee and Investor Member at the same time and in the same manner.

**Section 8. IMPROVEMENTS TO PREMISES; PERMITTED LEASEHOLD MORTGAGE.**

**8.1 Improvements. With respect to the Improvements:**

**8.1.1 Utilities.** Prior to the commencement of any excavation activities by Tenant, Tenant shall contact all appropriate utility agencies for the purpose of verifying the location, depth and nature of all utilities affecting the Property and any areas bordering upon the Land.

**8.1.2 Safety.** In connection with any construction on the Property, Tenant shall comply with the overall safety programs promulgated by any Governmental Authority that are applicable to the Property.

**8.1.3 Alterations.** Any new improvements made to the Property by either Party shall be made in a good and workmanlike manner in accordance in all material respects with all Applicable Law, including without limitation, all applicable building codes, and shall not be made without the prior written consent of Special Member (as defined in the Operating Agreement), which consent shall be provided in Special Member's sole discretion. Landlord's consent shall not be required for Tenant to alter, improve or modify the Property.

**8.2 Mechanics' or Other Liens.**

**8.2.1** Tenant shall: (a) within sixty (60) days after it first becomes effective against any of the Premises or is known to Tenant, whichever is later, have released (by bonding or otherwise) any mechanics', materialmen's' or other lien filed or claimed against any or all of the Property, by reason of labor or materials provided for or about any or all of the Property during the Term, or otherwise arising out of Tenant's use or occupancy of any or all of the Property, and (b) defend, indemnify and hold harmless Landlord and Landlord Related Parties against and from any and all liability, claim of liability, and direct, reasonable expense (including but not limited to reasonable attorneys' fees) incurred by Landlord on account of any such lien or claim.

**8.2.2** If Tenant fails to discharge or bond around any such lien within said 60-day period, then, in addition to any other right or remedy held by Landlord on account thereof, Landlord may (a) discharge the lien by paying the amount claimed to be due or by deposit or bonding proceedings, and/or (b) compel the prosecution of any action for the foreclosure of any such lien by the holder thereof and pay the amount of any judgment in favor of such holder. Tenant shall reimburse Landlord promptly upon Landlord's demand therefor for any reasonable amount paid by Landlord to discharge any such lien and all reasonable expenses incurred by Landlord in connection therewith.



**8.2.3** Nothing in this Lease shall be deemed to (a) constitute Landlord's consent or request, express or implied, that any contractor, subcontractor, laborer, or materialman provide any labor or materials for any alteration, addition, improvement, or repair to any or all of the Property, (b) give Tenant any right, power, or authority to contract for or permit to be furnished any service or materials, if doing so would give rise to the filing of any mechanics' or materialmen's' lien against any or all of the Landlord's Fee Estate, or (c) evidence Landlord's consent that the Property be subjected to any such lien.

**8.2.4** Notwithstanding anything to the contrary set forth in this Lease, Tenant shall not be in default for failure to comply with Sections 8.2.1 and 8.2.2 if Tenant is contesting any lien described in said Sections in accordance with the terms of the Permitted Leasehold Mortgage and/or this Lease.

**8.3** Fixtures. Any and all improvements, repairs, alterations, and all other property attached to or otherwise installed as a fixture within the Project by Landlord or Tenant shall, immediately on the completion of such installation, become part of the Improvements and remain with the Improvements at the expiration or earlier termination of this Lease, except that any machinery, equipment, or fixtures installed by Tenant at no expense to Landlord and used to conduct Tenant's business (rather than to service the Property generally) and are not a part of the Equipment shall, at Tenant's election, remain Tenant's property and be removable from the Project by Tenant at the end of the Term.

**8.4** Joinder. Without limiting Landlord's obligations under any other provision of this Lease, Landlord shall, promptly at Tenant's request and expense at any time during the Term (and provided that Landlord thereby assumes no liability or obligation), join in any and all applications for building permits, subdivision plat approvals, or certificates of dedication thereon, public works and other agreements, and permits for sewer, water, and other utility services, other instruments of dedication and other permits or approvals, the granting of or entry into which by any Governmental Authority having jurisdiction over the Property is necessary to permit (a) the subdivision, development, improvement, use, and/or occupancy of the Property for the purposes permitted by this Lease, without violating Applicable Law; and (b) the dedication to the appropriate Governmental Authority after the Commencement Date of easements and restrictions as are, in Tenant's reasonable opinion, necessary or desirable.

**8.5** Signs. Tenant shall have the right to erect signs at the Property, provided it is done in accordance with Applicable Law.

## **Section 9. REPAIRS AND MAINTENANCE.**

**9.1** Repairs. Tenant shall, throughout the Term and at its expense, subject to normal wear and tear and casualty, and subject to the other terms of this Lease, including without limitation Section 11, make any and all repairs to the Property as is necessary to maintain the Property in good condition.



**9.2 Maintenance.** Tenant shall use commercially reasonable efforts to keep and maintain all of the Property in a clean and orderly condition, subject to normal wear and tear and casualty, and to keep the Property in compliance with all Applicable Laws in effect now or in the future.

#### **Section 10. LANDLORD'S RIGHT OF ENTRY.**

**10.1 Inspection and Repair.** Subject to the rights of any Resident under a Tenancy Agreement and the other terms and provisions of this Lease, upon two (2) business days' prior written notice to Tenant, Landlord and its authorized representatives shall be entitled to enter the Property during Tenant's normal business hours, to inspect the Property and may take such action as Landlord is permitted to take pursuant to the terms of this Lease; provided that, in a situation in which the health, welfare, or safety of the Residents or physical condition of the Property would be materially and unreasonably jeopardized unless Landlord were to immediately take such action, Landlord shall give only such notice to Tenant as is reasonable under the circumstances. Nothing in this Section 10.1 shall be deemed to impose any duty upon Landlord to make any such repairs or take any such action, and Landlord's performance thereof shall not constitute a waiver of Landlord's right hereunder to have Tenant perform such work.

**10.2 Exhibiting the Property.** If requested by a Governmental Authority, Landlord, its representatives, and representatives of such Governmental Authority may from time to time, after two (2) business days' prior written notice thereof to Tenant, and subject to the rights of the Residents under Tenancy Agreements, enter the Units and the rest of the Property during Tenant's normal business hours to exhibit the Property to said Governmental Authority, provided that in doing so Landlord and each such invitee observes all reasonable safety standards and procedures which Tenant may require. In exercising its rights under this Section, Landlord shall use its good faith, reasonable efforts to minimize any interference or disruption of Tenant's work or Tenant's use or operation of the Property.

#### **Section 11. FIRE AND OTHER CASUALTIES.**

**11.1 Restoration.** Subject to the provisions of the Permitted Leasehold Mortgage and as otherwise provided in this Lease, if any or all of the Property is damaged or destroyed, Tenant shall (a) promptly notify Landlord thereof if the cost of restoration equals or exceeds Fifty Thousand and 00/100 (\$50,000.00), and (b) provided insurance proceeds are available and adequate to complete such restoration, and only to the extent that insurance proceeds are made available to Tenant by Permitted Leasehold Mortgagee and Investor Member for such restoration (or if adequate insurance proceeds are not available but Tenant chooses to provide adequate funds from other sources and to proceed with restoration at its own election), commence and complete restoration of the Property with reasonable diligence.

**11.2 Application of Proceeds on Termination.** Notwithstanding anything in this Lease to the contrary, upon the expiration or earlier termination of this Lease before restoration of the Property is completed free and clear of any liens, any insurance proceeds not theretofore applied to the cost of such restoration shall be paid: (a) pursuant to the applicable provisions of the First



Permitted Leasehold Mortgage, during such time as a First Permitted Leasehold Mortgage encumbers the Leasehold Estate; then (b) to Landlord to the extent of any past-due Rent owing by Tenant (provided all amounts secured by any Permitted Leasehold Mortgage has been paid in full); then (c) to Tenant.

**11.3 Rights of Permitted Leasehold Mortgagee.** Notwithstanding anything to the contrary set forth in this Lease, during the time that any Permitted Leasehold Mortgage encumbers the Leasehold Estate, (a) the application of insurance proceeds shall be governed by the applicable provisions of the First Permitted Leasehold Mortgage, and Permitted Leasehold Mortgagee and Tenant shall have the right to participate in the adjustment of losses related thereto, (b) this Lease may not be terminated due to damage or destruction unless the amounts secured by the Permitted Leasehold Mortgage have been paid in full, (c) Landlord may not receive any insurance proceeds until the Property has been restored or the sums secured by the Permitted Leasehold Mortgage have been paid in full, and (d) insurance proceeds remaining after restoration of the Property is complete shall be paid to Tenant (subject to the lien of the Permitted Leasehold Mortgage).

**11.4 Termination upon Non-Restoration.** Notwithstanding anything to the contrary set forth in this Lease, following a casualty, this Lease may be terminated by Tenant, with the prior written consent of Permitted Leasehold Mortgagee and Investor Member and the repayment in full of the amounts secured by the Permitted Leasehold Mortgage, if such casualty prevents the use and operation of Property in accordance with the Housing Requirements, or if the insurance proceeds made available to Tenant are insufficient to restore the Improvements to a condition substantially similar to the condition existing prior to such casualty.

## **Section 12. CONDEMNATION.**

**12.1 Notice of Taking.** Promptly upon receipt by either Landlord or Tenant of notice of the institution of any proceeding for the taking or condemnation of any of the Property by any Governmental Authority or any other Person under the right of eminent domain or otherwise (a "Taking"), the Party receiving such notice shall give notice thereof to the other, as well as Permitted Leasehold Mortgagee and Investor Member, and such other Party, as well as Permitted Leasehold Mortgagee and Investor Member, may also appear in such proceeding and be represented by counsel, who may also be counsel for the Party receiving such notice.

**12.2 Condemnation Awards.** Tenant's share of any condemnation award, which shall be paid to the First Permitted Leasehold Mortgagee, shall be no less than the total condemnation award minus the value of Landlord's remainder interest in the Premises, considered as if unimproved but encumbered by this Lease and the Permitted Leasehold Mortgage. To the extent that Tenant is entitled to any condemnation award, it shall be paid to the First Permitted Leasehold Mortgagee in accordance with the First Permitted Leasehold Mortgage.

**12.3 Total Taking.** In the event of a permanent Taking of the entire Fee Estate or the entire Leasehold Estate (a "Total Taking"), this Lease shall thereupon terminate as of the effective date of such Total Taking, without liability or further recourse to the Parties, provided that any



outstanding Rent payable or obligations owed by Tenant to Landlord as of the date of said Total Taking shall be paid or otherwise carried out in full, subject to the terms of any Permitted Leasehold Mortgage.

**12.4 Partial Taking; Procedures and Criteria for Course of Action.** In the event of a permanent Taking of less than the entire Property (a "**Partial Taking**");

**12.4.1** If (a) Tenant determines that the continued use and occupancy of the remainder of the Property by Tenant is or can be made to be economically viable and structurally sound based upon the amount of eminent domain proceeds and, at Tenant's option, any other funds of Tenant as are available for the purpose of paying for such restoration, and (b) Permitted Leasehold Mortgagee will permit the proceeds of the condemnation to be used for restoration in accordance with the Permitted Leasehold Mortgage, or other funds of Tenant are available for the purpose of paying for such restoration, and are sufficient to pay for the restoration (the "**Restoration Criteria**"), then the Property shall be restored pursuant to this Section.

**12.5 Restoration.** If the continued use and occupancy of the remainder of the Property by Tenant, in Tenant's reasonable determination, is not or cannot be made to be economically viable, structurally sound, consistent with the Permitted Leasehold Mortgage and otherwise feasible, then this Lease may be terminated pursuant to Section 12.7, provided that Tenant shall use commercially reasonable efforts to pay any outstanding Rent or other obligations owed by Tenant to Landlord as of the date of said termination.

**12.5.1** If Permitted Leasehold Mortgagee does not permit the proceeds of the condemnation to be used for restoration, they will first be applied to the reduction of the amounts secured by the Permitted Leasehold Mortgage.

**12.6 Restoration.** If a decision is made pursuant to Section 12.4 to restore the remainder of the Property, subject to the terms of the Permitted Leasehold Mortgage and the Operating Agreement, Tenant and Landlord shall reasonably agree upon and approve plans and specifications to modify the remaining portion of the Property, provided however, it shall be unreasonable for Landlord to object to items necessary to comply with the Housing Requirements and/or any other Applicable Law. Upon approval of said plans and specifications, Tenant shall proceed, at its expense and to the extent it has received the condemnation proceeds, to commence and complete the restoration pursuant to the provisions of Section 12. Tenant may use the entire condemnation proceeds for such restoration and may retain for its own use any portion of the condemnation proceeds remaining after the completion of the restoration.

**12.7 Termination Upon Non-Restoration.** Following a Partial Taking, if a decision is made pursuant to Section 12.4 that the remaining portion of the Property is not to be restored, Tenant shall surrender the Property to Landlord and this Lease shall thereupon terminate without liability or further recourse to the Parties, provided that any Rent or obligations owed by Tenant to Landlord as of the date of the Taking shall be paid in full. Additionally, following a Partial



Taking, this Lease may be terminated by Tenant if such Partial Taking prevents the use and operation of Property in accordance with the Housing Requirements. Tenant's condemnation award shall be applied as set out in Section 12.2.

**12.8 Rights of Permitted Leasehold Mortgagee.** Notwithstanding anything to the contrary set forth in this Lease, during the time that any Permitted Leasehold Mortgage encumbers the Leasehold Estate, the receipt, supervision, control, and application of condemnation proceeds, and the operation of termination provisions set forth in this Lease, will be governed by Permitted Leasehold Mortgagee and the applicable provisions of the Permitted Leasehold Mortgage and no actions in connection therewith may be taken without Permitted Leasehold Mortgagee's consent. In any event, Tenant and Permitted Leasehold Mortgagee shall have the right to participate in all proceedings and other matters related to any Takings.

### **Section 13. TRANSFERS.**

#### **13.1 Tenant.**

**13.1.1** Tenant shall have the right to assign its interest in this Lease and the Leasehold Estate, subject to delivery of written notice thereof to Permitted Leasehold Mortgagee, Managing Member, Special Member and Investor Member, provided that no assignee may be a Blocked Person. Further, where the assignee of Tenant's interest in this lease is not a Permitted Leasehold Mortgagee, Managing Member's written consent is required (except to the extent otherwise set forth in the Operating Agreement), such consent not to be unreasonably withheld, conditioned, or delayed. Any assignee of Tenant must further agree to be bound by the terms of an agreement in substantially the same form as the Operating Agreement. If the Permitted Leasehold Mortgagee (or its designee or nominee) shall acquire ownership of the Property or the Leasehold Estate, following the foreclosure or assignment in lieu of foreclosure of the Leasehold Estate, the Permitted Leasehold Mortgagee (or its designee or nominee) may further assign said interest to a third-party purchaser. Notwithstanding anything to the contrary in this Lease, Landlord's consent shall not be required for Tenant to assign or transfer its interest to Permitted Leasehold Mortgagee nor shall Landlord's consent be required in order for Permitted Leasehold Mortgagee to foreclose on the Property in accordance with the Permitted Leasehold Mortgage.

**13.1.2** If at any time Investor Member desires for the Tenant to assign its interest in this Lease and the Leasehold Estate, Landlord recognizes that CCHA shall have rights under the Option and Refusal Right to compel title in itself (except to the extent otherwise set forth in the Operating Agreement).

If Managing Member withdraws or is removed from Tenant in accordance with the Operating Agreement and no affiliate of CCHA is thereafter a member of Tenant, and if CCHA has not exercised its rights to compel title to the Project into itself in accordance with the Option and Refusal Right, then Landlord shall cooperate with Tenant to promptly terminate this Lease and Landlord shall surrender and convey by special warranty deed the Premises to Tenant, and Landlord and Tenant shall cause the other Termination Deliverables to be executed and recorded.



**13.2 Landlord.** Notwithstanding anything to the contrary herein, during the Term of this Lease, Landlord shall not transfer, encumber, or otherwise dispose of the Premises, the Fee Estate, or any interest therein without the written consent of Tenant, Permitted Leasehold Mortgagee, and Investor Member.

**13.3 Right of First Refusal.** The Special Member and its respective affiliates shall have a right to market the interests in the Project, the interests in the Leasehold Estate (the "**Leasehold Interest**") and the ownership interest of the Special Member in the Tenant (the "**Membership Interests**") for sale in accordance with the provisions of the Operating Agreement and this Lease, which may include, at the Special Member's option, either (a) a sale of the unencumbered fee estate and termination of this Lease (a "**Fee Sale**"), (b) a sale of the Leasehold Interest ("**Leasehold Sale**") or (c) a sale of the Membership Interests (a "**Membership Sale**"). Provided that the Managing Member has not been removed or withdrawn from the Tenant, in the event that Tenant receives from a ready, willing and able third party purchaser an acceptable bona fide offer for a Fee Sale, a Leasehold Sale or a Membership Sale, including, without limitation, pursuant to a letter of intent or term sheet (the "**Offer**"), which Offer Tenant intends to accept, the Landlord will have an irrevocable and exclusive right of first refusal to purchase the Project, the Leasehold Estate or the Membership Interests for which the Offer has been made (the "**Refusal Right**") for terms not less favorable than those set forth in the Offer (including but not limited to price, conditions to closing, and timing for closing), subject to the terms and conditions of this Lease. If Tenant receives an Offer, which Offer Tenant intends to accept, the Tenant will give written notice of the Offer to Landlord, specifying the name and address of such third-party purchaser and the purchase price and a copy of the Offer which sets out all of the terms of the Offer. The Landlord will thereupon have the right to exercise the Refusal Right by giving written notice of Landlord's intent to exercise the Refusal Right on terms not less favorable than those set forth in the Offer to the Tenant within thirty (30) days after the Landlord's receipt of the written notice of the Offer from the Tenant (the "**Response Period**"). The Tenant may accept an Offer subject to the Landlord's Refusal Right described herein. In addition to all other applicable conditions set forth in this Lease, the foregoing grant of the Refusal Right shall be effective only if Landlord is a governmental agency currently and remains such at all times hereafter until the date that the Refusal Right has been exercised and the resulting purchase and sale has been closed. If Landlord fails or declines to exercise its Refusal Right prior to the expiration of the Response Period in accordance with the terms of this Section 13.3, Landlord shall be deemed to have waived the Refusal Right with respect to such Offer and Tenant shall be free to proceed to sell the Project, the Leasehold Estate or the Membership Interests, as the case may be, to such third party purchaser substantially on the terms contained in the Offer. In the event that a Fee Sale, a Leasehold Sale or a Membership Sale is consummated, then the Refusal Right shall terminate and have no further force or effect. In such event, if requested by Tenant, Landlord agrees to execute an instrument in recordable form evidencing the termination of the Refusal Right. Furthermore, if a Fee Sale is consummated, at or prior to the closing thereof, Landlord shall cooperate with Tenant to terminate this Lease, surrender and convey by special warranty deed the Premises to Tenant, and cause the other Termination Deliverables to be executed and recorded, and Tenant shall be solely entitled to receive and keep all of the proceeds of such sale.



**13.3.1** The purchase price for the Project or the Leasehold Estate under the Refusal Right (the "**ROFR Purchase Price**") shall be the same as the purchase price contained in the Offer.

**13.3.2** If Landlord elects to exercise its Refusal Right in accordance with the terms of this Section 13.3, Tenant and Landlord shall enter into a written contract for the purchase and sale of the Project or the Leasehold Estate, as the case may be, substantially in accordance with the terms of the Offer and this Lease and providing for a closing not later than the date specified in the Offer, and shall proceed to the closing thereunder. At closing, Landlord shall pay to Tenant the ROFR Purchase Price, the parties shall cooperate to terminate or assign this Lease, surrender and convey the Premises to Landlord, and cause the other Termination Deliverables, as applicable, to be executed and recorded. In the event that the closing of the purchase and sale contemplated by such written contract fails to close as a result of a default by Landlord thereunder, Landlord shall be deemed to have waived its Refusal Rights under this Section 13.3, and Tenant shall be free to proceed to sell the Project or the Leasehold Estate, as the case may be, to such third party purchaser substantially on the terms contained in the Offer.

**13.3.3** Notwithstanding any term to the contrary contained herein, the Refusal Right granted in this Section 13.3 shall be subordinate, in all respects, to the Permitted Leasehold Mortgages.

#### **Section 14. DEFAULT.**

**14.1** Definition. Each of the following events continuing beyond the expiration of all applicable notice, grace, and cure periods set forth in this Lease, including without limitation, those described in Section 14.2, shall constitute an "**Event of Default**":

**14.1.1** Tenant fails to (a) pay any Rent, or other sum that Tenant is obligated to pay under this Lease, when it is due and payable hereunder after demand therefor, or (b) perform any of its obligations under this Lease; or

**14.1.2** Tenant's Bankruptcy occurs.

**14.2** Notice to Tenant; Grace Period. Notwithstanding anything in this Lease to the contrary, the defaults listed in Sections 14.1.1 – 14.1.2 above shall not be deemed to be an Event of Default, and Landlord shall not exercise any of its rights or remedies hereunder, unless and until:

**14.2.1** Landlord gives written notice thereof to Tenant, Permitted Leasehold Mortgagee, and Investor Member; and.

**14.2.2** Tenant, Permitted Leasehold Mortgagee, and Investor Member fail to cure such default within thirty (30) days after Landlord delivers such written notice of default to Tenant; provided, however, if the default is not a monetary event of default and cannot reasonably be cured within said 30-day period, then Tenant, Permitted Leasehold Mortgagee,



and Investor Member shall have such additional time as is reasonably necessary so long as Tenant, Permitted Leasehold Mortgagee, and/or Investor Member is proceeding with reasonable diligence to effect such cure and such cure is effected to Landlord's reasonable satisfaction within one hundred twenty (120) days of Landlord's notice to Tenant. For any default that cannot be cured without possession of the Premises, Landlord shall allow such additional time as Permitted Leasehold Mortgagee and/or Investor Member reasonably require to prosecute and complete a foreclosure, removal of Managing Member, or equivalent proceeding, and obtain such possession, including time to obtain relief from a bankruptcy stay in the case of Tenant's Bankruptcy. If Permitted Leasehold Mortgagee completes a foreclosure of this Lease, or Investor Member effects the removal of Managing Member, or either Party otherwise diligently exercises their rights and remedies hereunder, then Landlord shall waive any default and/or Event of Default that is not a monetary default and cannot reasonably be cured by Permitted Leasehold Mortgagee and/or Investor Member.

**14.2.3** Notwithstanding the other provisions in this Section 14.2, (a) Permitted Leasehold Mortgagee shall also have a reasonable additional time period (including time to obtain relief from any bankruptcy stay in the Tenant's bankruptcy) sufficient to enable the Permitted Leasehold Mortgagee to either foreclose the lien of the Permitted Leasehold Mortgage or obtain the appointment of a receiver or secure other remedies necessary to enable the Permitted Leasehold Mortgagee to cure Tenant's default; and (b) if Tenant's default is such that Permitted Leasehold Mortgagee cannot reasonably cure it and Ground Lease mortgagee has diligently exercised its rights and remedies and cured all other curable defaults of Tenant then existing, Landlord shall waive the default that is not reasonably curable.

Nothing in this Section 14.2 shall limit the right of Permitted Leasehold Mortgagee, Special Member and Investor Member to receive notice and an opportunity to cure pursuant to the terms of this Lease.

**14.3** Landlord's Rights on Event of Default.

**14.3.1** If an Event of Default exists, Landlord may (subject to the provisions of Section 14.2) take any or all of the following actions:

(a) Re-enter and repossess any or all of the Property; and/or

(b) If the Leasehold Estate is **not** encumbered by a Permitted Leasehold Mortgage, terminate this Lease by giving written notice of such termination to Tenant (and as otherwise required by the terms of this Lease), which termination shall be effective as of the date of delivery of such notice or any later date specified therein by Landlord (provided that, without limiting the generality of the foregoing provisions of this Section, Landlord shall not be deemed to have accepted any abandonment or surrender by Tenant of any or all of the Property or Tenant's Leasehold Estate unless Landlord has so advised Tenant in writing, regardless of whether Landlord has reentered or relet any or all of the Property or exercised any or all of Landlord's other rights under this Section



or Applicable Law); and, on the date specified in such notice and subject Section 2.1.3, Tenant's right to possession of the Property will cease and the Leasehold Estate shall revert in Landlord; provided, however, such reversion of the Leasehold Estate and the entry by Landlord shall be subject to, limited by, and shall not defeat, render invalid, or limit in any way the lien of the Permitted Leasehold Mortgage or any provision of the Housing Requirements; and/or

(c) In Landlord's own name (but either (i) as agent for Tenant, if this Lease has not been terminated, or (ii) for the benefit of Tenant, if this Lease has been terminated), relet any or all of the Property for any or all of the remainder of the Term (or, if this Lease has then been terminated, for any or all of the period which would, but for such termination, have constituted the remainder of the Term), or for a period exceeding such remainder, on such terms and subject to such conditions as are acceptable to Landlord in its reasonable discretion, and if this Lease has been terminated, (A) damages equaling the amount of any Rent which would have accrued during such remainder had this Lease not been terminated, less any monies received by Landlord with respect to such remainder from such reletting of any or all of the Property, plus (B) the reasonable cost to Landlord of any such reletting (including but not limited to any reasonable attorneys' fees, leasing or brokerage commissions, repair or improvement expenses, and the expense of any other actions taken in connection with such reletting), plus (C) any other sums for which Tenant is liable under Section 14.3; and/or

(d) In Landlord's own name (but either (i) as agent for Tenant, if this Lease has not then been terminated, or (ii) for the benefit of Tenant, if this Lease has then been terminated), relet any or all of the Premises for any or all of the remainder of the Term (or, if this Lease has then been terminated, for any or all of the period which would, but for such termination, have constituted the remainder of the Term), or for a period exceeding such remainder, on such terms and subject to such conditions as are acceptable to Landlord in its reasonable discretion, and collect and receive the rents therefor. Anything in this Lease or applicable law to the contrary notwithstanding, (1) Landlord shall not have any duty or obligation to relet any or all of the Premises as the result of any Event of Default, or any liability to Tenant or any other Person for any failure to do so or to collect any rent or other sum due from any such reletting; (2) Tenant shall have no right in or to any surplus which may be derived by Landlord from any such reletting, if the proceeds of such reletting exceed any Rent, if any, installment thereof or other sum owed by Tenant to Landlord hereunder; and (3) Tenant's liability hereunder shall not be diminished or affected by any such failure to relet or the giving of any such initial or other concessions or "free-rent" or reduced rent periods in the event of any such reletting. In the event of any such reletting, Tenant shall pay to Landlord, at the times and in the manner specified by Section 4, the reasonable cost to Landlord of any such reletting (including but not limited to any reasonable



attorneys' fees, leasing or brokerage commissions, repair or improvement expenses and the expense of any other actions taken in connection with such reletting), plus any other sums for which Tenant is liable under Section 14.6; and/or

(e) Enforce any one or more of the requirements under Applicable Law; and/or

(f) Cure such Event of Default in any other manner; and/or

(g) Pursue any combination of such remedies and/or any other right or remedy available to Landlord on account of such Event of Default under this Lease and/or at law or in equity, and all such rights and remedies shall be cumulative (i.e., the pursuit by any one of which shall not preclude Landlord from pursuing any other, either concurrently or sequentially).

**14.4 No Release.** No such expiration or termination of this Lease, or summary dispossession proceedings, abandonment, reletting, bankruptcy, vacancy, or re-entry by Landlord, shall relieve Tenant of any of its liabilities and obligations under this Lease (whether or not any or all of the Property is relet) during the Term, and Tenant shall remain liable to Landlord for all of Landlord's reasonable out-of-pocket expenses resulting from any Event of Default, including but not limited to any reasonable expenses resulting from the breach by Tenant of its obligation to pay Rent and any other sums which Tenant is obligated to pay hereunder.

**14.5 Reserved.**

**14.6 Reimbursement.** If an Event of Default exists, Tenant shall, promptly on its receipt of a written demand therefor from Landlord, reimburse Landlord for all reasonable out-of-pocket expenses (including without limitation, reasonable repossession costs, management expenses, operating expenses, legal expenses and attorneys' fees) incurred by Landlord (i) in curing or seeking to cure such Event of Default, and/or (ii) in exercising or seeking to exercise any of Landlord's rights and remedies under this Lease and/or at law or in equity due to such Event of Default, and/or (iii) otherwise arising out of any Event of Default, and/or (iv) (regardless of whether it constitutes an Event of Default) in connection with any action, proceeding or matter of the types referred to in Section 14.1.3; all of which expenses shall be Rent and shall be payable by Tenant promptly on demand therefor by Landlord.

**14.7 No Action.** Notwithstanding anything contained in this Lease to the contrary, Landlord agrees that:

**14.7.1** Reserved;

**14.7.2** Landlord may not terminate this Lease as a result of status or other defaults of Tenant that by their nature are not capable of being cured by Permitted Leasehold Mortgagee, so long as Rents are being paid;



**14.7.3** If this Lease terminates for any reason other than expiration of the Term (including without limitation, rejection or deemed rejection in bankruptcy, a Permitted Leasehold Mortgagee's inability to cure a default, merger of title or attempted surrender by Tenant), Landlord shall be obligated to enter into a new lease with Permitted Leasehold Mortgagee or its nominee on substantially the same terms as conditions as set forth in this Lease, and with the same priority. During the term of the Permitted Leasehold Mortgage, Landlord shall not accept a voluntary surrender of the Leasehold Estate or a termination of the Lease by Tenant.

**14.8 Landlord Event of Default.** Landlord shall be deemed in default of its obligations under this Lease if Landlord fails to perform, in a timely manner in accordance with the terms of this Lease, any of its obligations under this Lease, or if any Landlord representation made herein is false in any material respect, or if Landlord is the subject of a Bankruptcy (each a "**Landlord Event of Default**"). If such Landlord Event of Default shall continue for sixty (60) days after Tenant delivers written notice thereof to Landlord, or such additional period as may be reasonably required to cure such failure if the same may not be reasonably cured within said 60-day period, so long as Landlord commences such cure within thirty (30) days after notice thereof and thereafter diligently prosecutes the same to completion, but in any event such cure must be completed to Tenant's reasonable satisfaction within one hundred twenty (120) days of Tenant's notice to Landlord, subject to the Parties' mutual agreement to extend such time period. If Landlord fails to complete such cure as provided above, then subject to the provisions of any Permitted Leasehold Mortgage, Tenant shall thereupon be entitled to exercise any and all remedies available to Tenant for such Landlord Event of Default under this Lease or at law or in equity. Without waiving or limiting any other remedies available to Tenant, upon such Landlord Event of Default (and subject to the notice and cure rights of Landlord), Tenant shall be entitled (but not obligated) to perform or cause such obligations to be so performed on behalf of Landlord, and Landlord shall reimburse Tenant for its reasonable third party out-of-pocket costs and expenses, including reasonable attorney's fees, incurred by Tenant in doing so, which amount shall be due on demand. In the event Landlord or a creditor thereof files a petition for relief naming Landlord as a debtor under Title 11 of the United States Code, Landlord hereby acknowledges and agrees that Tenant's possessory interest under this Lease and ownership of the Improvements are unique interests and cannot be converted into a cash claim under Section 363 of Title 11 of the United States Code unless Tenant expressly consents to the same. Notwithstanding anything to the contrary set forth in this Lease, Tenant shall not have the right to treat this Lease as terminated in the event of Landlord's bankruptcy under Section 365(h)(A)(i) of Chapter 11 of the U.S. Bankruptcy Code, or any successor statute, without Permitted Leasehold Mortgagee's written consent, and Tenant's exercise of such right without the Tenant without Permitted Leasehold Mortgagee's prior written consent shall be void at the option of Permitted Leasehold Mortgagee.

## **Section 15. ESTOPPEL CERTIFICATE; SHORT FORM.**

**15.1 Estoppel Certificate.** Each Party shall, at any time and from time to time within fifteen (15) days after being requested in writing to do so by the other Party, Investor Member,



and/or Permitted Leasehold Mortgagee, execute, acknowledge, address, and deliver to the requesting party (or, at the latter's request, to any existing or prospective Mortgagee, transferee or other assignee of the requesting party's interest in the Property or under this Lease which acquires such interest in accordance with this Lease) a certificate in recordable form,

**15.1.1** Certifying (a) that this Lease is unmodified and in full force and effect (or, if there has been any modification thereof, that it is in full force and effect as so modified, stating therein the nature of such modification); (b) that Tenant has accepted possession of the Premises, and the date of the Commencement Date; (c) as to the dates to which any Rent and other charges arising hereunder have been paid; (d) as to the amount of any prepaid Rent or any credit due to Tenant hereunder; (e) as to whether, to the best of such Party's knowledge, information and belief, the requesting Party is not then in default in performing any of its obligations hereunder (and, if in default, specifying the nature of each such default); and (f) as to any other fact or condition regarding this Lease or the Property reasonably requested by the requesting Party; and

**15.1.2** Acknowledging and agreeing that any statement contained in such certificate may be relied upon by the requesting party and any such other addressee.

#### **Section 16. CONDITION OF TITLE AND PROPERTY.**

**16.1** Quiet Enjoyment. Landlord hereby:

**16.1.1** Represents and warrants that, at the time of the execution and delivery of this Lease by the Parties, Landlord (a) is the owner of the Fee Estate, subject to the operation and effect of the Permitted Encumbrances, and (b) has the full right, power and authority to enter into this Lease and thereby to lease the Premises to Tenant; and

**16.1.2** Covenants and agrees that Tenant will have quiet and peaceful possession of the Premises during the Term, except if and to the extent that such possession is terminated pursuant to the terms of this Lease.

**16.2** Limitation on Liability. Except as set forth in this Lease, nothing in this Lease shall be deemed to impose on Landlord any liability on account of any act or failure to act by any Person other than Landlord (or, where expressly so provided herein, any of Landlord's Related Parties) and, notwithstanding anything to the contrary in this Lease, Landlord shall not be liable under this Lease except to the extent of its ownership interest in the Property. Notwithstanding anything to the contrary in this Lease, Tenant shall not be liable under this Lease except to the extent of its ownership interest in the Property.

**16.3** Title to Personal Property. Landlord hereby waives any landlord's lien it might hold, whether statutory, constitutional, contractual, or otherwise, in any personal property owned or leased by Tenant and now or hereafter located in the Property. If so requested by Tenant, Landlord shall execute a waiver of any right, title, and interest, or right to seize any of Tenant's personal property on or in the Property that may be subject to a lien or security interest



in favor of Permitted Leasehold Mortgagee or a seller of Tenant's personal property or creditor holding a security interest in such personal property.

**Section 17. NOTICES.** Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to Permitted Leasehold Mortgagee, Investor Member, Special Member, Landlord, or Tenant shall be (a) in writing, and (b) deemed to have been delivered on the earlier of (i) three (3) business days after being sent certified or registered mail in the United States mails, postage prepaid, return receipt requested, or (ii) the next business day after having been deposited (in time for delivery by such service on such business day) with Federal Express or another national courier service, or (iii) (if such party's receipt thereof is acknowledged in writing) upon having been sent by telecopy or another means of immediate electronic communication, or (iv) (if such party's receipt thereof is acknowledged in writing) upon its having been given by hand or other actual delivery to such party, in each case to the address of such party set forth hereinabove or on Exhibit C, as applicable, or to such other address in the United States of America as such party may designate from time to time by notice to each other party hereto.

**Section 18. REPRESENTATIONS AND WARRANTIES.**

**18.1 Landlord's Representations and Warranties.** Landlord hereby represents and warrants to Tenant that:

**18.1.1** Landlord is organized and lawfully existing as a housing finance corporation under the laws of the State of Texas.

**18.1.2** Landlord owns fee simple title to the Premises, free and clear of all liens, charges, encumbrances, encroachments, easements, restrictions, leases, tenancies, occupancies or agreements, and matters affecting title, except for the Permitted Encumbrances.

**18.1.3** Landlord has full right, power and authority to make, execute, deliver and perform its obligations under this Lease, and this Lease is in full force and effect. Landlord has obtained and received all required and necessary consents and approvals to enter into this Lease with Tenant.

**18.1.4** There is no action, suit, litigation or proceeding pending or, to Landlord's knowledge, threatened against Landlord that could prevent or impair Landlord's entry into this Lease and/or performance of its obligations hereunder.

**18.1.5** The person signing this Lease on behalf of Landlord is duly and validly authorized to do so.



**18.2** Tenant's Representations and Warranties. Tenant hereby warrants and represents to Landlord that:

**18.2.1** Tenant is organized and lawfully existing as a limited liability company under the laws of the State of Texas.

**18.2.2** Tenant has the full right, power, and authority to make, execute, deliver and perform this Lease, and this Lease is in full force and effect.

**18.2.3** Tenant's execution and delivery of this Lease has been authorized by all requisite action on the part of Tenant, and the execution and delivery of this Lease by Tenant and the performance of its obligations hereunder will not violate or contravene any agreement or obligation to which Tenant is a party or by which it is bound.

**18.2.4** There is no action, suit, litigation or proceeding pending or, to Tenant's knowledge, threatened against Tenant that could prevent or impair Tenant's entry into this Lease and/or performance of its obligations hereunder.

**18.2.5** The person signing this Lease on behalf of Tenant is duly and validly authorized to do so.

#### **Section 19. Purchase Option**

**19.1** Option. Tenant hereby grants Landlord the right (the "**Option**") to purchase all of the Property owned by the Tenant at the time of purchase, including without limitation Tenant's Leasehold Estate (collectively, the "**Tenant's Property**"), (i) on any date thirty (30) days after Landlord delivers written notice to Tenant and the Permitted Leasehold Mortgagees of Landlord's intent to exercise the Option (the "**Option Exercise Notice**"), and (ii) upon the Tenant's receipt of the Purchase Price (as defined below). The "**Purchase Price**" for the Tenant's Property pursuant to the Option shall be set forth hereinbelow:

**19.1.1** Price Formula. An amount, determined by MAI appraisers mutually agreed to by Landlord and the Investor Member, equal to the greater of (i) the fair market value as determined in accordance with subsection 19.1.2 below, or (ii) an amount, on an after tax basis, equal to the diminution of economic value to the Investor Member (or a successor Investor Member) as a result of the purchase of the Tenant's Property by the Landlord, which shall include without limitation (A) all capital contributions of any members of the Tenant, (B) the outstanding balance of all loans (and any accrued interest thereon and yield maintenance) made to the Tenant by its members and the First Permitted Leasehold Mortgagee, which will not otherwise be repaid at the time of the purchase, (C) an 14% IRR on the capital contributions of any members in the Tenant and Investor Member's capital contributions, and (D) all costs and expenses incurred by or on behalf of the Tenant's members with respect to (1) admission to the Tenant, (2) such member's activities with respect to the Project prior to the Landlord's purchase of the Tenant's Property under this Option, and (3) an amount to distribute to the Tenant's members cash proceeds sufficient to enable its members to pay, after any and all



federal, state and local taxes imposed on such distribution, the taxes projected to be imposed on the members as a result of the sale pursuant to the Option.

**19.1.2 Fair Market Value.** Fair market value of the Tenant's Property for purposes of this Section 19.1 shall be calculated as follows: As soon as practicable following the delivery of the Option Exercise Notice, the Landlord and Investor Member (or an affiliate thereof) shall select a mutually acceptable Independent Appraiser to prepare an appraisal of the Land, Project and all assets owned by Tenant used in conjunction with the Project that are available for disposition. In the event that the parties are unable to agree upon an Independent Appraiser within fifteen (15) business days following the date of delivery of the Option Exercise Notice, the Landlord and Tenant each shall select an Independent Appraiser within the next succeeding five (5) business days. If either party fails to select an Independent Appraiser within such time period, the determination of the other Independent Appraiser shall control. If the difference between the appraised fair market values set forth in the two appraisals is not more than ten percent (10%) of the appraised fair market value set forth in the lower of the two appraisals, the fair market value for purposes of this Section 19.1 shall be the average of the two appraisals. If the difference between the two appraisals is greater than ten percent (10%) of the lower of the two appraisals, then the two Independent Appraisers shall jointly select a third Independent Appraiser whose determination of appraised fair market value shall be deemed to be binding on all parties as long as the third determination is between the other two appraisals, then the average of all three appraisals shall be the appraised fair market value for purposes of this Section 19.1. Landlord and Tenant shall each pay one-half of the fees and expenses of any Independent Appraiser(s) selected pursuant to this Section 19.1.2. All calculations of fair market value shall take into consideration the affordability restrictions and the Exemption, provided, however, that if the Exemption is eliminated or modified due to a change in law, the appraisal shall take into account such elimination or modification of the Exemption.

**19.2 Sale of Leasehold Interest.** Upon determination of the Purchase Price, Tenant and Landlord, shall enter into a written contract for the purchase and sale of the Tenant's Property in accordance with the terms of this Lease and containing such other terms and conditions as are standard and customary for similar commercial transactions in the geographic area in which the Property is located, providing for a closing not later than the date specified in the Option Exercise Notice or thirty (30) days after the Purchase Price has been determined, whichever is later. In the absence of any such contract, the Option under this Lease shall be specifically enforceable upon the exercise of the Option. The purchase and sale hereunder shall be closed through a deed-and-money escrow with the title insurer of Tenant's interest in the Property or another mutually acceptable title company. Tenant's right, title, and interest in the Tenant's Property shall be conveyed pursuant to the Termination Deliverables, which shall be delivered by Tenant to Landlord at closing. Landlord shall be responsible for all costs of the transfer and sale including, but not limited to, transfer taxes, title policy premiums and recording costs. Rents, insurance, taxes, debt service then due and payable and other costs and revenues then prepaid or accrued, as the case may be, shall be apportioned as of midnight of the day preceding the closing of title,



except that rents shall be apportioned as of the date of actual collection thereof (which obligation shall survive the closing).

**19.3 Automatic Termination of Option.** In the event that the Option is not exercised, or the sale pursuant thereto is not consummated, then, upon conveyance of the Tenant's Property to anyone other than Landlord the foregoing Option and all rights of Landlord with respect thereto shall automatically terminate and have no further force or effect. If requested by Tenant, Landlord agrees to execute an instrument in recordable form evidencing the termination of the Option.

**19.4 Subordination to Permitted Leasehold Mortgages.** Notwithstanding any term to the contrary contained herein, the Option granted in this Section 19 shall be subordinate, in all respects, to the Permitted Leasehold Mortgages.

## **Section 20. GENERAL.**

**20.1 Effectiveness.** This Lease shall be effective upon its execution and delivery by both Parties.

**20.2 Complete Understanding.** This Lease represents the complete understanding between the Parties as to the subject matter hereof and supersedes all prior negotiations, representations, warranties, promises, statements, or agreements, whether written or oral, between the Parties as to the same. No inducements, representations, understandings, or agreements have been made or relied upon in the making of this Lease, except those specifically set forth in this Lease. Neither Party has any right to rely on any other prior or contemporaneous representation made by anyone concerning this Lease that is not set forth herein.

**20.3 Amendment.** This Lease may not be amended, modified, restated, terminated, surrendered, or cancelled unless done so in writing executed by Landlord and Tenant, subject to the prior written consent of Permitted Leasehold Mortgagee and Investor Member. Any amendment, modification, restatement, termination, surrender, or cancellation of this Lease without Permitted Leasehold Mortgagee's written consent shall be void at the option of Permitted Leasehold Mortgagee.

**20.4 Waiver.** No Party shall be deemed to have waived the exercise of any right that it holds hereunder unless such waiver is made in writing (and, without limiting the generality of the foregoing, no delay or omission by any Party in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance shall be deemed a waiver as to any other such instance, or any other such right.

**20.5 Applicable Law.** This Lease shall be governed by the laws of the State of Texas, without giving effect to any choice or conflict of law, principals, or rules, and any action or proceeding arising hereunder shall be brought in the courts of the State of Texas having jurisdiction over the City of Corpus Christi, Texas; provided, that if any such action or proceeding arises under the Constitution, laws or treaties of the United States of America, or if there is a



diversity of citizenship between the parties thereto, so that it is to be brought in a United States District Court, it shall be brought in the United States District Court for the Western District of Texas.

**20.6 Time of Essence.** Time shall be of the essence of this Lease, except that if the last day for the exercise of any right or the discharge of any obligation hereunder falls on a Saturday, Sunday or statutory holiday, the Party having such right or obligation shall have until 5:00 p.m. on the next succeeding day that is not a Saturday, Sunday, or statutory holiday to exercise such right or discharge such obligation.

**20.7 Headings.** The headings of the sections, subsections, paragraphs, and subparagraphs hereof are provided herein for and only for convenience of reference and shall not be considered in construing their contents.

**20.8 Construction.** As used herein, all references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (c) to any section, subsection, paragraph or subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such section, subsection, paragraph or subparagraph of this Lease.

**20.9 Exhibits.** Each writing referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit hereto is hereby made a part hereof.

**20.10 Severability.** No determination by any court or other Governmental Authority that any provision of this Lease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other provision of this Lease, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by law and shall be construed wherever possible as being consistent with Applicable Law.

**20.11 Disclaimer of Partnership Status.** Nothing in this Lease shall be deemed in any way to create any relationship of partnership, joint venture or association between the Parties, and the Parties hereby disclaim the existence of any such relationship.

**20.12 Commissions.** Each Party hereby represents and warrants to the other that, in connection with the leasing of the Premises hereunder, the Party so representing and warranting has not dealt with any real estate broker, agent or finder, and there is no commission, charge or other compensation due on account thereof. Each Party shall defend, indemnify, and hold harmless the other against and from any liability, claim of liability or expense arising out of any inaccuracy in such Party's representation.

**20.13 Prevailing Party.** In the event either Party initiates judicial action against the other in order to enforce the terms, covenants and provisions of this Lease, the non-prevailing Party in such judicial action shall reimburse the prevailing Party in such judicial action for all reasonable



expenses, fees, costs, including reasonable attorneys' fees, incurred by the prevailing Party in connection with such judicial action.

**20.14 Limited 3<sup>rd</sup> Party Rights.** Notwithstanding anything to the contrary set forth elsewhere in this Lease, Investor Member, Special Member and Permitted Leasehold Mortgagee shall each be deemed a third-party beneficiary of the provisions of this Lease that reference Investor Member, Special Member and/or Permitted Leasehold Mortgagee, as applicable. The foregoing rights of each of Investor Member, Special Member and Permitted Leasehold Mortgagee to be a third-party beneficiary under this Lease shall be the only rights (expressed or implied) of Investor Member, Special Member and Permitted Leasehold Mortgagee under this Lease.

**20.15 Conflict.** In the event of a conflict or inconsistency between any requirement contained in this Lease (or between any requirement contained in any document referred to in this Lease, including any Permitted Leasehold Mortgage), Applicable Law shall in all instances be controlling.

**20.16 No Subordination of Leasehold Estate.** Except as otherwise provided in this Lease, at no time shall Tenant's Leasehold Estate, or Tenant's interest in this Lease, be subordinated in any manner to the interest of any Mortgagee with a security interest in the Fee Estate. Landlord agrees that (a) any existing Mortgage on the Fee Estate shall be subordinated to Tenant's interest in the Leasehold Estate, and (b) Landlord may not hereafter place a Mortgage on the Fee Estate unless there is an express written subordination of such Mortgage to Tenant's interest under this Lease and in and to the Leasehold Estate.

**20.17 Non-Merger.** In the event Tenant's Leasehold Estate is conveyed to Landlord or Landlord conveys its Fee Estate to Tenant, or there is any other merger of the Fee Estate and the Leasehold Estate under any circumstances (whether voluntary or involuntary or effected by Landlord or Tenant), the Fee Estate and the Leasehold Estate shall not merge, but shall remain distinct interests in land and this Lease shall continue in existence in relation to the Permitted Leasehold Mortgage.

**20.18 Approvals, Etc.** Whenever a Person is required under this Lease to provide its consent or approval, or render its determination, judgment, satisfaction, or decision, such Person will act in good faith and such consent, approval, determination, judgment, satisfaction, or decision (or the denial thereof, as the case may be) shall not be unreasonably withheld, delayed, or conditioned. **Force Majeure.** If curing any default or Event of Default (other than failure to pay Rent or other amounts, if any, due under this Lease) or performing any other covenant or term of this Lease is delayed by reason of (a) strike, lock-out or other labor troubles, (b) governmental restrictions or limitations, (c) failure or shortage of electrical power, gas, water, fuel oil, or other utility or service, (d) riot, war, insurrection, acts of terror or other national or local emergency, (e) accident, flood, fire or other casualty, (f) adverse weather conditions, (g) any other act of God, (h) the State of Texas or the area or county in which the Premises are located is declared by a duly authorized Governmental Authority to be under a state of emergency or a disaster area, and/or (i) any other cause similar to any of the foregoing and beyond the reasonable control of



the Person obligated or permitted under this Lease to do or perform the term or covenant, regardless of whether the circumstance is similar to any of those enumerated or not, each Person so delayed is excused from performance during the delay period and all applicable periods and/or deadlines shall be tolled during such delay period.

**20.20 Subordinate to Permitted Leasehold Mortgage.** Landlord's right to receive payment of Rent is subordinate to the right of Permitted Leasehold Mortgagee to receive all payments due pursuant to the terms of the Permitted Leasehold Mortgage.

**20.21 Contest Proceedings.** Tenant shall have the right to contest by appropriate legal proceedings, without cost or expense to Landlord, the validity of any Applicable Law and to postpone compliance with the same, if by the terms of any such Applicable Law compliance therewith may legally be held in abeyance without incurring any lien, charge or liability of any kind against the Property or any interest of Landlord or Tenant therein, and without subjecting Landlord to any civil or criminal liability for failure so to comply therewith. Tenant may postpone compliance therewith until the final determination of any such proceedings, provided that all such proceedings shall be prosecuted with due diligence. If Tenant initiates any such legal proceedings in the name of Landlord, or of Landlord and Tenant, Tenant shall so advise Landlord in writing not less than fifteen (15) days before initiating such proceedings. Such notice shall give details as to the tribunal in which said proceedings are to be filed, the Applicable Law contested, and such additional data as Landlord may reasonably require to enable it to understand and evaluate the facts. If any lien, charge or civil liability, but not criminal liability, is incurred by reason of non-compliance, Tenant may nevertheless make the contest as aforesaid and delay compliance as aforesaid, provided that Tenant furnishes to Landlord security reasonably satisfactory to Landlord, against any loss or injury by reason of such non-compliance or delay and prosecutes the contest with due diligence.

**20.22 Landlord Not Entitled to Proceeds.** Landlord, in its role as landlord, shall not be entitled to share in the proceeds of any loan obtained as a result of any financing or refinancing undertaken by Tenant that is secured by a Permitted Leasehold Mortgage.

**20.23 Easements.** Tenant is hereby authorized to make, execute, acknowledge and deliver instruments granting a license or easement with respect to the Property, in the form typically used for such purposes in the applicable jurisdiction, to any Person, and the successors and assigns of such Person, for the purpose of laying mains, pipes, sewers, gas lines, cable television lines, and electrical conduits, poles, wires and supports, and such other improvements related to utilities serving the Property, in, upon or under the Property.

**20.24 Zoning.** Tenant is hereby authorized and empowered to execute a consent or petition for any zoning change variance or special exception relating to the Premises where the same is required for the purpose of authorizing the operation of the Property for any purpose not inconsistent with the terms of this Lease, or to join in any petition for a release from restrictive covenants which interfere with the operation or improvement of the Property for such purpose.



**20.25 Memorandum of Ground Lease.** The Parties shall execute, for recording purposes, a memorandum of ground lease in conformity with the law and practice of the State of Texas, and the same shall be placed of record at Tenant's expense in the Real Property Records of the county in which the Property is located. If requested by Landlord, Tenant shall, upon termination of this Lease as provided herein, execute and deliver to Landlord an appropriate release, in form proper for recording, of Tenant's interest in the Property.

**20.26 No Personal Liability.** No Permitted Leasehold Mortgagee or its designee or affiliate, shall have any liability under this Lease for acts or omissions taking place prior to the date it acquires record title to Tenant's interest and assumes Tenant's obligations under this Lease (or a new lease), and such liability shall be limited to the value of Permitted Leasehold Mortgagee's and/or its designee's or affiliate's respective interest in this Lease and the Leasehold Estate. If Permitted Leasehold Mortgagee or its designee or affiliate, or any other party, shall succeed to the interest of Tenant under this Lease, whether as a purchaser at a foreclosure sale or by the acceptance of a deed-in-lieu of foreclosure, Permitted Leasehold Mortgagee, its designee or affiliate shall (a) not be liable for any act or omission of Tenant, and (b) be released from all liability prior to the date Permitted Leasehold Mortgagee or its designee or affiliate succeeds to the interest of Tenant and has taken record title to the Leasehold Estate, such release to be automatic with no further action required by any such party.

**20.27 Benefit and Burden.** This Lease shall be binding on and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns in interest hereunder.

**20.28 Access.** Tenant agrees to grant a right of access to Landlord and its authorized representatives with respect to all books, documents, papers, or other records related to this Lease in order to make audits, examinations, excerpts and transcripts.

**20.29 Special Conveyance Right.** In the event (a) all or any material portion of the Property shall become subject to ad valorem tax as a result of an intentional act or failure to act on the part of the Managing Member or Landlord or at any time that the loss of the tax exemption would result in a default under the First Permitted Leasehold Mortgage, or (b) Managing Member is removed as the managing member of Tenant, Tenant shall have the right to, at any time thereafter, by written notice to Landlord and any Permitted Leasehold Mortgagee and the Investor Member, cause Landlord to convey title to the Land to Tenant or Tenant's nominee for the payment of One Hundred Dollars (\$100.00). Tenant shall be responsible for all costs including, but not limited to, Landlord's reasonable attorneys' fees, transfer taxes, title policy premiums and recording costs. Notwithstanding anything to the contrary contained herein, the special conveyance right granted in this Section 19.30 is and shall be subject and subordinate, in all respects, to the Permitted Leasehold Mortgages held by Permitted Leasehold Mortgagees and the exercise of such special conveyance right shall be subject to the prior written consent of each Permitted Leasehold Mortgagee.


**[SIGNATURES BEGIN ON THE NEXT PAGE]**

IN WITNESS WHEREOF, each party hereto has executed this Lease or caused it to be executed on its behalf by its duly authorized representatives, on the date set forth in the applicable acknowledgment, to be effective as of the day and year first above written.

LANDLORD:

**CORPUS CHRISTI HOUSING AUTHORITY,**  
a Texas public nonprofit housing authority

By:

  
\_\_\_\_\_  
Gary R. Allsup, Chief Executive Officer

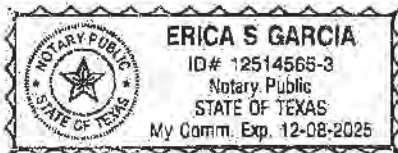
STATE OF TEXAS

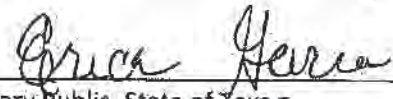
§

§

COUNTY OF NUECES

This instrument was acknowledged before me on this 17<sup>th</sup> day of December, 2024, by Gary R. Allsup, Chief Executive Officer of Corpus Christi Housing Authority, a Texas public nonprofit housing authority, on behalf of said housing authority.



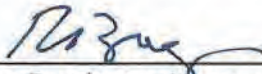
  
\_\_\_\_\_  
Notary Public, State of Texas



TENANT:

**TX AZURE APARTMENTS 1, LLC,**  
a Delaware limited liability company

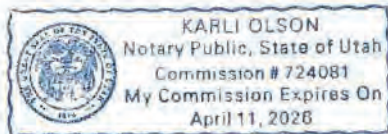
By: Sundance Bay Income and Growth Fund GP, LLC, a  
Delaware limited liability company, General Partner

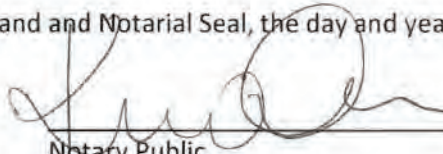
By:   
Ryan Baughman, Manager

STATE OF Utah §  
§  
COUNTY OF Salt Lake §

I HEREBY CERTIFY that on or about this 17 day of December, 2024, before me, a Notary Public for the state aforesaid, personally appeared Ryan Baughman, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Regulatory Agreement and Declaration of Restrictive Covenants, who acknowledged that he is the Manager of the General Partner of TX Azure Apartments 1, LLC, that he has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth; and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.



  
Notary Public

My commission expires on 4/11/26

## **EXHIBIT A**

### **Description of Land**

Lot One (1), Block One (1), SAN MARIN, a subdivision situated in the City of Corpus Christi, Nueces County, Texas, commonly known as San Marin Apartments, as shown by the map or plat thereof, recorded in Volume 57, Page 193, Map Records of Nueces County, Texas and being more particularly described by metes and bounds as follows, to-wit:

All that certain tract, piece or parcel of land containing 9.5316 acres (415,196 sq. ft.) of land, more or less, and being portion of that certain 90.043 acre tract deeded to Tristar Development, Inc., recorded in Volume 1919, Page 216, Deed Records of Nueces County, Texas:

BEGINNING at a found 5/8th inch iron rod being the most Easterly corner of Lot 1, Block 1, of said San Marin, same being a point in the Northwest line of South Staples Street (F.M. 2444) (100 feet wide);

THENCE South 28 degrees 56 minutes 00 seconds West, along said Northwest line of South Staples Street, a distance of 150.00 feet to a found 5/8th inch iron rod for corner of the herein described tract, said corner also being the most Easterly corner of Lot 2, Block 1, of said San Marin;

THENCE North 61 degrees 04 minutes 00 seconds West, departing said line along the Northeasterly line of said Lot 2, a distance of 150.00 feet to a found 5/8th inch iron rod for corner of the herein described tract;

THENCE South 28 degrees 56 minutes 00 seconds West, along the Northwesterly line of said Lot 2, a distance of 200.00 feet to a set 5/8th inch iron rod for corner of the herein described tract;

THENCE South 61 degrees 04 minutes 00 seconds East, along the Southwesterly line of said Lot 2, a distance of 150.00 feet to a found 5/8th inch iron rod returning to said Northwest line of South Staples Street for corner of the herein described tract, said corner also being the most southerly corner of said Lot 2;

THENCE South 28 degrees 56 minutes 00 seconds West, along said Northwest line of South Staples Street, a distance of 433.23 feet to a set 5/8th inch iron rod for corner, a point of curvature of a curve to the right;

THENCE in a Southwesterly direction, around a curve to the right whose radius equals 15.00 feet, having a central angle of 89 degrees 58 minutes 35 seconds, an arc length of 23.56 feet, a chord bearing South 73 degrees 56 minutes 43 seconds West, 21.21 feet to a set 5/8th inch iron rod for corner in the Northeast line of Henderson Street (60 feet wide), the most Southerly corner of the herein described tract;

THENCE North 61 degrees 02 minutes 35 seconds West, along the Northeast line of said Henderson Street, a distance of 627.27 feet to a set 5/8th inch iron rod for corner, a point of curvature of a curve to the right;



THENCE in a Northwesterly direction, around a curve to the right whose radius equals 10.00 feet, having a central angle of 90 degrees 00 minutes 15 seconds, an arc length of 15.71 feet, a chord bearing North 16 degrees 02 minutes 42 seconds West, 14.14 feet to a set 5/8th inch iron rod for corner, the most Westerly corner of the herein described tracts;

THENCE North 28 degrees 57 minutes 10 seconds East, along the Northwest line of said San Marin, a distance of 557.29 feet to a found 5/8th inch iron rod for corner of the herein described tract, same being a point in the Southwesterly line of said Stonehenge Unit 1 Subdivision;

THENCE South 61 degrees 02 minutes 50 seconds East, along said Southwesterly line, a distance of 326.00 feet to a found 5/8th inch iron rod for corner of the herein described tract;

THENCE North 28 degrees 57 minutes 10 seconds East, along said Southwesterly line, a distance of 230.89 feet to a found 5/8th inch iron rod for corner of the herein described tract;

THENCE South 61 degrees 02 minutes 50 seconds East, along a Southwesterly line, a distance of 326.00 feet returning the POINT OF BEGINNING of the herein described tract containing 9.5316 acres (415,196 sq. ft.) of land, more or less.

**EXHIBIT B**

**Schedule of Permitted Encumbrances**

All documents recorded in the Real Property Records of Nueces County, Texas, on the date hereof that affect the Property.



**EXHIBIT C**

**Notice Addresses**

<b>If to Landlord:</b>	Corpus Christi Housing Authority 3701 Ayers Street Corpus Christi, Texas 78415 Attention: Chief Executive Officer
<b>With a copy to:</b>	Anderson, Lehrman, Barre & Maraist, LLP 1001 Third Street, Suite 1 Corpus Christi, Texas 78404 Attention: R. Bryan Stone, Esq.
<b>If to Tenant:</b>	TX Azure Apartments 1, LLC 1240 E 2100 S, Suite 300 Salt Lake City, Utah 84106
<b>With a copy to:</b>	Ascenda Capital 9242 Beverly Blvd. Suite 300 Beverly Hills, CA 90210 Attention: Matt Avital Email: matt@ascendacap.com
	Holland & Knight LLP 1180 West Peachtree Street, NW, Suite 1800 Atlanta, Georgia 30309 Attention: Allison Dyer Email: allison.dyer@hklaw.com
<b>If to Investor Member:</b>	Sundance Bay Income and Growth OP, LP 1240 E 2100 S, Suite 300 Salt Lake City, Utah 84106
<b>With a copy to:</b>	Holland & Knight LLP 1180 West Peachtree Street, NW, Suite 1800 Atlanta, Georgia 30309 Attention: Allison Dyer Email: allison.dyer@hklaw.com

# **EXHIBIT H**

## **SAMPLE REGULATORY AGREEMENT**



---

REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS

By and Between

CORPUS CHRISTI HOUSING AUTHORITY

And

TX AZURE APARTMENTS 1, LLC

Relating to: Azure Apartments

DATED AS OF DECEMBER 30, 2024

---

When Recorded Send to:  
Holland & Knight LLP  
1180 West Peachtree St., Suite 1800  
Atlanta, Georgia 30319  
Attn: Allison Dyer

## Table of Contents

SECTION	HEADING	PAGE
Section 1.	Term of Restrictions.....	1
Section 2.	Occupancy Restrictions.....	2
Section 3.	Enforcement.....	4
Section 4.	Recording and Filing.....	4
Section 5.	Amendment.....	5
Section 6.	Severability.....	5
Section 7.	Notices.....	5
Section 8.	Governing Law.....	6
Section 9.	Estoppel Certificate.....	6
EXHIBIT A	Description of Land	
EXHIBIT B	Certification of Income	
EXHIBIT C	Certificate of Continuing Program Compliance	



**REGULATORY AGREEMENT AND DECLARATION  
OF RESTRICTIVE COVENANTS**

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (including the Exhibits attached hereto, and as amended, modified, or supplemented from time to time, this "*Regulatory Agreement*"), dated as of December 30, 2024, is entered into by and between CORPUS CHRISTI HOUSING AUTHORITY, a public nonprofit housing authority organized under Chapter 392 of the Texas Local Government Code (together with its successors and assigns, "*CCHA*"), and TX AZURE APARTMENTS 1, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware (together with its permitted successors and assigns, the "*Owner*").

**WITNESSETH:**

WHEREAS, the Owner owns a leasehold interest in certain real property upon which exists a building or buildings and related improvements, furnishings, equipment and related property installed therein, located in the City of Corpus Christi, Nueces County, Texas, more particularly described in *Exhibit A* attached hereto and made a part hereof (the "*Land*"), comprising a 220-unit multifamily development in place and operating at 7221 S. Staples Street (such buildings, improvements, furnishings, equipment, and related property being collectively referred to as the "*Development*"); and

WHEREAS, Azure Apartments-CCHA, LLC, a Delaware limited liability company (together with its permitted successors and assigns, the "*Managing Member*") is the Managing Member of the Owner;

WHEREAS, the Managing Member is owned and managed by CCHA; and

WHEREAS, compliance of the Development with the requirements of Section 392.005 of the Texas Housing Finance Corporations Act, Chapter 392, Texas Local Government Code, as amended (the "*Act*") and certain other restrictions required by CCHA, is within the control of the Owner; and

WHEREAS, it is necessary for the Owner to agree to this Regulatory Agreement, and thereby consent to be regulated as herein set forth to ensure compliance with the Act and certain other restrictions required by CCHA.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, CCHA, the Managing Member, and the Owner hereby agree, as follows:

*Section 1. Term of Restrictions.* (a) *Occupancy Restrictions:* The term of the occupancy restrictions set forth in Section 2 hereof (the "*Occupancy Restrictions*") with respect to the Development shall commence on the execution and delivery hereof and end with respect to the Development, subject to Section 1(b), on the date on which the Managing Member is no longer the managing member of the Owner and CCHA is no longer the owner of the fee interest in the Land. The Managing Member and the Owner shall be permitted to take affirmative action to



place the Land on the tax rolls maintained by the Nueces County Appraisal District upon the termination of this Regulatory Agreement.

(b) Notwithstanding the provisions of paragraph (a) of this Section 1, this Regulatory Agreement and all other restrictions hereunder shall cease to apply in the event of an involuntary noncompliance caused by weather events, fire, and other casualties, seizure, requisition, foreclosure, transfer of title by deed or assignment in lieu of foreclosure, orders, or restraints of any kind of the State of Texas or of any of its departments, agencies, or officials.

(c) Upon termination of this Regulatory Agreement pursuant to the terms hereof, CCHA shall, upon request by the Owner, any foreclosing lender (if applicable), or their assigns, file in the real estate records of Nueces County, Texas, any documentation necessary to evidence and provide notice of the termination of this Regulatory Agreement.

*Section 2. Occupancy Restrictions.* The Owner represents, warrants, and covenants that:

(a) In order to comply with Section 392.005 of the Act, no less than fifty percent (50%) of the residential units will be restricted for rent to Qualifying Tenants. As used herein "Qualifying Tenants" means one or more natural persons or a family, irrespective of race, creed, religion, color, national origin, familial status, mental or physical handicap, or gender, whose current annual family income does not exceed eighty percent (80%) of the area median gross income (within the meaning of section 142(d) of the Internal Revenue Code of 1986, as amended (the "*Code*")) calculated using the Novogradac Rent and Income Limit Calculator (the "*Calculator*") for the applicable year, under the "Other Federal, State, or Local Program" category for Nueces County – Corpus Christi, TX HUD Metro FMR Area for families of four or more persons, which calculation is based on the HUD Published Income Limit for 50% VLI, or such other reliable compilation of income statistics as CCHA may determine to employ, as adjusted by CCHA according to the most recent Consumer Price Index statistics (the "*Area Median Gross Income*"). Rent will not be calculated with regard to utility allowances; provided, however, that the rents shall not exceed 35% of 0.8 (or 0.6, as applicable) multiplied by the Area Median Gross Income, divided by twelve (12) for the Qualifying Tenants.

(b) In addition, it is presently intended that at all times:

(i) 88 units will be income restricted for rent to individuals and households whose aggregate adjusted gross incomes do not exceed eighty percent (80%) of Area Median Gross Income; and

(ii) 22 units will be income restricted for rent to individuals and households whose aggregate adjusted gross incomes do not exceed sixty percent (60%) of Area Median Gross Income; and



(iii) 110 units will be market rate.

(c) As a condition to occupancy, the property management company (the "*Property Manager*") shall verify the household income, by form of "Certification of Income", of each individual or household who is intended to be a Qualifying Tenant prior to occupying a residential unit or signing a lease. In addition, such Qualifying Tenant shall be required to provide whatever other information, documents or certifications as are reasonably deemed necessary by the Owner or CCHA to substantiate the initial or subsequent Certification of Income, which may include employment verifications, income tax returns, employee pay stubs, W-2s and K-1s (each to the extent applicable).

(d) Beginning December 30, 2026, and continuing annually thereafter after any residential unit in the Development is available for occupancy, the Owner will cause the Property Manager to submit to CCHA the "Certificate of Continuing Program Compliance," in the form attached hereto as Exhibit C, or a form substantially similar thereto, executed by the authorized representative of the Property Manager stating the percentage of residential units in the Development which were occupied or held available for occupancy by Qualifying Tenants at all times during the preceding calendar year, as appropriate, and identifying Qualifying Tenants who commenced or terminated occupancy in the Development during such year.

(e) In order to satisfy the requirements of the Act, the Owner covenants and agrees to obtain and maintain on file the Certification of Income for each Qualifying Tenant (in the form attached as Exhibit B, or a form substantially similar thereto,) who resides in the Development (and of any persons who reside in the same residential unit with such Qualifying Tenant) for the taxable year immediately preceding the initial occupancy or lease renewal for such Qualifying Tenant, as described in Section 2(b) above. All Certifications of Income will be maintained on file at the Development throughout the term of this Regulatory Agreement and the Owner shall, upon three (3) business days' prior request, make such Certifications of Income available for inspection by CCHA.

(f) The Owner will comply with all fair housing laws, rules, regulations, or orders applicable to the Development and shall not discriminate on the basis of race, creed, color, gender, age, or national origin in the lease, use, or occupancy of the project or in connection with the employment of persons for the operation and management of the Development.

(g) If at any time the project fails to satisfy the Occupancy Restrictions due to vacancy, required repairs, or an increase in the income of a Qualifying Tenant (a "Temporary Occurrence"), Owner shall achieve the Occupancy Restrictions as soon as possible and in any case, within sixty (60) days. Owner is not required to evict or otherwise displace any tenant for the purpose of achieving the Occupancy Restrictions, so long as the appropriate number of the residential units in the project to achieve the Occupancy Restrictions are (x) in the case of less than 100% occupancy at the project at the time of the onset of such Temporary Occurrence, reserved for the appropriate proportion of Qualifying Tenants and leased to for the appropriate proportion of Qualifying Tenants as



soon as possible, and (y) in the case of 100% occupancy at the project at the time of the onset of such Temporary Occurrence, the next available residential unit(s) at the project are actually leased to for the appropriate proportion of Qualifying Tenants until such time as 50% of the total number of residential units of the project are actually occupied by the appropriate proportion of Qualifying Tenants. For the avoidance of doubt, if a tenant household leasing a Qualifying Tenant unit completes the Certification of Income provided as Exhibit B and such completed Certification of Income demonstrates that the tenant household is no longer a Qualifying Tenant, such residential unit shall immediately cease to be characterized as a Qualifying Tenant unit and the provisions of this Section 2(g) with respect to a Temporary Occurrence shall apply. It is the express intent of Owner that the project strictly comply with the requirements of Section 2(a) at all times during the term, and Owner agrees to take all necessary action to cause such compliance.

*Section 3. Enforcement.* (a) The Owner shall permit, after three (3) business days' prior notice, any duly authorized representative of CCHA to inspect any books and records of the Owner regarding the Development and with respect to the incomes of Qualifying Tenants which pertain to compliance with the provisions of this Regulatory Agreement.

(b) In addition to the information provided for in Section 2 hereof, the Owner shall submit any other information, documents or certifications reasonably requested by CCHA that are reasonably necessary to substantiate continuing compliance with the provisions of this Regulatory Agreement.

(c) If the Owner shall fail to observe or perform any covenant, condition, or agreement contained herein on its part to be observed or performed, and such failure continues for sixty (60) days after the Owner actually discovers or receives notice from CCHA of such failure, then and in such event, CCHA shall be entitled, in addition to all other remedies provided by law or in equity, to compel specific performance by the Owner of its obligations under this Regulatory Agreement.

Notwithstanding anything in this subsection (c) to the contrary, if with respect to any calendar year for which a Certificate of Continuing Program Compliance is provided pursuant to Section 2(c) hereof, the Owner has failed to comply with the Occupancy Restrictions described in Section 2(a) hereof and such failure is not cured by the later of (x) sixty (60) days after receipt of written notice from CCHA of such failure or (y) the forty-fifth (45th) day following the end of the calendar year for which such Certificate of Continuing Program Compliance pertains, then so long as the Owner fails to comply with the Occupancy Restrictions beyond any applicable notice and cure periods set forth herein, the Managing Member shall have the right, but not the obligation to (y) withdraw as managing member of the owner and/or (z) exercise any purchase option with respect to the Development on the same terms as those set forth in that certain Purchase Option and Right of First Refusal Agreement of the Owner, as the same may be amended.

*Section 4. Recording and Filing.* The Owner shall cause this Regulatory Agreement and all amendments and supplements hereto to be recorded and filed in the real property records of Nueces County, Texas. This Regulatory Agreement shall be recorded in the grantor-grantee index



to the name of the Owner as grantor and to the name of CCHA as grantee. The Owner shall pay all fees and charges incurred in connection with any such recording.

*Section 5. Amendment.* Neither this Regulatory Agreement nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the duly authorized representatives of CCHA and the Owner provided any such amendment shall only be effective upon the prior written notice to and consent of (i) the holder of a senior deed of trust or similar security instrument encumbering the Development, (ii) the Department, and (iii) the Fiscal Agent.

*Section 6. Severability.* The invalidity of any clause, part or provision of this Regulatory Agreement shall not affect the validity of the remaining portions of this Regulatory Agreement.

*Section 7. Notices.* Any notice, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if and when personally delivered and receipted for, or, if sent by private courier service, overnight mail or delivery service or United States registered or certified mail, return receipt requested, postage prepaid, shall be deemed to have been given if and when received (unless the addressee refuses to accept delivery, in which case it shall be deemed to have been given when first presented to the addressee for acceptance). Any such notice, demand or other communication shall be addressed to a party at its address set forth below or to such other address the party to receive such notice may have designated to all other parties by notice in accordance herewith:

To the Owner: TX Azure Apartments 1, LLC  
1240 E 2100 S STE 300  
Salt Lake City, UT 84106  
Attention: David Hatch  
Email: [david@sundancebay.com](mailto:david@sundancebay.com)

With a copy to: Ascenda Capital  
9242 Beverly Blvd.  
Suite 300  
Beverly Hills, CA 90210  
Attention: Matt Avital  
Email: [matt@ascendacap.com](mailto:matt@ascendacap.com)

Holland & Knight LLP  
1180 West Peachtree Street, NW, Suite 1800  
Atlanta, Georgia 30309  
Attention: Allison Dyer  
Email: [allison.dyer@hklaw.com](mailto:allison.dyer@hklaw.com)

Managing Member: Azure Apartments-CCHA, LLC  
c/o Corpus Christi Housing Authority  
3701 Ayers Street  
Corpus Christi, Texas 78415  
Attention: Chief Executive Officer

With a copy to: Anderson, Lehrman, Barre & Maraist, LLP  
1001 Third Street, Suite 1  
Corpus Christi, Texas 78404  
Attention: R. Bryan Stone, Esq.

To CCHA: Corpus Christi Housing Authority  
3701 Ayers Street  
Corpus Christi, Texas 78415  
Attention: Chief Executive Officer

With a copy to: Anderson, Lehrman, Barre & Maraist, LLP  
1001 Third Street, Suite 1  
Corpus Christi, Texas 78404  
Attention: R. Bryan Stone, Esq.

*Section 8. Governing Law.* This Regulatory Agreement shall be construed in accordance with and governed by the laws of the State of Texas, excluding its choice and conflict of law principles.

*Section 9. Estoppel Certificate.* Each party hereto shall, at any time and from time to time within ten (10) days after being requested to do so by the other party and/or any mortgagee with respect to any portion or all of the Development, in writing, execute, acknowledge, and address and deliver to the requesting party (or, at the latter's request, to any existing or prospective mortgagee, transferee or other assignee of the requesting party's interest in the Development or under this Regulatory Agreement) a certificate in recordable form, (i) certifying (a) that this Regulatory Agreement is unmodified and in full force and effect (or, if there has been any modification thereof, that it is in full force and effect as so modified, stating therein the nature of such modification); (b) as to whether, to the best of such party's knowledge, information and belief, the requesting party is then in default in performing any of its obligations hereunder (and, if so, specifying the nature of each such default); and (c) as to any other fact or condition reasonably requested by the requesting party; and (ii) acknowledging and agreeing that any statement contained in such certificate may be relied upon by the requesting party and any such other addressee.

[Signature Pages Follow]



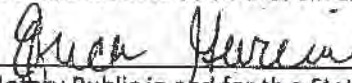
IN WITNESS WHEREOF, the parties hereto have caused this Regulatory Agreement to be signed by their respective, duly authorized representatives, as of the day and year first above written.

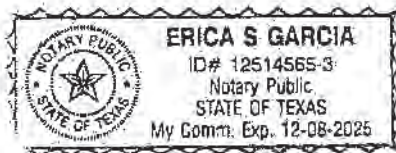
CORPUS CHRISTI HOUSING AUTHORITY,  
a Texas public nonprofit housing authority

By:   
Gary R. Allsup, Chief Executive Officer

STATE OF TEXAS                   §  
   §  
COUNTY OF NUECES           §

I HEREBY CERTIFY that on or about this 7<sup>th</sup> day of December, 2024, before me, a Notary Public for the state aforesaid, personally appeared Gary R. Allsup, the Chief Executive Officer of Corpus Christi Housing Authority, a Texas public nonprofit housing authority, on behalf of said public housing authority, for the purposes and consideration therein expressed.

  
Notary Public in and for the State of Texas



[Signature Page to Regulatory Agreement]

Azure Apartments-CCHA, LLC, a Delaware limited liability company

By: Corpus Christi Housing Authority,  
a Texas municipal housing authority  
Its: Sole Member

By:   
Gary R. Allsup, Chief Executive Officer

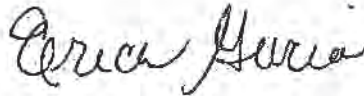
STATE OF TEXAS       §  
                                     §  
COUNTY OF NUECES   §

I HEREBY CERTIFY that on or about this 14<sup>th</sup> day of December 2024, before me, a Notary Public for the state aforesaid, personally appeared Gary R. Allsup, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Regulatory Agreement and Declaration of Restrictive Covenants, who acknowledged that he is the Chief Executive Officer, that he has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth; and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

Notary Public

My commission expires on  
12/8/25






[Signature Page to Regulatory Agreement]



TX AZURE APARTMENTS 1, LLC,  
a Delaware limited liability company

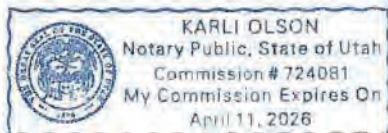
By: Sundance Bay Income and Growth Fund GP, LLC, a  
Delaware limited liability company, General Partner

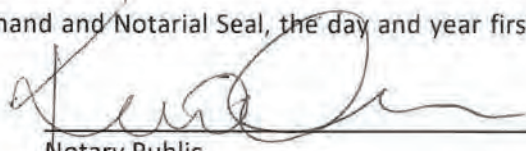
By:   
Ryan Baughman, Manager

STATE OF Utah §  
COUNTY OF Salt Lake §

I HEREBY CERTIFY that on or about this 17 day of December, 2024, before me, a Notary Public for the state aforesaid, personally appeared Ryan Baughman, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Regulatory Agreement and Declaration of Restrictive Covenants, who acknowledged that he is the Manager of the General Partner of TX Azure Apartments 1, LLC, that he has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth; and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.



  
Notary Public

My commission expires on 4-11-26

## **EXHIBIT A**

### **DESCRIPTION OF LAND**

Lot One (1), Block One (1), SAN MARIN, a subdivision situated in the City of Corpus Christi, Nueces County, Texas, commonly known as San Marin Apartments, as shown by the map or plat thereof, recorded in Volume 57, Page 193, Map Records of Nueces County, Texas and being more particularly described by metes and bounds as follows, to-wit:

All that certain tract, piece or parcel of land containing 9.5316 acres (415,196 sq. ft.) of land, more or less, and being portion of that certain 90.043 acre tract deeded to Tristar Development, Inc., recorded in Volume 1919, Page 216, Deed Records of Nueces County, Texas:

BEGINNING at a found 5/8th inch iron rod being the most Easterly corner of Lot 1, Block 1, of said San Marin, same being a point in the Northwest line of South Staples Street (F.M. 2444) (100 feet wide);

THENCE South 28 degrees 56 minutes 00 seconds West, along said Northwest line of South Staples Street, a distance of 150.00 feet to a found 5/8th inch iron rod for corner of the herein described tract, said corner also being the most Easterly corner of Lot 2, Block 1, of said San Marin;

THENCE North 61 degrees 04 minutes 00 seconds West, departing said line along the Northeasterly line of said Lot 2, a distance of 150.00 feet to a found 5/8th inch iron rod for corner of the herein described tract;

THENCE South 28 degrees 56 minutes 00 seconds West, along the Northwesterly line of said Lot 2, a distance of 200.00 feet to a set 5/8th inch iron rod for corner of the herein described tract;

THENCE South 61 degrees 04 minutes 00 seconds East, along the Southwesterly line of said Lot 2, a distance of 150.00 feet to a found 5/8th inch iron rod returning to said Northwest line of South Staples Street for corner of the herein described tract, said corner also being the most southerly corner of said Lot 2;

THENCE South 28 degrees 56 minutes 00 seconds West, along said Northwest line of South Staples Street, a distance of 433.23 feet to a set 5/8th inch iron rod for corner, a point of curvature of a curve to the right;

THENCE in a Southwesterly direction, around a curve to the right whose radius equals 15.00 feet, having a central angle of 89 degrees 58 minutes 35 seconds, an arc length of 23.56 feet, a chord bearing South 73 degrees 56 minutes 43 seconds West, 21.21 feet to a set 5/8th inch iron rod for corner in the Northeast line of Henderson Street (60 feet wide), the most Southerly corner of the herein described tract;

THENCE North 61 degrees 02 minutes 35 seconds West, along the Northeast line of said Henderson Street, a distance of 627.27 feet to a set 5/8th inch iron rod for corner, a point of curvature of a curve to the right;



THENCE in a Northwesterly direction, around a curve to the right whose radius equals 10.00 feet, having a central angle of 90 degrees 00 minutes 15 seconds, an arc length of 15.71 feet, a chord bearing North 16 degrees 02 minutes 42 seconds West, 14.14 feet to a set 5/8th inch iron rod for corner, the most Westerly corner of the herein described tracts;

THENCE North 28 degrees 57 minutes 10 seconds East, along the Northwest line of said San Marin, a distance of 557.29 feet to a found 5/8th inch iron rod for corner of the herein described tract, same being a point in the Southwesterly line of said Stonehenge Unit 1 Subdivision;

THENCE South 61 degrees 02 minutes 50 seconds East, along said Southwesterly line, a distance of 326.00 feet to a found 5/8th inch iron rod for corner of the herein described tract;

THENCE North 28 degrees 57 minutes 10 seconds East, along said Southwesterly line, a distance of 230.89 feet to a found 5/8th inch iron rod for corner of the herein described tract;

THENCE South 61 degrees 02 minutes 50 seconds East, along a Southwesterly line, a distance of 326.00 feet returning the POINT OF BEGINNING of the herein described tract containing 9.5316 acres (415,196 sq. ft.) of land, more or less.

**EXHIBIT B**

**CERTIFICATION OF INCOME**

RE: DEVELOPMENT NAME – Azure Apartments

Apartment Number: \_\_\_\_\_

Primary Resident: \_\_\_\_\_ Number of Occupants on Lease: \_

Type of Unit: \_\_\_\_\_

I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully and truthfully each of the following questions for all persons who are to occupy the unit in the above apartment development for which application is made, all of whom are listed below:

Check the applicable box to indicate which income limit applies to your household income for the 20\_\_\_\_\_ calendar year:

1. The combined income of all persons residing in the unit during the 12-month period beginning on the later of the date on which the above persons first occupy the apartment or sign a lease with respect to the apartment, including income described in (a) below, but excluding all income described in (b) below,

- ☐ Does not exceed the 80% AMI income limit (\$\_\_\_\_\_)
- ☐ Does not exceed the 60% AMI income limit (\$\_\_\_\_\_)

(a) The amount set forth above includes all of the following income (unless such income is described in (b) below):

(i) all wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services, before payroll deductions;

(ii) net annual income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization or capital indebtedness). (An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Include any withdrawal of cash or assets from the operation of a business or profession, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the above persons);

(iii) interest and dividends;

(iv) the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death



benefits and other similar types of periodic receipts, including a lump sum payment for the delayed start of a periodic payment;

(v) payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation and severance pay;

(vi) any welfare assistance: if the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, include as income (a) the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities, plus (b) the maximum amount that the welfare assistance agency could in fact allow the above persons for shelter and utilities. (If the welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under clause (b) shall be the amount resulting from one application of the percentage);

(vii) periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling;

(viii) all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household, spouse or other household member whose dependents are residing in the unit; and

(ix) any earned income tax credit to the extent it exceeds income tax liability.

(b) The following income is excluded from the amount set forth above:

(i) Income from employment of children (including foster children) under the age of 18 years;

(ii) Payment received for the care of foster children;

(iii) Lump sum additions to household assets, such as inheritances, insurance payments (including payments under health and accident insurance and workers' compensation), capital gains and settlement for personal or property losses;

(iv) Amounts received by the household that are specifically for, or in reimbursement of, the cost of medical expenses for any household member;

(v) Income of a live-in aide;

(vi) Amounts of education scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies,

transportation and miscellaneous personal expenses of the student. Any amount of such scholarship or payment to a veteran not used for the above purposes that is available for subsistence is to be included in income;

(vii) The special pay to a household member serving in the Armed Forces who is exposed to hostile fire;

(viii) (a) Amounts received under training programs funded by Housing and Urban Development ("HUD");(b) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency ("PASS");

(c) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(ix) Temporary, nonrecurring or sporadic income (including gifts); or

(x) Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937.

This Certification of Income will be maintained on file at the Development throughout the term of this Regulatory Agreement and the Owner shall, upon three (3) business days' prior request, make such Certifications of Income available for inspection by Corpus Christi Housing Authority.

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

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

\_\_\_\_\_

\_\_\_\_\_



## EXHIBIT C

### CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Reporting Month/Year: \_\_\_\_\_

Property Name: Azure Apartments

On Site Property Manager: \_\_\_\_\_

Property Address: 7221 S. Staples Street  
Corpus Christi, Texas 78413

Telephone Number: \_\_\_\_\_

To: Corpus Christi Housing Authority  
3701 Ayers Street  
Corpus Christi, Texas 78415  
Attention: Chief Executive Officer

The undersigned, as the authorized representative of \_\_\_\_\_  
(the "*Property Manager*"), hereby certifies that he or she has read and is thoroughly familiar with the provisions of the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of December 30, 2024 (the "*Regulatory Agreement*"), between Corpus Christi Housing Authority and TX Azure Apartments 1, LLC (as executed by such entity's Managing Member) and certifies the following as of the date of this certificate:

#### **Development Units**

\_\_\_\_\_ Total Occupied Units in Development

\_\_\_\_\_ Total Vacant Units

\_\_\_\_\_ Total Units

#### **Qualifying Tenants with Adjusted Gross Incomes at or below 80% AMI**

\_\_\_\_\_ Units Occupied by such Qualifying Tenants

\_\_\_\_\_ Units Held Vacant for such Qualifying Tenants

#### **Qualifying Tenants with Adjusted Gross Incomes at or below 60% AMI**

\_\_\_\_\_ Units Occupied by such Qualifying Tenants

\_\_\_\_\_ Units Held Vacant for such Qualifying Tenants

\_\_\_\_\_ Total (At least 50% of Total Units)

The terms Qualifying Tenants, Adjusted Gross Incomes and AMI have the meanings given to them in the Regulatory Agreement.

Certified By:

---

Printed Name and Title

---

Authorized Representative Signature

---

Date



# **EXHIBIT I**

## **SAMPLE CCHA OPERATING AGREEMENT**

**AMENDED AND RESTATED OPERATING AGREEMENT  
OF  
TX AZURE APARTMENTS 1, LLC**



## TABLE OF CONTENTS

### ARTICLE I

#### **CONTINUATION; NAME, PURPOSE AND TERM.....2**

1.1.	Continuation; Name. ....	2
1.2.	Purposes of the Company. ....	2
1.3.	Powers of the Company. ....	2
1.4.	Registered Agent and Office; Principal Office. ....	3
1.5.	Term. ....	4
1.6.	Entity Characterization. ....	4
1.7.	Definitions and Schedules Incorporated. ....	4
1.8.	Representations and Warranties. ....	4
1.9.	Real Estate Matters. ....	7
1.10.	Ground Lease. ....	7

### ARTICLE II

#### **CAPITAL CONTRIBUTIONS AND THE LIABILITY OF MEMBERS .....8**

2.1.	Company Capital. ....	8
2.2.	Capital Contributions. ....	8
2.3.	Funding Deficits. ....	8
2.4.	Withdrawal of Capital. ....	9
2.5.	Liability of Members. ....	9
2.6.	No Restoration of Deficit Capital Account. ....	9
2.7.	Loan Guaranty. ....	9
2.8.	Replacement Reserve. ....	9

### ARTICLE III

#### **MANAGEMENT; RIGHTS, POWERS; DUTIES; DEFAULTS AND REMOVAL OF THE MEMBERS .....10**

3.1.	Management of the Company. ....	10
3.2.	Major Decisions; Property Management; Affiliated Contracts. ....	14
3.3.	Special Limited Member Right to Compel Sale. ....	16
3.4.	Exculpation; Indemnification. ....	17
3.5.	Outside Activities of Members. ....	17
3.6.	[Reserved]. ....	18
3.7.	Removal of the Managing Member. ....	18
3.8.	Fees. ....	19
3.9.	Information and Meetings. ....	20

3.10.	Duties to Others. ....	20
3.11.	Event of Default as to the Managing Member.....	21
3.12.	Event of Default as to the Special Limited Member.....	21
3.13.	General Construction. ....	21
<b>ARTICLE IV</b>		
	<b>DISTRIBUTIONS.....</b>	<b>22</b>
4.1.	Net Cash Flow Distributions.....	22
4.2.	Distributions from Interim Capital Transactions. ....	22
4.3.	Distribution Upon Dissolution.....	23
4.4.	General.....	24
4.5.	Tax Withholding. ....	24
<b>ARTICLE V</b>		
	<b>PROFITS AND LOSSES .....</b>	<b>25</b>
5.1.	Allocation of Profits and Losses from Other Than a Terminating Capital Transaction.....	25
5.2.	Allocation of Profits and Losses from a Terminating Capital Transaction. ....	25
<b>ARTICLE VI</b>		
	<b>FISCAL MATTERS .....</b>	<b>27</b>
6.1.	Books and Records. ....	27
6.2.	Bank Accounts.....	27
6.3.	Accounting and Fiscal Year.....	28
6.4.	Tax Filings; Partnership Representative. ....	28
<b>ARTICLE VII</b>		
	<b>BUDGETS; REPORTS .....</b>	<b>29</b>
7.1.	Budgets. ....	29
7.2.	Annual Reports. ....	30
7.3.	Other Reports.....	30
7.4.	General Requirements.....	31
<b>ARTICLE VIII</b>		
	<b>TRANSFERS.....</b>	<b>31</b>
8.1.	Restrictions on Transfer of Membership Interests.....	31
8.2.	Restrictions Applicable to the Investor Member and the Special Limited Member. .....	32
8.3.	General Restrictions on All Transfers.....	32
8.4.	Substitute Members. ....	34



	<b>ARTICLE IX</b>	
	<b>PURCHASE AND SALE RIGHTS BETWEEN MEMBERS .....</b>	<b>34</b>
9.1.	Intentionally omitted. ....	34
9.2.	Purchase of the Managing Member’s Interest Upon Default. ....	34
	<b>ARTICLE X</b>	
	<b>DISSOLUTION AND TERMINATION OF THE COMPANY .....</b>	<b>37</b>
10.1.	Events Causing Dissolution. ....	37
10.2.	Procedures on Dissolution. ....	38
10.3.	Disposition of Documents and Records.....	38
	<b>ARTICLE XI</b>	
	<b>GENERAL PROVISIONS .....</b>	<b>38</b>
11.1.	Notices; Calculation of Days. ....	38
11.2.	Word Meanings.....	39
11.3.	Binding Provisions.....	39
11.4.	Applicable Law; Venue; No Jury Trial.....	40
11.5.	Counterparts; Electronic Copy.....	40
11.6.	Separability of Provisions. ....	40
11.7.	Captions. ....	41
11.8.	Entire Agreement; Amendments; Further Assurances. ....	41
11.9.	No Third Party Beneficiaries. ....	41
11.10.	Waiver of Partition, Etc. ....	41
11.11.	Remedies; Waivers; Attorney’s Fees.....	42
11.12.	Survival of Certain Provisions. ....	42
11.13.	Members’ Limited Liability.....	42
11.14.	Dispute Resolution.....	43
	<b>ARTICLE XII SINGLE PURPOSE ENTITY .....</b>	<b>45</b>
12.1.	Single Purpose Entity Requirements. ....	45
12.2.	Contributions.....	48
12.3.	Member Loans .....	48
12.4.	Conflict .....	48
12.5.	Termination of Provisions.....	49

EXHIBIT A

DEFINITIONS

SCHEDULE I

Percentage Interest and Required Capital Contributions of Each Member

SCHEDULE II

Real Property Description

SCHEDULE III

Major Decisions

SCHEDULE IV

Tax Allocation and other Tax Provisions



AMENDED AND RESTATED  
OPERATING AGREEMENT  
OF  
TX AZURE APARTMENTS 1, LLC

THIS AMENDED AND RESTATED OPERATING AGREEMENT (this “**Agreement**”) of TX Azure Apartments 1, LLC, a Delaware limited liability company (the “**Company**”), dated as of December 30, 2024, is made by and among Azure Apartments-CCHA, LLC, a Delaware limited liability company (the “**Managing Member**”), Sundance Bay Income and Growth OP, LP, a Delaware limited partnership (the “**Investor Member**”) and TX Azure Apartments SLM, LLC, a Utah limited liability company (the “**Special Limited Member**”). This Agreement amends and restates in its entirety all prior operating agreements of the Company, including that certain Operating Agreement of the Company dated June 1, 2022 (the “**Original Agreement**”).

RECITALS

A. On May 20, 2022 (the “**Formation Date**”), the Company was formed pursuant to the Delaware Limited Liability Company Act (as from time to time amended and including any successor statute of similar import, the “**DLLCA**”) by the filing of the Certificate of Formation (the “**Certificate**”) with the Secretary of State of the State of Delaware in accordance with the DLLCA.

B. AZ Sora on Rose, LLC, an Arizona limited liability company (the “**Initial Member**”), entered into the Original Agreement as the sole member of the Company.

C. On December 30, 2024, the Initial Member dissolved and all of its Membership Interest in the Company were distributed to Investor Member, the sole member of the Initial Member.

D. The Managing Member was formed on November 12, 2024, for the purpose of financing, acquiring, operating, and managing affordable housing for low and moderate income individuals and families in Corpus Christi, Texas, in support of the mission of its sole member, Corpus Christi Housing Authority, a Texas public nonprofit housing authority (“**CCHA**”), organized pursuant to the Texas Housing Finance Corporations Act, Chapter 392, Texas Local Government Code, as amended (the “**Act**”).

E. The Company was formed to acquire, maintain, and operate an approximately 220-unit multifamily housing community and associated improvements in that certain rental housing community known as Azure Apartments, which such development is located at 7221 S Staples St, Corpus Christi, Texas 78413.

F. The Members now desire to enter into this Agreement in order to (i) to memorialize the admission of new Members to the Company, (ii) establish the manner in which the business and affairs of the Company shall be managed, and (iii) set forth the respective rights, duties and

obligations of the Members with respect to the Company and each other from and after the date hereof.

NOW, THEREFORE, in consideration of the foregoing, of mutual promises, covenants and conditions of the parties hereto herein contained and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Members hereby agree as follows:

## ARTICLE I

### Continuation; Name, Purpose and Term

#### 1.1. Continuation; Name.

(a) The Company was formed upon the filing of the Certificate. The Members hereby agree to operate the Company as a limited liability company under the DLLCA.

(b) The Special Limited Member shall file such amendments and restatements to the Certificate as may be required by the DLLCA, and any other certificates, applications or other documents and do or cause to be done all such filing, recording, publishing, or other acts as may be necessary or appropriate to comply with the requirements of law for the formation and/or operation of a limited liability company in accordance with the laws of the State of Delaware and in all other jurisdictions, if any, in which the Company shall conduct business. The Special Limited Member shall deliver to the Members a copy of the Certificate, any changes thereto, and any other document or instrument required to be filed, recorded or published under this Article I.

(c) The name of the Company shall be **TX Azure Apartments 1, LLC**. The name of the Company shall not be changed without the consent of the Investor Member. All of the business and other activities of the Company shall be carried out in the name of, and all assets shall be held in the name of, the Company, unless the Special Limited Member reasonably determines that using a different name is necessary or desirable.

#### 1.2. Purposes of the Company.

The Company was formed, and its sole purpose is, to lease, operate, and otherwise deal with the Project. The Company may acquire, own, rehabilitate, renovate, improve, maintain, finance, refinance, manage, operate, lease, convey, assign, mortgage, pledge, encumber, and sell and otherwise deal with the Project, or any of it and in any real and/or personal property (tangible, intangible or otherwise) now or hereafter appurtenant thereto or a part thereof, or hereafter acquired in connection therewith.

#### 1.3. Powers of the Company.

In furtherance of its purposes, but without limiting in any way the powers conferred upon the Company under the DLLCA, and in any event subject to all the other provisions of this Agreement, the Company is hereby authorized to, and shall have full power to do the following:



(a) own, rehabilitate, renovate, operate, manage, maintain, finance, refinance, improve, assign, mortgage, pledge, encumber, lease and sell, convey or otherwise transfer, the Project and any other real or any personal property and any other assets of the Company convenient or incidental to the accomplishment of the purposes of the Company;

(b) enter into agreements or other arrangements with any federal, state or other governmental authorities as to the rental of the Project, including, without limitation, restrictions thereon for the purpose of promoting affordable housing;

(c) borrow money (including from Members or their Affiliates as and to the extent permitted by the other provisions of this Agreement) and issue evidences of indebtedness in furtherance of any or all of the purposes of the Company, and to secure the same by mortgages, pledges, or other liens on the Project or any other assets of the Company;

(d) prepay or repay, in whole or in part, refinance, recast, increase, modify, or extend any mortgages or other liens or encumbrances affecting the Project or any portion thereof and in connection therewith to execute any extensions, renewals or modifications of any mortgages, pledges or other liens or encumbrances securing such indebtedness;

(e) enter into, execute, modify, amend, perform and carry out contracts of any kind, (including contracts with Affiliated Persons of any Member permitted by the other provisions of this Agreement) necessary or convenient to, in connection with, or incidental to the accomplishment of the purposes of the Company;

(f) create nominee trusts, subsidiaries and otherwise to own interests in business trusts or realty trusts or limited liability companies and liquidate, merge, consolidate or otherwise reorganize with any such Entities, or enter into joint ventures, partnerships, (general or limited) or other arrangements with third parties, for purposes consistent with the purposes of the Company set forth in this Agreement and permitted under the DLLCA, provided that the Company shall not hold any interests, debt or equity or of any other nature whatsoever, in any Entity that is not either treated under the Code as a disregarded Entity or taxed as a partnership, except with Consent of the Special Limited Member; and

(g) enter into, carry on, or otherwise engage in any kind of activity necessary to, in connection with or incidental to the accomplishment of the purposes of the Company, and have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to, and take any other action permitted under, the DLLCA.

1.4. Registered Agent and Office; Principal Office.

(a) The registered agent and office of the Company required under the DLLCA shall be as designated in the Certificate, and may be changed by the Managing Member in accordance with the DLLCA, upon Consent of the Special Limited Member. The principal

business office of the Company shall be located at such address as shall be designated by the Managing Member, upon Consent of the Special Limited Member.

(b) Upon Consent of the Special Limited Member, the Managing Member may establish additional places of business of the Company within and without the State of Texas as and when required by the business of the Company and may appoint agents for service of process in any jurisdiction in which the Company shall conduct business.

1.5. Term.

The Company commenced as of the Formation Date, and shall continue in perpetuity, unless sooner terminated in accordance with the provisions hereof or pursuant to the DLLCA.

1.6. Entity Characterization.

It is the intention of the Members that the Company constitute a partnership for federal, state and local income tax purposes. The Managing Member agrees that it: (a) will not cause or permit the Company to elect, without the Consent of the Special Limited Member, (i) to be excluded from the provisions of Subchapter K of the Code, or (ii) to be treated as a corporation for federal, state and local income tax purposes; and (b) will cause the Company to make any election and otherwise take such acts as are reasonably necessary or appropriate in order to ensure the treatment of the Company as a partnership for federal income tax purposes.

1.7. Definitions and Schedules Incorporated.

Capitalized terms used in this Agreement shall have the meanings ascribed to them in the definitions attached hereto as **Exhibit A** or as they appear elsewhere in this Agreement. All accounting terms used in this Agreement shall have the meanings assigned to them in accordance with the accrual accounting method. The Definitions and Schedules attached hereto are incorporated herein and made a part hereof.

1.8. Representations and Warranties.

(a) Each Member (including, without limitation, each permitted transferee as a condition to becoming a Member), for itself only, represents and warrants (provided, however, that in the case of any representations of the Managing Member (other than those representations with respect to Managing Member's due authorization, existence and ability to enter into related transaction documents), such representations are based solely on such Managing Member's actual knowledge as of the date hereof with no duty to inquire) to the Company and to each other Member and acknowledges that as of the date hereof:

(i) It is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation with all requisite power and authority to enter into this Agreement and to conduct the business of the Company.

(ii) It has all requisite power, authority and financial capacity to enter into and to perform its obligations under this Agreement.



(iii) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the performance of all obligations and all transactions contemplated by this Agreement to be performed by it have been duly authorized by all necessary limited liability company, corporate or partnership action on the part of the Member and any other organizational and any other necessary actions.

(iv) This Agreement and the performance by such Member of its covenants and obligations under this Agreement will not result in a breach or violation of, or a default under, its partnership or operating agreement, trust agreement, charter or by-laws, as the case may be, any material agreement by which such Member or any of such Member's property, is or are bound, or any statute, regulation, order or other law to which such Member or its principals is subject.

(v) No consents or approvals are required from any other governmental authority or other Person or Entity for the Member to enter into this Agreement.

(vi) It has acquired its Membership Interest, solely for its own account, with the intention of holding the Membership Interest for the following purposes: (i) in the case of the Managing Member, fulfilling of CCHA's statutory nonprofit mission to provide affordable and low-income housing, and (ii) in the case of other Members, investment only. Each Member has acquired its Membership Interest not for the purpose of, or with a view toward, the resale, fractionalization, division or distribution of all or any part thereof, nor with a view toward selling or otherwise distributing such Membership Interest or any part thereof at any particular time or under any predetermined circumstances.

(vii) It is a sophisticated investor, able and accustomed to handling sophisticated financial matters for itself, and it does not anticipate a need for the funds that it has invested in the Company in what it understands to be a highly speculative and illiquid investment.

(viii) Its Membership Interest is a speculative security for which there is no established market and that no such market is likely to exist, and without any portion of its Membership Interest being in violation of the Securities Act or any applicable state securities law.

(ix) It acknowledges that (x) it is aware that its Membership Interest has not been registered under the Securities Act in reliance upon exemptions contained in the Securities Act and that its Membership Interest has not been registered under the securities law of any state in reliance upon the exemptions contained in such state securities law, (y) that the Company will not and has no obligation to register any Member's Membership Interest under the Securities Act or any state securities law, and (z) the Company has no obligation to recognize any Transfer of a Member's Membership Interest to any Person other than as permitted pursuant to the other provisions of this Agreement.

(x) It has consulted and been advised by its legal counsel and tax advisor in connection with the potential profit, tax consequences of any sort (including, without limitation, the tax consequences resulting from forming the Company, executing this Agreement, making or failing to make a Capital Contribution to, and being admitted as a Member of, the Company, or being allocated profits, losses and items of each thereof), cash flows or yield, if any, in respect of the Company.

(xi) It is neither a “foreign person” within the meaning of Code Section 1445(f) nor a “foreign partner” within the meaning of Code Section 1446(e).

(xii) It has not retained any Person or otherwise agreed to any brokerage or commission or other similar compensation due or payable on an absolute or contingent basis to any Person with respect to or on account of the execution of this Agreement.

(xiii) Intentionally omitted.

(xiv) It is in compliance with and at all times will comply with all laws relating to anti-money laundering, anti-terrorism, trade embargoes and economic sanctions now or hereafter in effect, including, without limitation, Executive Order 13224, “Blocking Property Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism,” 66 Fed. Reg. 49079 (Sept. 23, 2001) and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (the “**Patriot Act**”), or any enabling legislation or executive order relating hereto (collectively, the “**AT/AML Laws**”).

(xv) It is in compliance with all applicable anti-money laundering and anti-terrorist laws, regulations, rules, executive orders and government guidance, including the reporting, record keeping and compliance requirements of the Bank Secrecy Act, as amended by The International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001, Title III of the Patriot Act and other authorizing statutes, executive orders and regulations administered by OFAC, and related Securities and Exchange Commission, SRO or other agency rules and regulations, and has policies, procedures, internal controls and systems that are reasonably designed to ensure such compliance.

(xvi) It is the Company’s policy to cooperate fully with law enforcement agencies. Each Member hereby represents that: (x) it is, and shall continue to be, in compliance with all AT/AML Laws; (y) it is not directly or indirectly owned or controlled, in whole or in part, by a Blocked Person; and (z) it has not, does not, and will not, conduct any business with a Blocked Person or otherwise engage in any transaction relating to any property, or interests in property, blocked by any AT/AML Law.

(xvii) There are no actions, suits, proceedings or investigations pending, or, to the knowledge of such Member or any of its Affiliates, threatened against or affecting



such Member or any of its Affiliates or any of their properties, assets or businesses in any court or before or by any governmental department, board, agency or instrumentality, domestic or foreign, or any arbitrator which could, if adversely determined (or, in the case of an investigation could lead to any action, suit or proceeding which if adversely determined could) reasonably be expected to materially impair such Member's ability to perform its obligations under this Agreement or to have a material adverse effect on the financial condition of such Member. Such Member or any of its Affiliates has not received any currently effective notice of any default, and neither such Member nor any of its Affiliates is in default, under any applicable order, writ, injunction, decree, permit, determination or award of any court, any governmental department, board, agency or instrumentality, domestic or foreign, or any arbitrator which could reasonably be expected to materially impair such Member's (or any of its Affiliate's) ability to perform its obligations under this Agreement or to have a material adverse effect on the financial condition of such Member.

(xviii) No broker, agent or other person acting as such on behalf of such Member was instrumental in consummating the acquisition of the Real Property or this transaction and no conversations or prior negotiations were had by such party with any broker, agent or other such person concerning the transaction that is the subject of this Agreement and there are no brokerage commissions or finders' fees due in connection with entering into this Agreement.

Notwithstanding the foregoing, the Members acknowledge and agree that the Managing Member will not be looked upon by the Special Limited Member or Investor Member to conduct Project related diligence, and any such diligence conducted by CCHA is solely for its own benefit.

(b) The Managing Member hereby represents and warrants that 100% of the membership interests in the Managing Member are legally and beneficially owned by CCHA, which are free and clear of all liens, encumbrances, security interests and charges of any kind.

#### 1.9. Real Estate Matters.

Concurrently with the execution of this Agreement, an Affiliate of the Company will (i) deed the land described on **Schedule II** into CCHA or an Affiliate thereof, and (ii) convey the improvements on such land to the Company, and the Company will thereafter enter into the Ground Lease.

#### 1.10. Ground Lease.

The Members acknowledge that the Ground Lease is necessary in order for the Company to receive the Real Estate Tax Exemption, and that the Members would not undertake to acquire the Project without such Real Estate Tax Exemption. Therefore, the Members hereby authorize the execution of the Ground Lease.

ARTICLE II  
Capital Contributions and the Liability of Members

2.1. Company Capital.

The capital of the Company shall be the aggregate of the amount of each Member's Capital Account. No interest or preferred return shall accrue or be paid on any Capital Account or Capital Contribution except as otherwise specifically provided in this Agreement. No loan made to the Company by a Member (or any Affiliated Person of a Member) or by any other Person shall constitute a Capital Contribution to the Company for any purpose, nor affect any such Member's share of the profits, losses, credits and distributions under this Agreement.

2.2. Capital Contributions.

The names, addresses and respective Percentage Interests of the Members are as set forth in **Schedule I** attached hereto. If not previously paid, upon five (5) Business Days' notice from the Special Limited Member, each Member shall contribute to the Company, the respective amounts set forth in **Schedule I**.

2.3. Funding Deficits.

(a) In the event the Company requires funds (in addition to the Capital Contributions made by all Members on or prior to the date of this Agreement) to conduct the business of the Company or to meet its obligations, the additional amount needed (the "**Deficit**") shall be obtained as follows, subject to the provisions of the Loan Documents: (y) the Company may borrow funds from third-party lender(s) or from any Member or any Affiliated Person of any Member, except for the Managing Member or their Affiliates, on such terms and conditions as are approved by the Special Limited Member (provided if such third-party lender is a non-government sponsored entity (e.g., Fannie Mae or Freddie Mac) or the subject loan will have a loan-to-value ratio in excess of 85%, then the Consent of the Managing Member will also be required), or (z) the Special Limited Member or the Investor Member may make a Capital Contribution to eliminate such Deficit (a "**Preferred Capital Contribution**"). If Investor Member wishes to contribute to the Deficit, each Member shall have the right to contribute a proportionate share, based on their Percentage Interests.

(i) In addition to the above, the Investor Member may at any time make a Preferred Capital Contribution for the amount of any Non-Discretionary Expenditures which are in excess of the amount of cash which the Investor Member in good faith reasonably believes is available for the payment of such amounts (such excess also being herein referred to as a Deficit).

(b) Except as set forth in Sections 2.2 and 2.3(a)2, as to the initial Capital Contributions of the Members and amounts for any Preferred Capital Contributions, no Member shall be obligated to make any Capital Contribution or loans to the Company, and no Capital Contributions or loans may be made by any Member except as specifically provided in this Agreement or with the Consent of the Special Limited Member.



#### 2.4. Withdrawal of Capital.

Although pursuant to this Agreement the Company may make distributions to the Members during the term of the Company in return of their Capital Contributions, no Member shall have the right to Withdraw from the Company, except as permitted herein, or to demand a return of all or any part of its Capital Contribution or its Capital Account or to receive property of the Company in exchange therefor, except upon the dissolution of the Company, and then only in the manner specifically provided in this Agreement. Any return of any Member's Capital Contributions or a Member's Capital Account shall be made solely from the assets of the Company and only in accordance with the terms of this Agreement, and, no Member shall have personal liability for the return of any other Member's capital. To the extent any monies which any Member is entitled to receive pursuant to Article IV hereof or any other provision of this Agreement would constitute a return of capital, each of the Members consents to the return of such capital.

#### 2.5. Liability of Members.

No Member shall be personally liable for any debts, liabilities or obligations of the Company. No Member shall be required to lend or contribute any sums to the Company on account of the liabilities or the obligations of the Company, or otherwise, other than its initial Capital Contribution pursuant to Section 2.2 or as required under the DLLCA.

#### 2.6. No Restoration of Deficit Capital Account.

Notwithstanding anything in this Agreement to the contrary, no Member which has a deficit balance in its Capital Account following the completion of all adjustments to the Members' Capital Accounts upon the liquidation of the Company shall be obligated to make a Capital Contribution or otherwise restore any deficit balance in its Capital Account.

#### 2.7. Loan Guaranty.

In connection with securing financing and refinancing for the Project, Affiliates of the Special Limited Member shall be responsible to provide a customary Nonrecourse Carve Out Guaranty and/or indemnitees to the extent required by a lender. The Managing Member and its Affiliates shall not be required to provide any guarantees or indemnitees. No Member shall have any personal or recourse liability pursuant to a Company financing unless it agrees in writing with respect thereto.

#### 2.8. Replacement Reserve.

The Replacement Reserve shall be maintained by the Company in the Replacement Reserve Account. The Replacement Reserve shall be controlled by the Special Limited Member and shall be utilized in the Special Limited Member's reasonable discretion, subject to the requirements of the Loan Documents, to pay capital expenditures and repairs and replacements (i) required from time to time or that are (ii) immediately necessary to cover expenditures to protect the life and safety of the tenants or the mechanical or structural integrity of the Project in the event of an emergency.

ARTICLE III  
Management; Rights, Powers; Duties; Defaults and Removal of the Members.

3.1. Management of the Company.

(a) Subject to Sections 3.1 and 3.2, and any other provision of this Agreement limiting or restricting the Managing Member's authority and/or requiring the Consent of the Special Limited Member or the consent of the Investor Member (collectively, the "**Managing Member Restrictions**"), the Managing Member shall have the right, power and duty to implement the Major Decisions and otherwise to manage the Company's affairs and to make recommendations as to all other matters involving the Company (other than those to be made by the Special Limited Member under Section 3.2), and in so implementing the Major Decisions and any other decisions of the Company (including without limitation, those to be made by the Special Limited Member under Section 3.2), to do all things reasonably necessary or appropriate to carry on the business and purposes of the Company and, consistent with the above, to exercise all rights and powers reasonably necessary to effectuate the purposes of the Company. The Managing Member shall have the power and authority to execute, acknowledge and deliver any and all instruments necessary or desirable in effectuating the foregoing. Subject in all events to the Managing Member Restrictions and any approvals or consents or any reserved rights, restrictions or limitations with respect thereto that are imposed pursuant to the granting of any such approvals, consents or other rights, and further subject to the limitations set forth in the Approved Budget, and any allowable variations therefrom permitted pursuant to the provisions of Section 7.1, and any other applicable provisions of this Agreement, the Managing Member's rights, powers and duties shall include the use of all reasonable and necessary acts and efforts to:

- (i) Do any and all acts and things necessary, proper, convenient or advisable to effectuate the purposes of the Company, and to direct the Company in accordance with the terms of this Agreement, and devote such time as is necessary to perform the foregoing, and perform any other duties or obligations of the Managing Member pursuant to this Agreement or any other duties or obligations of the Company as it is in a competent and professional manner, in the best interests of the Company, and in all events in compliance with and subject to the Managing Member Restrictions;
- (ii) Within the limitations set forth in the Approved Budget, and any allowable variations therefrom permitted pursuant to the provisions of Section 7.1, and subject to any other applicable provisions of this Agreement, pay as and when due all debts, obligations, costs and expenses incurred as to the Project, or the Company, and create and maintain all required reserves, all out of the Company funds, and take all reasonable steps to insure that such amounts are timely paid or provision for payment thereof is timely undertaken from such funds;
- (iii) Within the limitations set forth in the Approved Budget, and allowable variations therefrom permitted pursuant to the provisions of Section 7.1, and subject to any other applicable requirements under this Agreement, negotiate and



cause the Company to execute and deliver appropriate contracts and other agreements, and cause, or the Company to comply with and perform under all contracts and other agreements of the Company or to which they or any of their respective property is subject;

(iv) Operate, maintain, improve and otherwise manage and deal with the Project and the interests in the Company in an efficient manner and otherwise in accordance with the limitations set forth in the Approved Budget, and any allowable variations therefrom permitted pursuant to the provisions of Section 7.1;

(v) Oversee and supervise the Property Manager, and inform the Investor Member, for determination by the Investor Member, of any actions to be taken by the Company in connection with any default under, or the exercise of any rights or options of the Company under, the Property Management Agreement;

(vi) Implement all Major Decisions once made pursuant to Section 3.2, and all other decisions made under this Agreement as to the Company and/or the Project, subject to the limitations set forth in the Approved Budget, and any allowable variations therefrom permitted pursuant to the provisions of Section 7.1, and also subject to any other limitations, qualifications or other requirements imposed as part of approving any such Major Decision or any other decisions of the Company;

(vii) Keep all books of account and other records of the Company and, as appropriate, record, file or deliver all certificates, returns, budgets, plans, reports and other information in the manner and at the times provided for in Section 6.4, Article VII, or as required by any other provision of this Agreement or pursuant to any agreement binding on the Company or to which they or any of their respective properties are subject;

(viii) Comply and cause the Company to comply with the Housing Agreements and all other Housing Requirements and with all Loan Documents and with the terms and provisions of any other agreement executed by the Company or to which either the Project or any other property of either is subject;

(ix) Cause the Company to obtain and maintain insurance fulfilling such requirements as the Company or any of its property may be subject or as the Investor Member may require, provided any such requirement by the Investor Member shall be consistent with the insurance carried on other properties owned by the Investor Member or in which the Investor Member holds an interest, subject to any geographical or other special issues (such as, without limitation, earthquake, flood, environmental, etc.);

(x) Cause each Company to comply with all present and future applicable laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, courts, departments, commissions, and boards, including, without limitation, all Hazardous Materials Laws, and any national or local Board of Fire Underwriters or any other body exercising functions similar to those of any

of the foregoing, all as may be applicable to the Project or the operation and management thereof (collectively “**Laws**”), and, subject to any limitations set forth elsewhere in this Agreement, take action to contest the validity or application of any such Laws; and

(xi) Provide copies to the Members of all notices received or sent with respect to any mortgages, security agreements, contracts or other agreements of the Company and all reports, notices and any other writings relating to Hazardous Materials and Hazardous Materials Laws.

(b) The Managing Member shall devote, and shall cause its partners, members, officers, directors and employees, if any, to devote such time to the affairs of the Company as the Managing Member, in its reasonable discretion, exercised in good faith, as it determines is necessary for performance by the Managing Member of its duties under this Agreement. It is understood that no single Person serving as a managing member shall be required to devote full time to the business and affairs of the Company.

(c) The Special Limited Member shall cause the Property Manager to maintain a fidelity bond in an amount of not less than one million dollars (\$1,000,000) for all employees, officers or other agents of the Property Manager or any of its Affiliates that handles funds of the Company or otherwise holds a position of trust with the Company.

(d) The rights of the Managing Member shall not be assignable, whether voluntarily, by operation of law or otherwise. The duties of the Managing Member shall not be delegated, voluntarily, by operation of law or otherwise, except in accordance with Section 3.1(g) and 3.1(h) below.

(e) The Company shall have no employees and the Managing Member shall have no authority to hire any employees for the Company. The Managing Member shall employ, or shall have access to employees of Affiliates, and shall cause the Property Manager to employ, as the case may be, a sufficient number of capable employees to carry out its or their respective duties under, as applicable, this Agreement or under the Property Management Agreement, each at its own expense (without limiting any reimbursement rights as to such employees under the Property Management Agreement).

(f) Subject to the Managing Member Restrictions, the Managing Member is authorized to execute, sign, seal and deliver in the name and on behalf of the Company, any and all agreements, certificates, instruments, or other documents requisite to carrying out its duties under this Agreement. Subject to evidence of compliance with the Managing Member Restrictions when required, every agreement, instrument, certificate or other document executed by the Managing Member, on behalf of the Company, on the Company’s own behalf, shall be conclusive evidence in favor of every Person relying thereon or claiming thereunder that, at the time of the delivery thereof: (i) the Company is in existence, (ii) this Agreement had not been terminated or canceled or amended in any manner so as to restrict such authority (except as shown in certificates or other instruments duly filed in accordance with the DLLCA), and (iii) the execution and delivery of such instruments were duly authorized under this Agreement. Any Person dealing with the



Company may rely on the power and authority of the Managing Member as set forth in this Agreement, except where any such Person has actual notice or actual knowledge of the applicability of a Managing Member Restriction.

(g) The Managing Member acknowledges and agrees that the Investor Member and its respective principals, successors and assigns will have extensive liabilities and exposure in connection with the financing of the Company and the Project (the “**Investor Obligations**”). Therefore, so long as any Investor Obligations are outstanding, the Managing Member shall and does hereby delegate its rights, powers, and responsibilities under this Section 3.13.1 to the Special Limited Member, subject to the Managing Member’s right to revoke such delegation as set forth below. The Special Limited Member accepts such delegation of the Managing Member’s rights, powers, and responsibilities and agrees to act on such rights and powers and perform such responsibilities in accordance with this Agreement. It is expressly acknowledged and agreed that the delegation to the Special Limited Member herein is intended to facilitate financing for the benefit of the Project. Such delegation is granted with the understanding that the Special Limited Member will exercise such rights, powers, and authority and undertake actions in furtherance thereof in a manner consistent with the purposes of the Company set forth in Section 1.2 of this Agreement, including the fulfillment of the public purpose of CCHA. To the extent the Managing Member reasonably determines that the Special Limited Member’s exercise of its rights, powers, and authority would violate the foregoing purposes, the Managing Member shall provide the Special Limited Member with notice regarding such violation. The Special Limited Member shall then have a period of thirty (30) days to cure such violation, and if not so cured within such timeframe, the Managing Member shall be entitled to revoke the delegation and exercise its rights, powers and authority as the Managing Member of the Company and take such action as it deems reasonably necessary to cure such violation, subject to the Consent of the Special Limited Member if required under this Agreement. So long as the delegation by the Managing Member to the Special Limited Member is in effect, (i) the Managing Member shall reasonably cooperate with the Special Limited Member to assist the Special Limited Member in carrying out the delegation set forth in this Section, and (ii) the Special Limited Member shall indemnify the Managing Member and any of its Affiliates against Damages arising from any and all Claims brought by any party against the Managing Member in connection with the ownership and operation of the Project, excluding Claims arising from the fraud or willful misconduct of the Managing Member or its Affiliates, and provided that such indemnification shall be required only to the extent indemnification is not already provided to the Managing Member under the provisions of Section 3.4(b). For the purpose of the foregoing indemnification “Claim” or “Claims” shall refer to claims, causes of action, litigation, threat of litigation or other such matters, from whomsoever brought, including without limitation third parties or Affiliates of the Investor Member, and “Damages” shall mean any and all costs, damages, expenses and charges that relate thereto or may accrue in connection with a “Claim”. The Special Limited Member shall provide to the Managing Member upon request copies of any documents executed in accordance with this Section 3.1(g).

(h) Subject to any and all limitations on the Special Limited Member’s rights to act or make decisions hereunder, including subject to the revocation of such rights under

Section 3.1(g) above, the Members acknowledge and agree that the signature of the Special Limited Member shall be sufficient to: (1) bind the Company; (2) exercise and enforce the rights of the Company to the extent that such rights affect the Investor Member's economic interest in the Company or have been delegated to the Special Limited Member pursuant to this Section 3.1; and (3) approve, amend, modify or replace the Loan Documents, provided that the Special Limited Member shall deliver to the Managing Member advance copies of any documents evidencing such amendment, modification or replacement of the Loan Documents prior to their execution. Furthermore, and for the avoidance of doubt, the signature of the Managing Member is hereby not required in order to effectuate any of the actions described in this Paragraph (h).

(i) Subject to any and all limitations on the Special Limited Member's rights to act or make decisions hereunder, including subject to the revocation of such rights under Section 3.1(g) above, and notwithstanding anything in this Agreement to the contrary, the Members acknowledge and agree that the Special Limited Member shall have the sole authority to (i) subject to the provisions of Section 3.1(i)(a), pursue and consummate any refinance of the Project, and accept or decline, in its sole and absolute discretion, any offer to refinance the Project, provided that the Special Limited Member complies with any document delivery requirements set forth in Section 3.1(h)(3); (ii) pursue and complete any capital improvements to the Project, and approve or reject any planned capital improvements to the Project; (iii) operate the Project on a day-to-day basis including, without limitation, executing and enforcing any management agreement, laundry leases and any other agreements relating to the operating of the Project, subject to any and all limitations on the Special Limited Member's rights to act or make decisions under this Section 3.1; and (iv) pursue and consummate a sale of the Project, subject to the terms of the Ground Lease.

(a) Notwithstanding the foregoing, Consent of the Managing Member shall be required for any refinancing of the Project, which consent shall not be unreasonably withheld, conditioned or delayed, so long as: (a) neither CCHA nor any of its Affiliates is required to serve as a guarantor, key member or key person, (b) CCHA and the Managing Member are not subject to springing member provisions, (c) the loan-to-value is not greater than ninety percent (90%), (d) the debt service coverage ratio is not less than 1.15x and (e) the refinancing documents do not impose any new material obligations on CCHA or the Managing Member.

(j) Notwithstanding anything to the contrary herein, no provision in this Agreement shall be interpreted as requiring the Managing Member to undertake actions or obligations that the Special Member is required to undertake under this Agreement.

### 3.2. Major Decisions; Property Management; Affiliated Contracts.

(a) Except as otherwise expressly set forth in this Agreement, all Major Decisions shall be made and implemented only with the Consent of the Members. Major Decisions shall mean all those matters set forth in **Schedule III** attached hereto. For all Major Decision, each of the Special Limited Member, the Investor Member, and the

Managing Member shall be entitled to propose the Company undertake a Major Decision by giving written notice of such proposal including reasonable details of the proposed Major Decision to the other Members. The Members shall be given twenty-one (21) days from the date of receipt of such written notice to review and grant or decline such consent. If any of the Special Limited Member, the Investor Member, and/or the Managing Member does not grant or decline such consent by the end of the twenty-one (21) day period, consent shall be deemed given by such Member.

(b) It is the intent of the Members that the Project will be operated under the applicable Housing Agreements and in accordance with all other Housing Requirements (including any cure period provided therein), so long as such is in effect. The Company shall not seek to terminate the Housing Agreements or otherwise withdraw therefrom without the Consent of the Members.

(c) If at any time the Property Management Agreement is with an Affiliate of the Managing Member, all decisions as to any amendment, modification, enforcement, extension, termination of, or the exercise or waiver by the Company of any rights, options or consent or approval rights (other than as to operational matters as to the Project, but subject to any approval and consent rights as to any such matters pursuant to the other provisions of this Agreement) the Company may have under the Property Management Agreement shall be made by the Special Limited Member. Furthermore, and for the avoidance of doubt, the signature of the Special Limited Member shall be sufficient in order to effectuate any of the actions described in this Paragraph (c) and the signature of the Managing Member shall not be required. The Property Management Agreement shall be the form previously approved by the Special Limited Member.

(d) The Special Limited Member shall ensure that no tenant or potential tenant is discriminated against based on source of income. For the purpose of this paragraph (d), “source of income” means lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant, or paid to a housing owner or landlord on behalf of a tenant, including federal, state, or local public assistance and federal, state, or local housing subsidies, including, but not limited to, federal housing assistance vouchers under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f). The Special Limited Member shall cause any Property Management Agreement to include language requiring the Property Manager to ensure that no tenant or potential tenant is discriminated against based on source of income.

(e) All decisions as to any entering into, and the form and substance of, any amendment, modification, enforcement, extension, termination of, or the exercise or waiver by the Company of any rights or options it may have under the Ground Lease shall be made exclusively by the Special Limited Member on behalf of the Company. All decisions as to entering into, and the form and substance of, any amendment, modification, enforcement, extension, termination of, or the exercise or waiver by the Company of any rights or options it may have under, any other Affiliated Contract, and all of the aforesaid decisions as to any such Affiliated Contract, shall be made by the Special Limited Member on behalf of the Company, except that the Managing Member will make all such decisions with respect to any contract with an Affiliate of the Special Limited Member.



In the event of any default by the Property Manager under the Property Management Agreement or by the Special Limited Member or any Affiliate of the Special Limited Member under any other Affiliated Contract, the Special Limited Member shall promptly notify the Managing Member and shall use all reasonable efforts to cause the other party to any such Affiliated Contract to cure any such default. In addition, the Special Limited Member shall have the right to remove or replace the Property Manager (whether or not such is an Affiliate of the Managing Member and/or the Special Limited Member) if at any time there has been a default under the Property Management Agreement that has or could have a material adverse impact on the Company. The Property Manager may engage the Special Limited Member or its Affiliate to provide certain supportive services that it reasonably believes beneficial or necessary for the residents of the Project, provided that as a pre-condition to providing such services, the Company and the Special Limited Member (or its Affiliate) shall enter into an agreement governing the provision of such services (a “**Supportive Services Agreement**”). Any Supportive Services Agreement entered into between the Company and the Special Limited Member (or its Affiliate) shall include, without limitation, provisions setting forth (i) the scope of the services, duration and intended beneficiaries of the services to be provided, (ii) that any costs associated with providing such services shall be paid by the Special Limited Member, and (iii) that the Company shall have the right, in its reasonable discretion, to terminate the Supportive Services Agreement upon thirty (30) days’ prior written notice to the Property Manager and the Special Limited Member.

Upon the making of any decision by the Special Limited Member as to any Property Management Agreement or as to any Affiliated Contract, the Company shall promptly take any and all actions, and shall execute and deliver all agreements and other documents as may be necessary or appropriate to implement any such decisions.

Upon request from time to time by the Managing Member, the Special Limited Member shall deliver a status report to the Managing Member on the Affiliated Contracts confirming, after appropriate investigation, whether the parties thereto are in compliance therewith, detailing any defaults thereunder, and including such other information as may be requested by the Managing Member from time to time.

### 3.3. Special Limited Member Right to Compel Sale.

Subject to the Investor Member’s written approval, which approval shall not be unreasonably withheld, conditioned or delayed, and notwithstanding any approval right of the Managing Member thereof as a Major Decision, the Special Limited Member shall have the right, but not the obligation, to require the Managing Member to sell or refinance the Project. In the event that Special Limited Member desires to sell or refinance the Project (any such sale may take the form of a sale of a majority interest in both the managing member and the other members and/or a sale of the fee interest in the land), CCHA and the Managing Member shall cooperate with the Special Limited Member in connection with such efforts. In the event that either CCHA or the Managing Member do not cooperate, the Special Limited Member shall have the right to require or compel such cooperation through all available relief and remedies that may be available at law or in equity. Nothing in this Section 3.3 shall affect, limit, or impair any purchase option or right of first refusal that either CCHA or the Managing Member may be entitled to exercise

hereunder or pursuant to the terms of the Ground Lease. Notwithstanding the foregoing, no transfer of the property shall be permitted to another governmental entity or its affiliate, other than the CCHA or any of its Affiliates, so long as the Real Estate Tax Exemption has not been lost by either inaction or action by the CCHA.

3.4. Exculpation; Indemnification.

(a) No Member shall have any liability to the Company or to any other Member for any loss suffered by the Company which arises out of any action or inaction of such Member if such Member acted in good faith, in the best interests of the Company, unless such course of conduct constituted gross negligence, misfeasance, malfeasance, fraud or willful misconduct of such Member or, as to the Managing Member, was not within the scope of the Managing Member's authority or was in violation of any of the Managing Member Restrictions.

(b) To the fullest extent permitted by law, the Company shall indemnify and hold each Member, and their respective equity owners, officers, directors, employees and agents harmless from and against any and all costs and expenses (including reasonable attorneys' fees and expenses), imposed upon any such Person by reason of (i) any action or omission or alleged act or omission performed or omitted to be performed on behalf of the Company, any Partner or any Affiliate of the foregoing in connection with the business of the Company or (ii) such Person being or acting in connection with the business of the Company as a partner, Affiliate, manager, director, officer or agent of the Company or that such Person is or was serving at the request of the Company as a member, manager, director, officer, or agent of any person including the Company, unless and to the extent any such loss, cost or expense was the result of the gross negligence, misfeasance, malfeasance, fraud or willful misconduct on the part of the Member or such other Person or, as to actions by the Member or Persons acting by, through, under or on behalf of the Member, was not within the scope of such Person's authority or was in violation of any of the Managing Member Restrictions. The indemnity under this Section 3.4(b) shall be provided out of and only to the extent of the assets of the Company, and no Member shall have any personal liability on account thereof. Further, the Company's indemnity obligation under this Section 3.4(b) shall be subordinate to its obligations under the Loan.

(c) To the fullest extent permitted by law, the Special Limited Member shall indemnify the Managing Member and CCHA for any actual damages and/or actual liabilities in connection with or arising out of any default or material breach by the Special Limited Member or any of its or their respective Affiliates thereof under this Agreement, except for liabilities incurred as a result of the direct acts, actions, or omissions of Managing Member/CCHA and/or as a result of Managing Member or CCHA's gross negligence or willful misconduct and in no event shall such indemnification be contingent upon a ruling of a court of law. Further, the indemnity obligation under this Section 3.4(c) shall be subject and subordinate to Special Member's obligations under the Loan.

3.5. Outside Activities of Members.

Any Member, and any partner, member, shareholder, equity holder, officer, director, employee, agent, trustee, or Affiliate of any Member shall be entitled to and may have and own real property and other business interests and engage in business activities in addition to those relating to the Company, including real property, developing, operating or managing residential housing, and other business interests and activities that are contiguous, adjacent to or near the Project and/or in direct competition with the Project, and/or the Company or that are directly enhanced by the Project and/or activities of the Company. Neither the Company, nor any Member nor any Affiliate of any Member nor any other Person shall have any rights by virtue of this Agreement or the Company relationship established hereby in any such or any other business ventures of any other Member, or any of their Affiliates. No Member or such other Person shall have any obligation pursuant to this Agreement to offer any interest in any such business ventures to the Company, or any Member or any such other Person, even if such opportunity is of a character which, if presented to the Company, any Member or such other Person, could be undertaken by such Person.

3.6. [Reserved].

3.7. Removal of the Managing Member.

(a) Except as provided in this Section 3.7, any change in the Member performing the duties of the Managing Member shall require the Consent of the Members.

(b) If there shall occur an Event of Default as to the Managing Member that remains uncured following all applicable cure periods then, so long as any such event is continuing, the Special Limited Member may remove the Managing Member as a managing member of the Company upon written notice to the Managing Member, and subject to any requirements in the Loan Documents. In the event of any matter described above, the Special Limited Member will provide the Managing Member with written notice of its intention to replace the Managing Member together with a detailed description of the specific respects in which the Managing Member's performance has not met the relevant requirements of the immediately preceding sentence.

(c) If the Managing Member is so removed as the Managing Member, the Special Limited Member shall designate a new managing member (the "**Replacement Managing Member**"), which may be the Special Limited Member or any other Person. In the event the Special Limited Member has the right to remove the Managing Member as a managing member (and whether or not it does so remove the Managing Member), the Special Limited Member shall have the right to cause the Managing Member or the Replacement Managing Member, as the case may be, on behalf of the Company, to terminate any Affiliated Contract, all without any penalty, fee or other cost to the Company as a result of any such termination (and each such Affiliated Contract shall in all events contain such a termination provision), and replace the contracting party to any Affiliated Contract so terminated with a third party selected by the Special Limited Member.

(d) Notwithstanding any litigation or other proceeding challenging any removal of the Managing Member as a managing member, the Managing Member and the Special Limited Member hereby agree that, unless and until either otherwise agreed by them or



finally adjudicated by a court of competent jurisdiction, the Replacement Managing Member alone shall have full power and authority to act as the Managing Member under this Agreement, and that after any removal made by the Special Limited Member under this Section 3.7, the Managing Member shall have no power to act as a managing member of the Company in any respect under this Agreement or otherwise.

(e) The Members agree that notwithstanding any provision of federal, state or other applicable law allowing a longer period, any proceeding challenging the removal of the Managing Member under this Section 3.7 shall be initiated within thirty (30) days after such removal occurs, the Members agreeing that if there is any challenge to the removal, the necessities of managing and operating the Company, of making decisions as to the Company, and otherwise as to the relationship of the Members would be materially and adversely affected if any challenge to removal were not promptly initiated and resolved. The Members hereby waive any longer period otherwise permitted by applicable law for the initiation of any such proceeding.

(f) The Special Limited Member shall have no liability beyond actual damages incurred by the Managing Member for the improper removal of the Managing Member unless it acted in bad faith or without any reasonable basis for believing that it had a right to remove the Managing Member.

(g) In the event the Managing Member is removed and is thereafter reinstated pursuant to a final unappealable court proceeding, and during the time of its removal any distribution is made under Article IV which, but for such removal, would have been made to the Managing Member, then all distributions shall be recalculated to take into account a redetermination of the appropriate distributions that should have been made as if there had been no such removal, and any Member which received greater distributions than it should have based on such re-determination shall return such over-distribution and such returned amounts shall then be distributed to the Managing Member.

(h) If Managing Member is removed for any reason, including, but not limited to, any of the reasons described in Sections 9.2(a), 9.2(b), or 3.11 herein, and following such removal no affiliate of CCHA remains as a member of the Company, and if CCHA has not exercised its right to compel title to the Project into itself in accordance with the Ground Lease, then CCHA shall cooperate with the Company to promptly terminate the Ground Lease and surrender the Premises to the Company.

### 3.8. Fees.

(a) CCHA shall be entitled to an initial lease payment in the amount of one hundred thirty two thousand five hundred dollars (\$132,500) to be paid at closing. CCHA shall also be entitled to an annual lease payment in an amount equal to 10% of the ad valorem property tax savings for the Project based on the final, non-appealable resolution of any contest of the ad valorem tax values for the Project for 2024, such tax values to be increased annually by 3%, as a Ground Lease payment (“**Ground Lease Fee**”). Such Ground Lease Fee shall be paid from Net Cash Flow in accordance with this Agreement. The initial installment of the Ground Lease Fee shall be due and payable on or prior to the

first day of the second Lease Year (as such term is defined in the Ground Lease), but shall be refunded, along with the initial lease payment, to the Company upon a denial of the Real Estate Tax Exemption based on the initial application therefor. The Ground Lease Fee shall be due and payable for each Lease Year in advance on the first day of each applicable Lease Year in lawful currency of the United States of America, to CCHA by delivering or mailing it to CCHA's address, or such other address or in such other manner as CCHA from time to time specifies by prior written notice to the Company; provided, however, that the Ground Lease Fee shall be prorated for any partial Lease Year based on the number of days in the year that the Ground Lease is in effect. Payment of the Ground Lease Fee is subordinate to the payment of the Loan, while the Loan remains outstanding.

(b) The Managing Member is entitled to receive an annual asset management fee (the "**Asset Management Fee**") in the amount of \$10,000.00, to be increased annually by 3% and to be paid out of available Net Cash Flow in accordance with Section 4.1. To the extent the Asset Management Fee is not timely paid in any one year, it shall accrue and be paid in a following year out of available Net Cash Flow in accordance with Section 4.1. The Asset Management Fee shall be paid for the year ending December 31, 2024, and shall be prorated based on the number of days in the year this Agreement is in effect.

(c) In the event of a sale or disposition of the Project, the Managing Member shall be paid a Disposition Fee prior to the distribution of the proceeds therefrom.

(d) At closing, counsel for CCHA, Anderson, Lehrman, Barre & Maraist, LLP, shall be paid a fee of five thousand dollars (\$5,000).

(e) At closing, CCHA shall be reimbursed for all reasonable costs incurred by CCHA in connection with the execution of the memorandum of understanding dated September 3, 2024, by and among CCHA and TX Azure Apartments 1, LLC, a Delaware limited liability company. Such costs shall not exceed fifteen thousand dollars (\$15,000).

### 3.9. Information and Meetings.

The Special Limited Member shall keep the Members informed of all facts, information, projections, litigation, or other matters which could be expected to have a meaningful impact upon the operations or maintenance or the condition of the Project or on the economic interests of the Members. A meeting of the Members may be called by any Member. Meetings of the Members may be held in such place mutually agreed upon by the Members. Meetings may be held via teleconference or in person. A meeting agenda of all material matters to be covered in any meeting shall be provided to all Members prior to the meeting, and, promptly after such meeting, minutes of such meeting shall be prepared and circulated to all Members. The Special Limited Member shall further provide all information relating to the Company which the Members reasonably propose to be so provided.

3.10. Duties to Others. The Managing Member understands and acknowledges that the Special Limited Member may have contractual and statutory fiduciary and other duties to various direct and/or indirect members or partners in Special Limited Member, and further acknowledges and agrees that the duties, if any, which Special Limited Member has to the Managing Member and to

the Company are expressly subject and subordinate to Special Limited Member's duties to others as described above.

3.11. Event of Default as to the Managing Member.

Upon the occurrence of, and during the continuance of, an Event of Default as to the Managing Member in its capacity as a Member, the Managing Member shall be a Defaulting Member, shall be removed as the Managing Member in accordance with Section 3.7 and shall also lose any authority it has to act for or any right to vote on or consent to any matters on which it may otherwise act under this Agreement or under the DLLCA (including, without limitation, all rights to participate, directly or indirectly, in the management of the business of the Company) other than where, under the DLLCA, such rights may not be waived.

3.12. Event of Default as to the Special Limited Member.

Upon the occurrence of, and during the continuance of an Event of Default as to the Special Limited Member, it shall be a Defaulting Member, and any delegation of the Managing Member's rights to the Special Limited Member under Section 3.1(g), 3.1(h) or 3.1(i) shall be revoked but the Special Limited Member shall retain all of its other rights under this Agreement, including without limitation, the right to approve Major Decisions of the Managing Member. Any revocation under this Section 3.12 be subject to the Managing Member first obtaining a release, as of the date of such revocation, of the Special Limited Member and its Affiliates, principals and direct and indirect members or owners from all liability, direct or contingent, by all holders of any Company debt, obligations or claims (including without limitation the Loan or the Loan Documents) with respect to matters arising after the date of revocation.

3.13. General Construction.

It is the intent of the Members that as to all matters as to the Company and the Project (including, without limitation, all financial and reporting matters, the calculation of all amounts under Article IV and Article V, and the making of all decisions), it shall be as if the Company directly owned the Project, and all receipts, expenditures and other items as to the Company and the Project shall be commingled together for all purposes under this Agreement.

3.14 Repurchase Option—Deadlock. In the event that the Managing Member and the Special Limited Member disagree on how to proceed on any matter concerning the management or governance of the Company or any matters affecting the Company, the Special Limited Member may provide the Managing Member with written notice including reasonable details of such disagreement and thereafter the Managing Member and the Special Limited Member shall make good faith efforts to engage in discussions and attempt to determine a mutually satisfactory resolution to such matter. If the parties are unable to resolve such disagreement within the thirty (30) day period immediately following the date on which the Special Limited Member give such written notice thereof to the Managing Member, a deadlock shall be deemed to exist for the purposes of this Section 3.14 (a “**Deadlock**”). The Managing Member hereby agrees that, in the event of a Deadlock, the Special Limited Member is hereby granted an exclusive option (the “**Deadlock Repurchase Option**”) to acquire any and all of the Managing Member's membership interest in the Company (the “**Ownership Interest**”) at any time prior to such Deadlock being



resolves to the satisfaction of the Special Limited Member by delivering written notice to the Managing Member that the Special Limited Member is exercising its Deadlock Repurchase Option pursuant to this Section 3.14. The purchase price for the membership interest upon exercise of the Deadlock Repurchase Option by the Special Limited Member shall be \$100.00, subject to the Managing Member being relieved of all liabilities regarding the Company and CCHA being indemnified by the Special Limited Member for any claims and liabilities caused after the transfer of the Ownership Interest. The Special Limited Member shall be responsible for obtaining all approvals and all costs and expense arising out of the purchase of CCHA's Ownership Interest. The Special Limited Member shall consummate the purchase and sale pursuant to on a date set by the Special Limited Member upon at least five (5) days prior written notice to the Managing Member, as follows: (i) the Special Limited Member shall pay to the Managing Member the purchase price by wire transfer; and (ii) the Managing Member shall assign to the Repurchaser or its nominee the Managing Member's Membership Interest, free and clear of liens and encumbrances, by an assignment in form and substance reasonably satisfactory to the Special Limited Member.

#### ARTICLE IV Distributions

##### 4.1. Net Cash Flow Distributions.

The Special Limited Member shall cause the Company to make distributions of Net Cash Flow to the Members at the end of each calendar quarter; or on such other periodic basis as the Special Limited Member may determine. All Net Cash Flow shall be distributed and applied in the following priority within ten (10) Business Days of the end of each calendar year:

- (i) First, to CCHA to pay any accrued and unpaid Ground Lease Fee, provided that if in any calendar year insufficient Net Cash Flow is available to pay the Ground Lease Fee during any year, the unpaid portion of the Ground Lease Fee shall be deferred and payable from subsequent distributions of Net Cash Flow;
- (ii) Second, to the Managing Member to pay any accrued Asset Management Fee provided that if in any calendar year insufficient Net Cash Flow is available to pay the Asset Management Fee during any year, the unpaid portion of the Asset Management Fee shall be deferred and payable from subsequent distributions of Net Cash Flow; and
- (iii) Third, 100% to the Investor Member.

##### 4.2. Distributions from Interim Capital Transactions.

The Capital Transaction Proceeds from any Interim Capital Transaction shall be distributed within ten (10) Business Days after an Interim Capital Transaction 100% to the Investor Member. Notwithstanding the foregoing, upon the closing of a refinancing of the Loan, the Capital Transaction Proceeds from the refinancing of the Loan shall be distributed as follows:

4.2.1 First, to fund reserves for liabilities not then due and owing and for contingent liabilities to the extent deemed reasonable by the Special Limited Member, provided that, upon

the expiration of such period of time as the Special Limited Member shall deem advisable, the balance of such reserves remaining after payment of such contingencies shall be distributed in the manner hereinafter set forth in this Section 4.2;

4.2.2 Second, to the payment of all matured debts and liabilities of the Company (including amounts due pursuant to any loan);

4.2.3 Third, to fund and/or replenish any reserves as necessary in the Special Limited Member's reasonable discretion;

4.2.4 Fourth, to pay all expenses of the Company incident to the refinancing of the Loan;

4.2.5 Fifth, to the Managing Member to pay any accrued and unpaid Asset Management Fee from prior calendar years;

4.2.6 Sixth, to the Investor Member in proportion to its respective Preferred Capital Contributions, if any, until Investor Member has received a full return of its Preferred Capital Contribution; and

4.2.7 Seventh, 100% to the Investor Member.

#### 4.3. Distribution Upon Dissolution.

Upon dissolution, and/or upon the occurrence of a Terminating Capital Transaction, and after payment of, or adequate provision for, the debts and obligations of the Company, the remaining assets, if any, of the Company shall be sold and the proceeds of such sale and the gross proceeds from a Terminating Capital Transaction shall be distributed and applied in the following priority within ten (10) Business Days after a Terminating Capital Transaction:

(i) First, to fund reserves for liabilities not then due and owing and for contingent liabilities to the extent deemed reasonable by the Special Limited Member, provided that, upon the expiration of such period of time as the Special Limited Member shall deem advisable, the balance of such reserves remaining after payment of such contingencies shall be distributed in the manner hereinafter set forth in this Section 4.3;

(ii) Second, to the payment of all matured debts and liabilities of the Company (including amounts due pursuant to any loan, including the Loan);

(iii) Third, to CCHA to pay an accrued and unpaid Ground Lease Fee;

(iv) Fourth, to fund and/or replenish any reserves as necessary in the Special Limited Member's reasonable discretion;

(v) Fifth, to pay all expenses of the Company incident to the dissolution and/or Terminating Capital Transaction;

(vi) Sixth, to the Managing Member to pay any accrued and unpaid Asset Management Fee; and

(vii) Seventh, 100% to the Investor Member.

#### 4.4. General.

(a) No Member shall have the right to require any distribution of assets of the Company in kind. If any assets of the Company are to be distributed in kind, such assets shall be distributed on the basis of the fair market value thereof and any Member entitled to any interest in such assets shall receive such interest therein as a tenant-in-common with all other Members so entitled. The fair market value of such assets shall be determined by the Investor Member, acting reasonably or, if any Member so desires, such fair market value shall be determined by a disinterested independent appraiser selected by the Investor Member with the Consent of the Special Limited Member.

(b) Wherever in this Article IV reference is made to distributions “to the Members” and/or “pro rata”, such references shall mean distributions to such of the Members who have, and only such Members who have, balances of the type referred to, and as among the Members having such balances, in proportion to the respective balances of each such Member of the relevant and defined item, and not with regard to respective Membership Interests.

#### 4.5. Tax Withholding.

If the Company incurs a withholding tax obligation with respect to the share of income allocated to any Member, (a) any amount which is (i) actually withheld from a distribution that would otherwise have been made to such Member and (ii) paid over to the Internal Revenue Service in satisfaction of such withholding tax obligation shall be treated for all purposes under this Agreement as if such amount had been distributed to such Member, and (b) any amount which is paid over to the Internal Revenue Service or state or local taxing authority by the Company in satisfaction of such withholding obligation, but which exceeds the amount, if any, actually withheld from a distribution which would otherwise have been made to such Member, shall be treated as an interest-free advance to such Member. Amounts treated as advanced to any Member pursuant to this Section 4.5 shall be repaid by such Member to the Company within thirty (30) days after the Special Limited Member gives notice to such Member making demand therefor. Any amounts so advanced and not timely paid shall bear interest, commencing on the expiration of said thirty (30) day period, at the Lending Rate. The Company shall collect any unpaid amounts from any Company distributions that would otherwise be made to such Member.



ARTICLE V  
Profits and Losses

5.1. Allocation of Profits and Losses from Other Than a Terminating Capital Transaction. Subject to the special allocations in **Schedule IV**, the following allocations shall be made:

(a) Net Profits or Net Losses of the Company for each taxable year or the applicable period, for all such taxable years or applicable period commencing from and after the date of this Agreement, other than Net Profits or Net Losses arising from a Terminating Capital Transaction, shall be allocated between the Members in such manner as will reduce, proportionately, the difference between each Member's Partially Adjusted Capital Account so as to make the Partially Adjusted Capital Account of each Member equal to such Member's Target Balance, to the extent possible.

In the event the amount of Net Profits or Net Losses allocable to the Members pursuant to this Section 5.1(a) is insufficient to allow the Partially Adjusted Capital Account of each Member to equal each such Member's Target Balance, the Net Profits or Net Losses allocable pursuant to this Section 5.1(a) shall be allocated between the Members first so as to achieve a proportion in the respective differences between (y) each Member's Target Balance and (z) such Member's Partially Adjusted Capital Account balance immediately prior to the allocation of Net Profits or Net Losses pursuant to this Section 5.1(a) which is the same as the proportion of their Percentage Interests, and then in proportion to the remaining respective differences.

No Net Profits for any applicable period shall be allocated to a Member whose Target Balance is less than or equal to its Partially Adjusted Capital Account for such period, nor shall any Net Losses be allocated to a Member whose Target Balance is greater than or equal to its Partially Adjusted Capital Account for such period.

(b) At no time shall any allocation of Net Losses or of any item of loss or deduction be made if and to the extent such allocation would cause any Member to have a deficit in, or would increase the deficit in, the Adjusted Capital Account of such Member at the end of any taxable year if and to the extent any other Member has a positive Adjusted Capital Account. Any Net Losses or any item of loss or deduction not allocated to a Member pursuant to this Section 5.1(b) shall be allocated pro-rata among the other Members; provided, however, that no such other Member shall be allocated Net Losses or items of loss or deduction pursuant to this sentence in an amount that would cause a violation of the immediately preceding sentence.

5.2. Allocation of Profits and Losses from a Terminating Capital Transaction. Subject to the special allocations in **Schedule IV**, the following allocations shall be made:

(a) Net Profits or Net Losses recognized in connection with a Terminating Capital Transaction shall be allocated (and credited or borne, as the case may be) as follows:

(i) Net Profits from a Terminating Capital Transaction shall be allocated as follows:

First, after all special allocations are made, to eliminate the negative balance in any Member's Capital Account, initially by establishing the same ratio among the negative balances of the Members' Capital Accounts as the ratio among their respective Percentage Interests and thereafter allocated in accordance with the respective Percentage Interests of the Members until the negative balances in the Capital Accounts of each Member has been eliminated;

Second, the amount of Net Profits remaining from a Terminating Capital Transaction after the allocation under Clause First above shall be added to the aggregate positive balances of all the Members, if any, with positive Capital Accounts (as determined prior to any distribution of cash or other assets as part of the Terminating Capital Transaction, and without reduction for the negative Capital Accounts of any Members), and such sum shall be treated as if it were the hypothetical amount of net proceeds to be distributed pursuant to Section 4.3. Net Profits shall then be allocated to each Member so as to make the positive balance in each Member's Capital Account equal to the aggregate amounts that would be distributed to each such Member pursuant to Section 4.3 if the aforesaid hypothetical sum were the amount to be distributed pursuant to said Section 4.3.

(ii) Net Losses from a Terminating Capital Transaction shall be allocated as follows:

First, there shall be allocated to each of the Members such amount of Net Losses as is necessary to make the Capital Account of each Member equal to the amounts that would be distributed to each such Member pursuant to Section 4.3 if the net proceeds, if any, of such Terminating Capital Transaction were to be distributed pursuant to said Section 4.3.

Second, if such Net Losses exceed the aggregate positive balances in the Capital Accounts of the Members immediately prior to the allocation of Net Losses under this clause (ii), then any Net Losses remaining after the allocation under Clause First of this clause (ii) shall be allocated to any such Member, or if more than one, between the Members in the proportion that their respective Percentage Interests bear to each other.

(b) The allocation of Net Profits or Net Losses arising from Terminating Capital Transaction shall be made prior to adjusting the Capital Account balances of the Members to reflect the distribution of the proceeds from such sale or other disposition or liquidation but after adjusting each Member's Capital Account for all distributions made or to be made for all periods ending immediately prior to the Terminating Capital Transaction event and for all allocations to be made pursuant to Schedule IV, including those to be made in connection with the Terminating Capital Transaction.

(c) In the event all Net Profits or Net Losses from a Terminating Capital Transaction are not recognized for any reason at the time of the occurrence of a Terminating Capital Transaction and the recognition of such Net Profits or Net Losses is deferred, calculations of the allocations of Net Profits pursuant to Section 5.2(a)(i) or Net

Losses pursuant to Section 5.2(a)(ii) shall be first made as if all such Net Profits or Net Losses were recognized without deferral, and any deferred Net Profits or Net Losses which are to be recognized later shall be allocated among the Members in the same proportion as the proceeds of such Terminating Capital Transaction which are to be received by the Company at such later date would be distributed to each Member, and the amount of Net Profits or Net Losses to be recognized in a later Fiscal Year by each Member shall be deducted from the amount of Net Profits or Net Losses to be allocated pursuant to the earlier provisions of this paragraph in determining the aggregate Net Profits or Net Losses to be allocated to each Member for the Fiscal Year in which the Terminating Capital Transaction occurs.

## ARTICLE VI Fiscal Matters

### 6.1. Books and Records.

In addition to any documents and information required to be furnished to the Members under the DLLCA, the Special Limited Member shall maintain, or cause to be maintained, for the Company, in a manner customary and consistent with the accrual accounting method, practices and procedures, a comprehensive system of office records, books and accounts in which shall be entered, as applicable, the financial transactions of each of the Company. All of the aforesaid records, books, accounts, documents and other information shall be and remain the property of the Company. Such books and records of account shall be prepared and maintained by the Special Limited Member at the principal place of business of the Company, or such other place or places as may from time to time be determined by the Managing Member with the Consent of the Special Limited Member. Each Member or its duly authorized representative shall have the right to inspect, examine and copy any and all such books and records of account at the applicable office during reasonable business hours.

### 6.2. Bank Accounts.

(a) Unless otherwise required under the Loan Documents, the bank accounts of the Company shall be maintained in commercial banks or trust companies organized and existing under the laws of the United States of America or of any State which is one of the 100 largest banks in the United States and whose deposits are insured by the Federal Deposit Insurance Corporation, as selected by the Special Limited Member, and withdrawals shall be made only in the regular course of business on such signature or signatures as shall be determined by the Special Limited Member. Upon the reasonable request of the Investor Member, the Special Limited Member shall change the depository institution in which the bank accounts of the Company are maintained.

(b) The Company shall from time to time invest funds not required for the operation of the Project or the maintenance of the existence of the Company in (i) marketable direct obligations of the United States of America or any of its agencies, (ii) marketable obligations fully guaranteed by the United States of America or any of its agencies, (iii) time certificates of deposit issued by commercial banks and fully insured by the Federal Deposit Insurance Corporation, (iv) so-called “repos”, and (v) in such other



instruments as the Special Limited Member may from time to time determine is appropriate.

(c) The funds of the Company shall not be commingled with the funds of any other Person, and neither the Special Limited Member nor any other Member, shall use, or permit any other Persons to use, such funds in any manner except for the benefit of the Company.

### 6.3. Accounting and Fiscal Year.

The books of the Company shall be kept on the accrual basis in accordance with the accrual accounting method, and the Company shall report its operations for federal, state, and local income tax purposes on the accrual method. The fiscal year of the Company shall end on December 31 of each year (the “**Fiscal Year**”), and the taxable year of the Company shall end on December 31 of each year unless a different taxable year shall be required by the Code. Any change in any of the above provisions of this Section 6.3 shall require the Consent of the Special Limited Member.

### 6.4. Tax Filings; Partnership Representative.

(a) The Special Limited Member shall cause to be prepared and timely filed all federal, state and local tax returns of the Company (the “**Returns**”) for each taxable year for which such Returns are required to be filed, but in all events the Special Limited Member shall provide to the Members copies of all of the aforesaid, for review and comment by the Members, by no later than March 31st, with K-1’s and comparable information for any federal, state and local income tax requirements that the Company is required to provide to the Managing Member. No such returns shall be filed until the Investor Member has either commented thereon or approved any such return. The Special Limited Member shall determine, the accounting methods and conventions to be used in the preparation of the Returns and whether to make any applicable election, claim any available credit or adopt any other method or procedure relating to the preparation of the Returns.

(b) Intentionally omitted.

(c) The Special Limited Member shall be the partnership representative of the Company as defined under Section 6223 of the Code (the “**Partnership Representative**”) and shall represent the Company in any disputes, controversies or proceedings with the Internal Revenue Service or with any state, local, or non-U.S. taxing authority. The Partnership Representative shall keep the Members apprised of the status of any tax audit or any other notices or other materials received by it. The Partnership Representative shall not bind the Company or the Members to a closing, compromise or settlement agreement, or extend the statute of limitations for any federal, state, local, or foreign tax purposes, without Consent of Members, if such action would have an adverse impact on the Members. The Partnership Representative shall not have any right to settle, extend the statute of limitations, make election under Sections 6221(b), 6225(c)(2), or Section 6226 of the Code without the Consent of Members, if such action would have an adverse impact on the Members. The Members agree to cooperate in good faith to timely provide

information reasonably requested by the Partnership Representative. To the extent that the Company is assessed amounts under Section 6221(a) of the Code, the current or former Member(s) to which this assessment relates shall pay to the Company, as may be applicable such Member's share of the assessed amounts, including such Member's share of any additional accrued interest assessed against the Company relating to such Member's share of the assessment, upon thirty (30) days of written notice from the Partnership Representative requesting the payment. For purposes of the preceding sentence, each Member's share of the imputed underpayment (and associated penalties and interest) shall be determined by taking into account (i) such Member's share of the Net Profits, Net Losses, and credits to which such adjustment and imputed underpayment relate, as determined by the Company's Accountants, (ii) such Member's obligation, if any, to indemnify, defend, or hold harmless the Company or any other Member for such imputed underpayment (and any associated penalties and interest) under this Agreement, and (iii) any taxes or other amounts paid by such Member which result in a modification of an imputed underpayment of the Company under Section 6225(c) of the Code. At the discretion of the Partnership Representative, the Company shall make an election under Section 6226(a) of the Code, and the Members shall reasonably cooperate and provide the Company with any information necessary for this purpose, including but not limited to making any payments required under Section 6226(b) of the Code. At the election of the Investor Member, the Investor Member may replace the Partnership Representative, and the Company shall file and take any action necessary to effectuate this election.

(d) At the request of the Special Limited Member, on the (first) federal income tax return of the Company for the taxable period that commences on the date of this Agreement, the Managing Member shall elect to adjust the basis of the Company's Property for federal income tax purposes in accordance with Code Section 754. Each Member agrees to provide, and to require any transferee to provide, information as is necessary to comply with any basis adjustment under Section 734 or 743 of the Code.

## ARTICLE VII

### Budgets; Reports

#### 7.1. Budgets.

(a) The Special Limited Member, Managing Member, and Investor Member have agreed upon an Approved Budget for the first twelve (12) months following the date of this Agreement. On or before December 1st of each Fiscal Year, the Special Limited Member shall send to the Members (i) an annual capital budget (an "**Annual Capital Budget**") for the following Fiscal Year, setting forth estimates, reasonably itemized, of all capital expenditures and receipts from Capital Transactions of the Company relating to the Project, and any other activities of the Company, and (ii) an annual operating budget (an "**Annual Operating Budget**") for such Fiscal Year setting forth estimates, reasonably itemized, of all income and expenses of the Company for such Fiscal Year, and establishing reserves and working capital for the Company. The Annual Operating Budget and/or the leasing plan shall include occupancy projections. If Managing Member does not approve any of the above budgets and plans submitted to it by the Special Limited Member, the Managing Member shall specify its objections in writing by December 31, and any portion

of the proposed budget and plans not so specified as objected to shall be deemed approved and, as to such approved items, shall be an Approved Budget. All of the above, as, when and to the extent approved by the Members is herein referred to as the “**Approved Budget**”.

(b) Unless and until such budgets and plans for each Fiscal Year commencing after the initial Approved Budget are approved, the Special Limited Member may cause the Company only to expend amounts which are for the payment of normal and customary operating expenses of the Company and in amounts for each such operating expense separately which are within the amounts set forth therefore in the Approved Budget for the immediately preceding Fiscal Year, but as to all other expenditures of the Company, the Special Limited Member shall be authorized to cause the Company to incur obligations only up to an amount equal to the amount set forth in the prior Fiscal Year’s Approved Budget for any operating expenses, but not for any capital expenditures, as if such prior year’s Approved Budget amount for any such operating expenses were the then current year’s Approved Budget, unless and until an Approved Budget is adopted pursuant to the preceding provisions of this Article VII. In the aforesaid circumstances, the Special Limited Member shall not make any capital expenditures other than as required pursuant to any agreement with a third party for capital expenditures which were previously approved as Major Decisions. Notwithstanding anything to the contrary contained in this paragraph, the Special Limited Member shall be entitled to make expenditures incurred as a result of an emergency posing imminent danger to persons or property or an emergency requiring an immediate response under applicable law (and in the event of any such emergency expenditure, the Special Limited Member shall reasonably promptly notify the Managing Member and the Investor Member of the same) regardless of whether the same is provided for in the Approved Budget.

#### 7.2. Annual Reports.

(a) The Special Limited Member shall provide to each Member with a copy of any annual financial report that is provided to the Company’s lenders.

(b) In addition to the above, as part of the annual statements provided by the Special Limited Member pursuant to the above, the Special Limited Member shall provide a report to each Member as to compliance with the requirements of the Housing Requirements or, if applicable, Section 3.2(b), to the extent such information is obtainable in compliance with applicable law.

#### 7.3. Other Reports.

The Special Limited Member shall provide each Member with a copy of any periodic financial or operating report that is provided to the Company’s lenders or is otherwise reasonably requested by the Investor Member.

In addition to all of the above, the Managing Member and/or Special Limited Member shall also provide to each Member copies of all reports and all other material information that the Housing Agreements, the Housing Requirements, the Loan Documents or which otherwise relate



to the status of the Project, which are provided to any lender, any party to or beneficiary of the Housing Agreements or any of the other Housing Requirements, or to any other third party.

#### 7.4. General Requirements.

The Special Limited Member will provide all necessary certifications as required by the Accountants with respect to the Financial Statements of the Company. The Special Limited Member shall report such financial information and provide such reasonable certifications as the Investor Member may request so as to provide such information as to the Company, as back up information, so as to enable the Investor Member, as well as its respective members, officers and directors, as applicable, to provide such certifications as may be required by the independent certified public accountants of the Investor Member and/or its Special Limited Member.

The Investor Member shall have the right to have the Company obtain any reports or information which, as applicable, the Company has the right to request be provided by any of the service providers under the Property Management Agreement or under any other agreement to which the Company is a party, such right to be exercised at any time by written notice to the Special Limited Member, and upon receipt of any such request, the Special Limited Member shall take reasonably promptly all actions necessary so as to have such requested reports or information provided to the Company and then to all the Members.

So long as the Company and the Project are subject to the Real Estate Tax Exemption, the Company shall promptly provide the Nueces Central Appraisal District with all records or documents reasonably requested.

### ARTICLE VIII Transfers

#### 8.1. Restrictions on Transfer of Membership Interests.

(a) Except as provided in Section 8.1(d) and Section 8.2, no Member may Transfer all or any part of its Membership Interest or otherwise Withdraw from the Company without the Consent of the Members.

(b) Notwithstanding anything to the contrary in this Agreement, except as otherwise provided in Section 8.4, substitute Members (including assignees of existing Members) may be admitted only with the Consent of the Members.

(c) There shall be no Transfer of Managing Member's Membership Interest or any direct or indirect ownership interest in Managing Member to an entity which is not a wholly owned Affiliate of Managing Member without the Consent of the Special Limited Member, which consent may be withheld in the Special Limited Member's sole discretion. The Managing Member may Transfer its Membership Interest and/or any direct or indirect ownership interest in Managing Member to another wholly owned Affiliate without the consent of any other Member, provided, however, that such Transfer will be contingent on confirmation that the Real Estate Tax Exemption will continue to be in effect following the Transfer.

(d) Nothing in this Agreement, including without limitation, the phrase “Transfer”, shall prohibit in any way any Transfers of any direct or indirect ownership interests in the Investor Member, the Investor Member’s members or any other Transfer of any direct or indirect equity interests in or by the Investor Member or the Special Limited Member, including, without limitation, any Transfer of ownership interests in the Investor Member or the Special Limited Member between existing members, managers, partners, shareholders or owners thereof. Notwithstanding the foregoing, no transferee under this clause (d) shall be to any Blocked Person. For the avoidance of doubt, no Transfer under this clause (d) shall be subject to the consent of the Managing Member provided the requirements of this clause (d) are satisfied and no Transfer under this clause (d) shall be subject to the terms of the Ground Lease.

8.2. Restrictions Applicable to the Investor Member and the Special Limited Member.

The Investor Member and the Special Limited Member shall each have the perpetual right to market its Membership Interest in the Company, subject to the terms of the Ground Lease, provided, however, that neither the Investor Member nor the Special Limited Member may Transfer any part of its Membership Interest to any Blocked Person. If the Investor Member and/or the Special Limited Member identifies a third party purchaser for its Membership Interest and CCHA does not exercise its rights under the terms of the Ground Lease, the Consent of the Managing Member shall be required for the Investor Member and/or the Special Limited Member to Transfer its Membership Interest to the third party purchaser, which consent shall not be unreasonably withheld, conditioned or delayed. For the avoidance of doubt, nothing in this Agreement or in any other agreement to which the Company, the Managing Member or any of its or their Affiliates are a party (including, without limitation, the Ground Lease), shall prohibit or restrict the ability of any member of the Investor Member from conveying its direct or indirect ownership interests in the Company (including, without limitation, its respective membership interests in the Investor Member) to an entity under common control with such member without the Consent of the Managing Member.

8.3. General Restrictions on All Transfers.

(a) Every Transfer by a Member of a Membership Interest permitted by Section 8.1(a) with the Consent of the Members or Section 8.2, shall nevertheless be subject to the following:

- (i) No Transfer of any Membership Interest may be made if such Transfer would cause or result in a breach of any agreement binding upon the Company or the Project or of then applicable rules and regulations of any governmental authority having jurisdiction over such Transfer. Any Transfer must be made in accordance with the requirements of the Loan Documents.
- (ii) Any non-transferring Member may require as a condition of Transfer of any Membership Interest that (x) the transferor and/or transferee assume all costs incurred by the Company and any Member in connection therewith, including, without limitation, any sales tax, real estate transfer tax or other taxes (excluding

income taxes) that arise as a result of such Transfer, and (y) the Company be furnished with an opinion of counsel, reasonably satisfactory to the Company, both as to counsel and opinion, that the proposed Transfer complies with all applicable federal and state securities laws;

(iii) No Member shall have the right to Transfer its Membership Interest if, by reason of such Transfer, the classification of the Company as a partnership for federal income tax purposes would be adversely affected or jeopardized; and

(iv) In the event of a Transfer of a Membership Interest (x) there shall be filed with the Company a duly executed and acknowledged counterpart of the instrument effecting such Transfer or conversion, together with any and all necessary certificates or other documents required in accordance with the laws of the States of Texas and Delaware and any other states in which the Company is then doing business, (y) the transferee shall enter into a valid and binding agreement with the Company and each of its Members the effect of which will be that the Membership Interest so Transferred shall continue to remain subject to the provisions of this Agreement with the same force and effect as if such transferee had originally been a party hereto as to the Membership Interest so Transferred, and (z) each transferee shall execute such additional certificates and other instruments as may be reasonably required by the non-transferring Members. The Company need not recognize any Transfer for any purpose unless and until the foregoing provisions of this clause (iv) have been fully satisfied.

(b) Each transferee, whether or not it becomes a substituted Member, shall by its acceptance of an assignment to it of a Membership Interest, be deemed to be bound by all of the terms and conditions of this Agreement, including, without limitation, this Article VIII, and to have assumed its proportionate share of the obligations of the Member which is making such Transfer, provided further that no such Transfer shall release the transferor Member from its liabilities and obligations as to the Membership Interest so Transferred, which have accrued prior to the date of such Transfer.

(c) Upon the admission or Withdrawal of a Member (whether by reason of a Transfer or otherwise, this Agreement (including without limitation **Schedule I** hereto)) and the Certificate, to the extent required under the DLLCA, shall be amended appropriately to reflect the then existing names and addresses of the Members and their respective Percentage Interests in the Company.

(d) Any Transfer in contravention of any of the provisions of this Agreement shall be null and void and ineffective to Transfer any Membership Interest, and shall not bind, or be recognized by, or on the books of, the Company.

(e) A Member seeking to Transfer all or any part of its Membership Interest shall pay all of the Company's legal and other expenses reasonably incurred in connection with affecting the Transfer of the transferor's Membership Interest.



(f) Any Member who shall Transfer all of its Membership Interest in the Company shall cease to be a Member of the Company, and shall no longer have any rights or privileges of a Member; provided, however, that, unless and until the transferee of such Member is admitted to the Company as a substituted Member in accordance with Section 8.4, such transferor Member shall retain the statutory obligations of an assignor or Member under the DLLCA.

(g) Any Membership Interest of the Managing Member that is Transferred shall remain subject to the provisions of Article IX applicable to the Managing Member with respect to such Membership Interest. Any Membership Interest of the Investor Member that is Transferred shall remain subject to the provisions of Article IX applicable to the Investor Member with respect to such Membership Interest.

#### 8.4. Substitute Members.

Except as to Transfers described in Section 8.2 (a transferee under said provision being entitled to be admitted as a substitute Member), or a Transfer made with the Consent of the Members pursuant to Section 8.1(a), no transferee (by conveyance, operation of law or otherwise) of the whole or any portion of any Membership Interest shall have the right to become a substitute Member, as that term is defined in the DLLCA, unless and until each other Member has given its consent thereto. An assignee of a Member's Membership Interest shall be entitled only to the rights conferred by the DLLCA on a transferee who does not become a substitute or additional Member, and in any event, such assignee shall not have the right (i) to act on any matters on which a Member may act under this Agreement, or (ii) otherwise to participate in the management of the business of, or as to any other matters as to, the Company unless, and to the extent, required by the DLLCA notwithstanding this provision.

### ARTICLE IX Purchase and Sale Rights Between Members

#### 9.1. Intentionally omitted.

#### 9.2. Purchase of the Managing Member's Interest Upon Default.

(a) Subject to all applicable rights to cure, if (i) CCHA or the Managing Member takes any action or omits to take an action within its sole and exclusive control and such action or inaction results in an event of default under any of the Project Documents, Project obligations, or this Agreement; or (ii) CCHA or the Managing Member takes any action or omits to take an action within its sole and exclusive control and such action or inaction causes the Special Limited Member, the Company, the Investor Member or any guarantors to incur any quantifiable liability which such party actually pays ((i) and (ii) are referred to as "**Repurchase Events**") then the Special Limited Member, the Investor Member, each of the guarantors, and their respective successors and assigns or designees, shall have the sole and exclusive option, with the consent of the Investor Member, to purchase from CCHA its ownership interest in the Managing Member or from the Managing Member its managing member interest in the Company for the sum of one hundred dollars (\$100.00) plus all unpaid fees and unreimbursed expenses earned by

CCHA and the Managing Member to the date of the Repurchase Event under (i) and (ii) above, which shall be exercisable by any such party upon fifteen (15) Business Days written notice to CCHA and the Managing Member (the “**Default Repurchase Option**”). It shall not be a Repurchase Event and this Default Repurchase Option will not apply if the event of default or the cause of guarantor’s liability or the repayment of the debt or equity is caused in whole or part by a matter or item over which guarantors or an affiliate has full control or is otherwise responsible for. For purposes of this paragraph, the term “caused” shall only include matters within the full or partial control of the applicable Person. In the event that the Default Repurchase Option is exercised, the fee estate shall be transferred to the Company for a nominal cost.

(b) If the Real Estate Tax Exemption is lost for any reason other than (i) the action or inaction of the Special Limited Member or the Investment Member or (ii) a legislative change or adverse court ruling related to the Real Estate Tax Exemption, the Managing Member or an affiliate of the Managing Member will have a period of one (1) year after the date on which it received notice of the loss of the Real Estate Tax Exemption (the “**Exemption Correction Period**”) to correct the loss or disqualification of the Real Estate Tax Exemption. CCHA and the Managing Member will at all times act in good faith to preserve, maintain, and/or reinstate the Real Estate Tax Exemption. If within such Exemption Correction Period, the Real Estate Tax Exemption is reinstated or restored, the Managing Member will not forfeit its interest in the Company and the Property will remain deeded to the CCHA. If within such Exemption Correction Period, the Real Estate Tax Exemption is not reinstated or restored, the fee estate in the Real Property shall (at Special Member’s option) be conveyed to the Company for one hundred dollars (\$100.00), the Ground Lease shall be terminated to allow the Company to establish an exempt structure in the future, and the Special Limited Member shall have the right to purchase from CCHA, CCHA’s ownership interest in Company for the sum of one hundred dollars (\$100.00) plus all unpaid fees and unreimbursed expenses earned by CCHA, and such purchase conveyance and purchase shall constitute a Repurchase Event and an exercise of the Default Repurchase Option, as applicable, for all purposes herein. In the event the Managing Member is replaced pursuant to the foregoing, the CCHA (or the Managing Member, as applicable) shall forfeit its right to receive (i) any future fees it would have otherwise been entitled to receive pursuant to this Agreement, the Ground Lease or any other project document and (ii) any cash flow, residual value, and/or proceeds from the Company or the Project. If no replacement can be identified, the property taxes owed annually on the Project shall be a Company expense paid out of net cash flow and the CCHA (or the Managing Member, as applicable) shall forfeit its right to receive (i) any future fees it is entitled to pursuant to this Agreement, the Ground Lease or any other Project Document, and (ii) any cash flow, residual value, and/or proceeds from the Company or the Project.

Notwithstanding the foregoing, in the event that the Real Estate Tax Exemption is lost, but reinstatement of the Real Estate Tax Exemption is reasonably anticipated after the Exemption Correction Period, so long as the CCHA continues to pursue such reinstatement diligently and in good faith and for so long as the reinstatement of the Real Estate Tax Exemption can continue to be reasonably anticipated, the CCHA shall be afforded such additional extensions as may be necessary to accomplish the reinstatement of the Real

Estate Tax Exemption, subject to the Consent of the Special Limited Member, which consent shall not be unreasonably withheld, conditioned, or delayed. Any advance payment of the Ground Lease Fee in a year in which the Real Estate Tax Exemption is lost and ad valorem property taxes are payable by the Company shall be repaid to the Company prorated to the date of loss of the Real Estate Tax Exemption.

(c) Closing Procedures.

(d) The Repurchaser shall consummate the purchase and sale pursuant to Section 9.2 on a date set by the Repurchaser upon at least five (5) days prior written notice to the Managing Member, such date to be no later than the time provided for in Section 9.2, in the following manner:

(i) The Repurchaser shall pay to the Managing Member the purchase price as described in Section 9.2 by wire transfer; and

(ii) The Managing Member shall assign to the Repurchaser or its nominee the Managing Member's Membership Interest, free and clear of liens and encumbrances, by an assignment in form and substance reasonably satisfactory to the Repurchaser.

Notwithstanding anything in this Article IX to the contrary, after taking into account all adjustments, prorations and any other items to be included in the calculation of the purchase price for the Managing Member's Membership Interest under Section 9.2, the net amount to be paid to the Managing Member shall not be less than zero dollars (\$0.00), and in no event shall the Managing Member be required to make any payment to the Repurchaser in a transaction governed by this Article IX.

(e) After the procedures of Section 9.2 are commenced, no Member may Transfer its Membership Interest or any part thereof or take any other actions which would impair the rights of the Investor Member under Article III or under this Article IX.

(f) The Investor Member shall have the right, without needing to obtain the consent or approval of any other Member, to assign all or any part of its rights under this Article IX to purchase the Managing Member's Membership Interest to a designee(s) (provided the designee(s) shall assume the Investor Member's obligations under this Article IX). No such assignment shall relieve the Investor Member of liability in connection with the purchase of the Managing Member's Membership Interest as herein contemplated.

(g) As a condition to the sale of its Membership Interest pursuant to this Article IX, the Managing Member shall obtain such consents as may be required from third parties, if any, or waivers thereof. If there is any outstanding guarantee, letter of credit or other collateral security provided by the Managing Member on behalf of the Company which cannot be released without unreasonable loss or cost to the Company, then the Investor Member (and, if appropriate, its principals) shall provide an appropriate indemnification agreement and reasonable security to the Managing Member.



(h) Each Member shall pay its own legal fees, except that the Company shall pay the reasonable, actual outside counsel legal fees of the Managing Member. Recording, transfer or similar taxes arising in connection with the sale of the Membership Interests shall be paid by the Special Limited Member. All other costs involved in the transaction shall be prorated between the Investor Member and the Special Limited Member in the same manner as such costs would be shared or paid as between a buyer and a seller of real estate in the locality where the Project is located, and if such costs would not ordinarily be part of such a purchase and sale, then such costs shall be shared equally.

(i) The time periods applicable to the sale of the Membership Interest of the Managing Member pursuant to this Article IX shall be automatically extended to the extent necessary for the procurement of any material and necessary lender, applicable CCHA, regulatory and other third-party approvals to the transaction, but not more than one hundred and eighty (180) days, subject to the rights of the Investor Member to extend such closing time for an additional ninety (90) days if any existing lender, applicable CCHA, regulatory or other required third-party approvals have not been obtained within the aforesaid time periods. The Managing Member agrees to cooperate with the Investor Member in obtaining any such required approvals, subject to reimbursement by the Investor Member for any reasonable third party out-of-pocket costs incurred by the Managing Member which have been approved by the Investor Member, acting reasonably, including, without limitation, any approvals any applicable to CCHA, and shall provide such information, and shall execute any documents or other instruments, which may reasonably be required in connection with any of the above.

(j) In the event of the failure of the Managing Member to sell its Membership Interest as required under any of this Article IX, the Investor Member shall have all rights against the Managing Member at law or in equity, and the Members consent to the granting of equitable relief, including specific performance.

## ARTICLE X

### Dissolution and Termination of the Company

#### 10.1. Events Causing Dissolution.

The Company shall be dissolved and its affairs wound up upon:

(a) The sale or other disposition of all or substantially all of the assets of the Company, provided, however, that if such assets are sold on the installment basis, the Special Limited Member, with the Consent of the Managing Member, shall have the option of delaying distribution until the proceeds relating to such sale have been paid in full or the Special Limited Member reasonably determines that no further payments will be received or are legally obtainable;

(b) The election to dissolve the Company, made by the Special Limited Member with the Consent of the Managing Member; or

(c) The dissolution of the Company pursuant to a judicial order therefore under the DLLCA.

(d) Notwithstanding any other provision of this Agreement, the bankruptcy of a Member shall not cause such Member to cease to be a member of the Company and upon the occurrence of such an event, the business of the Company shall continue without dissolution.

#### 10.2. Procedures on Dissolution.

(a) Dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, unless the Company is reconstituted or continued as otherwise provided in this Agreement, but the Company shall not terminate until the Company's Certificate shall have been canceled. Notwithstanding the dissolution of the Company, prior to the termination of the Company, as aforesaid, the business and the affairs of the Company shall, except as provided below in this Section 10.2, be conducted so as to maintain the continuous operation of the Company pursuant to the terms of this Agreement. Upon dissolution of the Company, the Special Limited Member, or a liquidator selected by the Special Limited Member, shall liquidate the assets of the Company, apply and distribute the proceeds thereof as otherwise provided for in this Agreement, and cause the cancellation of the Company's Certificate and any other certificate or registration in any jurisdiction where the Company has qualified or registered to do business.

(b) A reasonable time shall be allowed for the winding up of the affairs of the Company in order to minimize any losses otherwise attendant upon such a winding up, provided that the liquidator(s) shall use their best efforts to carry out the liquidation in conformity with the timing requirements of Treasury Regulations Section 1.704-1(b)(2)(ii)(g).

(c) If any assets of the Company are to be distributed in kind, such property shall be transferred and conveyed to the Members or their assignees so as to vest in each of them as a tenant-in-common an undivided interest in the whole of said property equal to the amount each Member would have received had there been a distribution of proceeds of a Terminating Capital Transaction made in accordance with Section 4.3, based upon a fair market value determination of the assets so to be distributed as determined by the liquidator.

#### 10.3. Disposition of Documents and Records.

All documents and records of the Company, including all financial records, tax returns, vouchers, canceled checks and bank statements shall be delivered to the Special Limited Member upon termination of the Company. The Special Limited Member shall retain such documents and records for a period of not less than seven (7) years and shall make such documents and records available during normal business hours to the Managing Member for inspection and copying.

### ARTICLE XI General Provisions

#### 11.1. Notices; Calculation of Days.

(a) Any and all notices, consents, demands, requests, approvals, proposals, offers, elections and other communications required or permitted under this Agreement shall be adequately given only if in writing and sent to such Member's address set forth in **Schedule I** and either: (i) personally delivered, (ii) sent prepaid by a recognized national overnight courier service; or (iii) sent by electronic mail with an electronic delivery receipt requested; and in the event of sending under clause (iii) hereof the simultaneous sending thereof by one of the previous two methods. Such notice or other communication shall be deemed received upon the earlier of (x) if personally delivered, the date of delivery or tender for delivery during regular business hours on a Business Day where received by or tendered for receipt to a Person apparently authorized to receive mail and/or packages, (y) if sent via courier service, on the day delivered or tendered for receipt by such service, or (z) if transmitted by electronic mail, on the day when received at the receiving transcribing device, unless the receipt thereof is sooner acknowledged on a Business Day during normal business hours, in which event the time of acknowledgment shall be the time when notice has been given.

(b) By giving to the other Members at least ten (10) days' prior notice thereof, a Member shall have the right from time to time and at any time during the term of this Agreement to change its address to any other address within the United States of America.

(c) In computing any period of time under this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. If the last day of the period so designated is not a Business Day, the period shall run until the end of the next Business Day, whether or not Business Days are otherwise referred to.

#### 11.2. Word Meanings.

The words such as "herein," "hereinafter," "hereof," and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires. References to a paragraph shall only be to the grammatical paragraph referred to unless there is a specific paragraph and/or Section designated. The use herein of the word "including," when following any general statement, term or matter shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

#### 11.3. Binding Provisions.

The covenants and agreements contained herein shall be binding upon, and shall inure to the benefit of, the parties hereto and, their respective permitted successors and assigns. Each and every successor to any Member, whether such successor acquires such Membership Interest by



way of gift, purchase, foreclosure or by any other method, shall hold such Membership Interest subject to all of the terms and provisions of this Agreement.

**11.4. Applicable Law; Venue; No Jury Trial.**

This Agreement shall be construed and enforced in accordance with the DLLCA as interpreted by the courts of the State of Texas, notwithstanding any rules regarding choice of law to the contrary. The rights and liabilities of the Members in the Company and as between them as to the Company shall be determined pursuant to the DLLCA and this Agreement. To the extent the rights or obligations of any Member are different by reason of any provision of this Agreement than they would otherwise be under the DLLCA in the absence of any such provision, or even if this Agreement is inconsistent with the DLLCA, this Agreement shall control, except to the extent the DLLCA prohibits any particular provision of the DLLCA to be waived or modified by the Members, in which event any contrary provisions hereof shall be valid to the extent permitted under the DLLCA. Notwithstanding the foregoing, subject to Section 11.14(c) below, any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with this Agreement, or the transactions contemplated hereby or thereby shall be brought in any federal or state court in Nueces County, Texas and each Member hereby consents to the exclusive jurisdiction such federal or state courts in Nueces County, Texas (and of the appropriate appellate courts therefrom) in any suit, action or proceeding, and irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any court. Without limiting the foregoing, each party agrees that service of process on such party by written notice pursuant to Section 11.1 will be deemed effective service of process on such party.

EVERY PARTY TO THIS AGREEMENT AND ANY OTHER PERSON WHO BECOMES A MEMBER OR HAS RIGHTS AS AN ASSIGNEE OF ANY PORTION OF ANY MEMBER'S MEMBERSHIP INTEREST HEREBY WAIVES ANY RIGHT TO A JURY TRIAL AS TO ANY MATTER UNDER THIS AGREEMENT OR IN ANY OTHER WAY RELATING TO THE COMPANY OR THE RELATIONS UNDER THIS AGREEMENT OR OTHERWISE AS TO THE COMPANY AS BETWEEN OR AMONG ANY SAID PERSONS.

**11.5. Counterparts; Electronic Copy.**

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties have not signed the original or the same counterpart. An electronic copy of a signed version of this Agreement shall have the same effect as an original.

**11.6. Separability of Provisions.**

Each provision of this Agreement shall be considered separable. If for any reason any provision or provisions of this Agreement 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, and if for any reason any provision or provisions herein would cause a Member to be bound by the obligations of the Company, such provision or provisions shall be deemed void and of no effect.

11.7. Captions.

Article, Section and paragraph titles and captions are for descriptive purposes only and shall not control or alter the meaning of this Agreement as set forth in the text.

11.8. Entire Agreement; Amendments; Further Assurances.

(a) This Agreement (including all Schedules attached hereto) constitutes the full and complete agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, undertakings, and representations of the parties in connection herewith.

(b) This Agreement may be amended or modified only by an instrument in writing executed by all the then Members and any amendment shall be subject to Article XII herein. The Members hereby covenant, for themselves and their respective permitted successors and assigns, that they will cooperate with each other and will execute, acknowledge, verify, deliver, record, or cause to be delivered or recorded, with affidavit, as applicable, all such other instruments, and will take all such other actions, as the other Member may reasonably request from time to time, to effectuate, implement, and/or accomplish the provisions and purposes hereof.

11.9. No Third Party Beneficiaries.

This Agreement is solely for the benefit of the parties hereto, and their permitted successors and assigns, and nothing herein shall be deemed to confer upon any creditor of the Company or any other Person other than the parties to this Agreement any right to insist upon or to enforce the performance or observance of any of the rights and obligations contained herein, any and all of which may be freely waived by the parties hereto.

11.10. Waiver of Partition, Etc.

Each Member agrees that irreparable damage would be done to the Company if any Member brought an action in court to dissolve or liquidate the Company. Accordingly, unless otherwise expressly authorized in this Agreement, each Member agrees that it shall not, either directly or indirectly, take any action to require partition or appraisal of the Company or of any of the assets or properties of the Company, or any action which might otherwise be available to such Member outside the terms and provisions of this Agreement for the purpose of severing its relationship with the Company or with any of the Members of the Company as set forth in this Agreement. Notwithstanding any provisions of this Agreement to the contrary, each Member (and its successors and assigns) accepts the provisions of this Agreement as its sole entitlement on termination, dissolution, and/or liquidation of the Company and hereby irrevocably waives any and all right to maintain any action for partition or to compel any sale or other liquidation with respect to its interest, in or with respect to, any assets or properties of the Company; and each

Member agrees that it will not petition a court for the dissolution, termination, or liquidation of the Company.

11.11. Remedies; Waivers; Attorney's Fees.

Except as otherwise expressly provided in this Agreement, each Member, in addition to all other rights provided herein or as may be provided by law, shall be entitled to all equitable remedies, including, without limitation, those of specific performance and injunction, to enforce such Member's rights hereunder. Except as otherwise provided herein, each right, power, and remedy provided for herein or now or hereafter existing at law or in equity, and shall be in addition to every other right, power or remedy provided for herein or now or hereafter existing at law or in equity, by statute or otherwise, and the exercise, the commencement of the exercise, or the forbearance of the exercise by any Member of any one or more of such rights, powers, or remedies shall not preclude the simultaneous or later exercise by such Member of any or all of such other rights, powers, or remedies.

No consent or waiver, express or implied, by a Member to or of any breach or default by any other Member in the performance by such other Member of such other Member's obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Member hereunder. Failure on the part of a Member to complain of any act or failure to act of any other Member or to declare any other Member in default, irrespective of how long such failure continues, shall not constitute a waiver by such non-complaining or non-declaring Member of the latter's rights hereunder.

Each Member shall pay its own legal fees and costs associated with any dispute between or among themselves related to the Company or this Agreement, except that if the Company, whether by derivative action or otherwise, or any Member obtains a judgment against any Member by reason of the breach of this Agreement or the failure to comply with the terms hereof or otherwise in connection with the interpretation or enforcement of any term or provision of this Agreement, attorneys' fees and costs, as approved by the court, shall be included in such judgment.

11.12. Survival of Certain Provisions.

The Members acknowledge and agree that in addition to creating the Company hereby created and providing for all the terms and conditions and covenants as among the Members as to the Company, this Agreement contains certain terms and conditions which are intended to survive the dissolution and termination of the Company, including, but without limitation, the provisions of Sections 2.6 and 3.3. The Members agree that such provisions of this Agreement which by their terms require, given their context, that they survive the dissolution and termination of the Company so as to effectuate the intended purposes and agreements of the Members shall survive notwithstanding that such provisions had not been specifically identified as surviving and notwithstanding the dissolution and termination of the Company or the execution of any document terminating this Agreement, unless such termination document specifically provides for nonsurvival by reference to this Section 11.12 and by reference therein as to any identified or as to all such surviving provisions hereof.

11.13. Members' Limited Liability.



Except for fraud, embezzlement and misappropriation, the liability of each Member under this Agreement shall be limited to the Membership Interest of such Member in the Company, and neither the Company nor the other Members shall seek to enforce any judgment or other remedy against any other assets of a Member. No Member nor any of their authorized representatives shall have any fiduciary duty to each other or to the Company and each Member hereby waives any such duty of the other Member. No Member, nor any other investment or asset of any Member, nor any Member or member of, or other participant in or beneficiary of, a Member, nor any trustee, beneficiary, employee, Member, officer, director, legal heir, estate, successor or assign of any of them, whether disclosed or undisclosed, shall have any personal liability with respect to the payment and performance by a Member of its obligations under this Agreement, and each of the other Members agrees that it will not seek to obtain any deficiency or any other money judgment against any Person herein named or referred to as being exculpated from personal liability.

The Members acknowledge and agree that the Managing Member has been adequately capitalized to fulfill its obligations under the documents governing the Company. The obligations and liabilities of the Managing Member under this Agreement are solely the obligations and liabilities of the Managing Member and not of CCHA as the owner of the Managing Member, which shall have no liability under this Agreement. The clawback of payments made to the Managing Member prior to the time a liability of the Managing Member accrues shall be prohibited. The liability of the Managing Member under this Agreement shall be limited to the positive balance of its Capital Account, provided, however, that in all events, the full amount of the insurance policy maintained by Company on the Managing Member's behalf shall apply and be accessible and subrogated as necessary to cover the liability of the Managing Member, to the extent such liability is covered by the applicable policy.

#### 11.14. Dispute Resolution.

Except as otherwise agreed by the Managing Member in writing, any controversy or claim arising out of or relating to this Agreement, including without limitation any dispute concerning the construction, validity, interpretation, enforceability or breach of this Agreement, shall be resolved exclusively as follows:

(a) Good Faith Negotiations. The Members will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of or relating to this Agreement. Any Member may initiate negotiations by providing written notice to the other Members, setting forth the subject of the dispute. The recipient of such notice will respond in writing within thirty (30) days with a statement of its position on and recommended solution to the dispute. If the dispute is not resolved by this exchange of correspondence, then representatives of each party with full settlement authority will meet at a mutually agreeable time and place within thirty (30) days of the date of the initial notice in order to exchange relevant information and perspectives, and to attempt to resolve the dispute. If the dispute is not resolved by these negotiations, the matter will be submitted to mediation pursuant to Section 11.14(b) below.

(b) Mediation. The Members agree that any and all disputes, claims, or controversies arising out of or relating to this Agreement shall be submitted to Judicial Arbitration and Mediation Services, Inc. (“JAMS”), or its successor, for mediation, if the

matter is not first resolved pursuant to Section 11.14(a) above, and if the matter is not resolved through mediation, then it shall be submitted to JAMS, or its successor, for final and binding arbitration pursuant to Section 11.14(c) below. If the matter is not first resolved pursuant to Section 11.14(a) above, any Member may commence mediation by providing to JAMS and the other Members a written request for mediation, setting forth the subject of the dispute and the relief requested. The Members will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of mediators having experience in the subject matter of such dispute, and in scheduling the mediation proceedings which shall be held in the State of Texas or in another location mutually acceptable to the parties. The Members covenant that they will participate in the mediation in good faith, and that fees and costs associated with the mediation will be split equally by each Member. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Any Member may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or ninety (90) days after the date of filing the written request for mediation, whichever occurs first. The mediation may continue after the commencement of arbitration if the parties so desire. Unless otherwise agreed to by the Members, the mediator shall be disqualified from serving as arbitrator in the case. The provisions of this Section 11.14(b) may be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorney's fees, to be paid by the party against whom enforcement is ordered.

(c) Arbitration. If the matter is not first resolved pursuant to Section 11.14(a) and Section 11.14(b) above, any dispute, claim or controversy arising out of or relating to this Agreement or breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by arbitration in Corpus Christi, Texas, before a sole arbitrator, in accordance with the laws of the State of Texas for agreements made in and to be performed in that State. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. The arbitrator will be authorized to apportion its fees and expenses and the reasonable attorney's fees and expenses of the parties, as the arbitrator deems appropriate. In the absence of such apportionment, the fees and expenses of the arbitrator will be split equally by each Member. The Members agree that this clause has been included to rapidly and inexpensively resolve any disputes between them with respect to this Agreement, and that this clause shall be grounds for dismissal of any court action commenced with respect to this Agreement, other than post-arbitration actions seeking to enforce an arbitration award and actions seeking equitable, injunctive or other similar relief. THE MEMBERS EXPRESSLY ACKNOWLEDGE THAT THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL WITH REGARD TO ALL MATTERS FOR WHICH ARBITRATION IS REQUIRED.

(d) Notwithstanding any provision of this Agreement to the contrary, this Section 11.14 shall be construed to the maximum extent possible to comply with and be binding according to the rules of the American Arbitration Association (“AAA”). If, nevertheless, it shall be determined by a court of competent jurisdiction that any provision or wording of this Section 11.14, including any rules of the AAA and/or JAMS, shall be invalid or unenforceable under the Federal Arbitration Act, 9 U.S.C., 1, et seq, or other applicable law, such invalidity shall not invalidate all of this Section 11.14. In that case, this Section 11.14 shall be construed so as to limit any term or provision so as to make it valid or enforceable within the requirements of the AAA or other applicable law, and, in the event such term or provision cannot be so limited, this Section 11.14 shall be construed to omit such invalid or unenforceable provision.

## ARTICLE XII Single Purpose Entity

12.1. Single Purpose Entity Requirements. Capitalized terms used but not otherwise defined in this Agreement shall have the meanings assigned to them in the Loan Agreement. Until the Loan is paid in full, the Company will remain a “**Single Purpose Entity**,” which means at all times it will satisfy each of the following conditions:

(a) It will not engage in any business or activity, other than the ownership, operation and maintenance of the Mortgaged Property and activities incidental thereto.

(b) It will not acquire, own, hold, lease, operate, manage, maintain, develop or improve any assets other than the Mortgaged Property and such Personalty as may be necessary for the operation of the Mortgaged Property and will conduct and operate its business as presently conducted and operated.

(c) It will preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its formation or organization and will do all things necessary to observe organizational formalities.

(d) It will not merge or consolidate with any other Person.

(e) It will not take any action to dissolve, divide or create divisions, wind-up, terminate or liquidate in whole or in part; to sell, transfer or otherwise dispose of all or substantially all of its assets; to change its legal structure; transfer or permit the direct or indirect transfer of any partnership, membership or other equity interests, as applicable, other than transfers permitted under the Loan Agreement; issue additional partnership, membership or other equity interests, as applicable, or seek to accomplish any of the foregoing.

(f) It will not, without the prior unanimous written consent of all of the Members of the Company, including the Special Member, take any of the following actions:

(i) File any insolvency, or reorganization case or proceeding, to institute proceedings to have the Company be adjudicated bankrupt or insolvent.



- (ii) Institute proceedings under any applicable insolvency law.
  - (iii) Seek any relief under any law relating to relief from debts or the protection of debtors.
  - (iv) Consent to the filing or institution of a Bankruptcy against the Company.
  - (v) File a petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable federal or state law relating to a Bankruptcy.
  - (vi) Seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official for the Company or a substantial part of its property.
  - (vii) Make any assignment for the benefit of creditors of the Company.
  - (viii) Admit in writing the Company's inability to pay its debts generally as they become due.
  - (ix) Take action in furtherance of any of the foregoing.
- (g) It will not amend or restate its organizational documents if such change would cause the provisions set forth in those organizational documents not to comply with the requirements set forth in this Article XII.
- (h) It will not own any subsidiary or make any investment in, any other Person.
- (i) It will not commingle its assets with the assets of any other Person and will hold all of its assets in its own name.
- (j) It will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the following:
- (i) The Indebtedness and any further indebtedness as described in Section 11.11 of the Loan Agreement with regard to Supplemental Instruments.
  - (ii) Customary unsecured trade payables incurred in the ordinary course of owning and operating the Mortgaged Property, provided such trade payables meet the following conditions:
    - (a) They are not evidenced by a promissory note.
    - (b) They are payable by their terms within sixty (60) days of the date incurred, and, provided the cash flow from the

Mortgaged Property is sufficient, are paid within that sixty (60) day time period.

(c) In the aggregate, they do not exceed at any time the Trade Payables Maximum.

(k) It will maintain its records, books of account, bank accounts, Financial Statements, accounting records and other entity documents separate and apart from those of any other Person and will not list its assets as assets on the financial statement of any other Person; provided, however, that the Company's assets may be included in a consolidated financial statement of its Affiliate provided that (A) appropriate notation will be made on such consolidated financial statements to indicate the separateness of the Company from such Affiliate and to indicate that the Company's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person, and (B) such assets will also be listed on the Company's own separate balance sheet.

(l) Except for Capital Contributions or capital distributions permitted under the terms and conditions of its organizational documents, it will only enter into any contract or agreement with any member, principal or Affiliate of the Company or any Guarantor, or any member, principal or Affiliate thereof, upon terms and conditions that are commercially reasonable and substantially similar to those that would be available on an arm's-length basis with third parties.

(m) It will not maintain its assets in such a manner that will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person.

(n) It will not assume or guaranty (excluding any guaranty that has been executed and delivered in connection with the Note) the debts or obligations of any other Person, hold itself out to be responsible for the debts of another Person, pledge its assets to secure the obligations of any other Person or otherwise pledge its assets for the benefit of any other Person, or hold out its credit as being available to satisfy the obligations of any other Person.

(o) It will not make or permit to remain outstanding any loans or advances to any other Person except for those investments permitted under the Loan Documents and will not buy or hold evidence of indebtedness issued by any other Person (other than cash or investment-grade securities).

(p) It will file its own tax returns separate from those of any other Person, unless the Company (A) is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable law or (B) is required by applicable law to file consolidated tax returns, and will pay any taxes required to be paid under applicable law.

(q) It will hold itself out to the public as a legal entity separate and distinct from any other Person and conduct its business solely in its own name (provided, however, that in the conduct of its business the Company shall be permitted to act in association with Affiliates and other related parties solely for marketing and management purposes, but not for the purpose of obtaining credit), will correct any known misunderstanding regarding its

separate identity and will not identify itself or any of its Affiliates as a division or department of any other Person.

(r) Provided the cash flow from the Mortgaged Property is sufficient, it will intend to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations and, provided the cash flow from the Mortgaged Property is sufficient, will pay its debts and liabilities from its own assets as the same become due.

(s) It will allocate fairly and reasonably shared expenses with Affiliates (including shared office space, if any) and use separate stationery (or that of an Affiliate and other related parties solely for marketing and management purposes, but not for the purpose of obtaining credit), invoices and checks bearing its own name, to the extent Borrower uses the same.

(t) It will not acquire obligations or securities of its members or Affiliates, as applicable.

(u) Except as contemplated or permitted by the property management agreement with respect to the Property Manager, it will not permit any Affiliate or constituent party independent access to its bank accounts.

(v) Provided the cash flow from the Mortgaged Property is sufficient, it will maintain a sufficient number of employees (if any) in light of its contemplated business operations and pay the salaries of its own employees, if any, only from its own funds.

(w) Provided the cash flow from the Mortgaged Property is sufficient, it will pay (or cause the Property Manager to pay on behalf of Borrower from Borrower's funds) its own liabilities (including salaries of its own employees) from its own funds.

(x) It will have a member that complies with the provisions of Section 6.13(b) of the Loan Agreement.

; provided, however, that nothing in this Section 12.1 will require any Member to make any equity contribution to Borrower.

12.2. Contributions. Nothing in this Article XII will require any Member of the Company or any Borrower Principal to make any equity contribution to the Company.

12.3. Member Loans. No Member of the Company shall make any loan or advance to the Company while the Loan remains outstanding.

12.4. Conflict. So long as the Loan remains outstanding, in the event of a conflict between the terms and conditions of this Agreement and Article XII of this Agreement, the parties agree that Article XII shall control interpretation of any inconsistency. However, the documents shall, to the extent possible, be construed to be consistent.



12.5. Termination of Provisions. At such time that all obligations set forth in the Loan Agreement and the promissory note executed by the Company to evidence the Loan have been paid and/or satisfied in full, this Article XII shall automatically terminate and be of no further force and effect.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Operating Agreement of TX Azure Apartments 1, LLC effective as of the day and year first above written.

MANAGING MEMBER:

**AZURE APARTMENTS-CCHA, LLC,**  
a Delaware limited liability company

By: Corpus Christi Housing Authority,  
a Texas public housing authority,  
its sole member

By:   
\_\_\_\_\_  
Gary R. Allsup, Chief Executive Officer

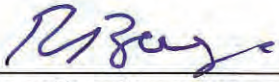
[Signatures continued on the following page.]

INVESTOR MEMBER:

**SUNDANCE BAY INCOME AND GROWTH  
OP, LP,**

a Delaware limited partnership

By: Sundance Bay Income and Growth Fund GP,  
LLC, a Delaware limited liability company,  
General Partner

By:   
Ryan Baughman, Manager

[Signatures continued on the following page.]



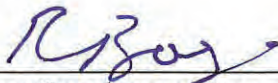
SPECIAL LIMITED MEMBER:

**TX AZURE APARTMENTS SLM, LLC,**  
a Utah limited liability company

By: Sundance Bay Income and Growth OP, LP  
a Delaware limited partnership, Member Manager

By: Sundance Bay Income and Growth Fund GP, LLC  
a Delaware limited liability company, General Partner

By:

  
\_\_\_\_\_  
Ryan Baughman, Manager

## EXHIBIT A

### DEFINITIONS

The following defined terms used in this Agreement shall have the meanings specified below:

“**AAA**” shall have the meaning provided in Section 11.14(d).

“**Accountants**” means the independent certified public accountants for the Company selected from time to time by the Investor Member.

“**Act**” shall have the meaning provided in Recital B.

“**Adjusted Capital Account**” means, with respect to any Member, the balance in such Member’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments: (i) credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulation §§1.704-2(g)(1) and 1.704-2(i)(5); and (ii) debit to such Capital Account the items described in Treasury Regulations §§1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6).

The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulation §1.704-1(b)(2) and shall be interpreted consistently therewith.

“**Affiliated Contract(s)**” means any contract, agreement or other arrangement between the Company and any Members or the Managing Member or any of their respective Affiliates, now existing or hereafter entered into.

“**Affiliated Person**” or “**Affiliate**” means, with respect to any Member, any (i) Person who owns directly or indirectly twenty percent (20%) or more of the beneficial ownership in any Member; (ii) the Immediate Family of, or the legal representative or trustee of, or trust principally for the benefit of, any such Person or any Person referred to in the preceding clause (i); (iii) any Entity in which the Member and/or one or more of the Persons referred to in the preceding clauses (i) and (ii) own directly or indirectly fifty percent (50%) or more of the beneficial ownership of such Entity, and (iv) any Entity which, for purposes of making day to day decisions controls, is controlled by or is in common control with the Member and/or one or more of the Persons referred to in the preceding clauses (i) and (ii).

“**Agreement**” means this Operating Agreement, as it may be further amended from time to time.

“**Annual Capital Budget**” shall have the meaning provided in Section 7.1.

“**Annual Operating Budget**” shall have the meaning provided in Section 7.1.

“**Approved Budget**” shall have the meaning provided in Section 7.1.

“**AT/AML Laws**” shall have the meaning provided in Section 1.8(a)(xiv).

“**Blocked Person**” means (i) any Person listed on the OFAC’s Specially Designated Nationals and Blocked Persons List; (ii) any Person (including a principal of an Entity) from January 1, 2011 or thereafter that has been (A) suspended or terminated from receipt of payments under any HUD assistance contract due to the Person’s fault or negligence; (B) convicted of a felony or is the subject of a pending complaint or indictment charging a felony with a “felony” defined as any offense punishable by imprisonment for a term exceeding one year, but does not include any offense classified as a misdemeanor under the laws of a State and punishable by imprisonment of two years or less; (C) suspended, debarred, issued a limited denial of participation, or otherwise restricted or precluded by any department or agency of the United States or any state government or agency thereof (the “**Governmental Agency**”) from doing business with a Governmental Agency; and/or (iii) any Person who is prohibited or limited by law, including a local policy of CCHA, from contracting with CCHA, including Members of Congress of the United States of America, a current member of CCHA’s Board or a close relative of a member of CCHA’s Board, and a current employee of CCHA (collectively, a “**Blocked Person**”).

“**Book Value**” means, with respect to any asset of the Company, such asset’s adjusted basis for federal income tax purposes, except that:

- (i) The initial Book Value for any asset contributed by a Member to the Company shall be the gross fair market value of such asset (not reduced for any liabilities to which it is subject or which the Company assumes), as such value is determined and for which credit is given (subject to adjustment for the aforesaid liabilities) to the contributing Member under this Agreement;
- (ii) The Book Values of all Property of the Company shall be adjusted to equal their respective gross fair market values at and as of the following times:
  - (a) the acquisition of an additional or new interest in the Company by a new or existing Member in exchange for other than a de minimis Capital Contribution by such Member;
  - (b) the distribution by the Company to a Member of other than a de minimis amount of any Property of the Company (other than money) as consideration for an interest in the Company, unless all the Members receive simultaneous distributions of undivided interests in any such distributed Property in proportion to their respective Percentage Interests in the Company;
  - (c) the liquidation of the Company within the meaning of Treasury Regulation §1.704-1(b)(2)(ii)(g);
  - (d) at such other times as the Special Limited Member shall determine in accordance with Treasury Regulations Sections 1.704-1(b) and 1.704-2;



provided, however, that adjustments pursuant to clauses (a) and (b) above shall be made only if the Special Limited Member reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members and with the Consent of the Managing Member; and

(iii) The Book Value of the Company Property shall be increased (or decreased) to reflect any adjustment to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulation §1.704-1(b)(2)(iv)(m) and Section 1(f) of Schedule IV; provided, however, that Book Value shall not be adjusted pursuant to this clause (iii) if an adjustment pursuant to clause (ii) above is necessary or appropriate in connection with the transaction that would otherwise result in an adjustment pursuant to this clause (iii).

If the Book Value of an asset has been determined or adjusted pursuant to the preceding clauses (i), (ii) or (iii), such Book Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Profit and Net Loss.

**“Business Day”** means any day excluding Saturday, Sunday and any day which shall be in the State of Texas a legal holiday or a day on which banking institutions in the State are authorized by law or executive action to close.

**“Capital Account”** means the capital account established and maintained for each Member. The Capital Account of each Member shall be (i) credited with all payments made to the Company by such Member on account of Capital Contributions (other than a deemed Capital Contribution under Section 2.3(a) (Funding Deficits) that was not contributed in cash or property by such Member), and as to any property other than cash or a promissory note of the contributing Member which may have been a Capital Contribution by a Member, the agreed fair market value of such property, net of liabilities assumed by the Company and any liabilities to which such contributed property is taken subject to, and by such Member’s allocable share of income and gain (including income and gain exempt from Federal income tax) of the Company, and (ii) charged with the amount of any distributions to such Member, and as to any distributions of property other than cash or a promissory note of a Member or the Company to a Member, by the agreed fair market value of such property, net of liabilities assumed by such Member and liabilities to which such distributed property is subject, and by such Member’s allocable share of losses and deductions and expenditures of the Company not deductible in computing taxable income and not properly chargeable to the capital account of the Company, as described in Code Section 705(a)(2)(B), or any successor provisions thereof, and all other expenditures of the Company described in Treasury Regulation §1.704-1(b)(2)(iv)(i) allocable to such Member, (iii) adjusted appropriately for a Member’s respective share of any upward or downward tax basis adjustment pursuant to Code Section 48(q)(6), and (iv) otherwise appropriately adjusted to reflect transactions of the Company and the Members. The Capital Accounts and adjustments thereto (including, without limitation, the determination of the amounts, character and timing thereof) shall be maintained and adjusted in accordance with applicable tax accounting principles, except that adjustments in respect of contributed or distributed property shall reflect its fair market value, and shall otherwise be treated

as provided in the Treasury Regulations under Code Section 704(b) and any successor provisions thereof.

For the purposes of this definition, a substitute Member shall be deemed to have made the Capital Contributions to the Company which were made by the Member whom such substitute Member succeeds, and to have received from the Company the credits, allocations and charges received from the Company by such former Member, such that the Capital Account of any such substitute Member will be the same as the Capital Account of such Member's assignor.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with such Treasury Regulations and shall be interpreted and applied in a manner consistent with such Treasury Regulations. The Members also shall make any appropriate modifications if unanticipated events might otherwise cause this Agreement not to comply with such Treasury Regulations.

**"Capital Contributions"** means the Capital Contribution made by the Members as described in Article II and Schedule I plus the amount of cash and the agreed value of any other property contributed to the Company by a Member in accordance with the provisions of this Agreement. Any reference in this Agreement to Capital Contribution shall include the Capital Contributions or, as the case may be, the appropriate portion thereof, previously made by a Member's transferor.

**"Capital Transaction"** means any of the following: (i) a sale, exchange, transfer, assignment or other disposition of all or any portion the Project or other assets of the Company (but not including occasional sales in the ordinary course of business of inventory, operating equipment or furniture, fixtures and equipment); (ii) any financing or refinancing of indebtedness of the Company; (iii) any condemnation or deed in lieu of condemnation of all or a portion of any Property of the Company; (iv) any collection in respect of property, hazard or casualty insurance (but not rental or business interruption insurance); or (v) any other transaction the proceeds of which, in accordance with generally accepted accounting principles, are considered to be capital in nature. The receipt by the Company of Capital Contributions from the Members shall not constitute a Capital Transaction.

**"Capital Transaction Proceeds"** means the net cash proceeds of a Capital Transaction, after deducting all expenses incurred in connection therewith and after application of any proceeds as required by any obligations binding on the Company to which the Company is subject, and otherwise as determined by the Members pursuant to Section 5.1 toward the payment of any indebtedness of the Company secured by the property that is the subject of a Capital Transaction or of any other indebtedness of the Company, and after the establishment of reserves for contingent or unforeseen liabilities deemed necessary or appropriate by the Members pursuant to Section 5.1.

**"CCHA"** shall have the meaning provided in Recital B.

**"Certificate"** shall have the meaning provided in Recital A.

**"Code"** means the Internal Revenue Code of 1986, as amended to the date hereof and as hereafter amended, and any successor provisions of federal law.

**“Consent of the Managing Member”** means the prior written consent or approval of the Managing Member or any permitted successor(s) to it as a Member.

**“Consent of the Members”** means the prior written consent of the Managing Member, the Special Limited Member, and the Investor Member.

**“Consent of the Special Limited Member”** means the prior written consent or approval of the Special Limited Member or any permitted successor(s) to it as a Member, which shall not be unreasonably withheld, delayed or conditioned.

**“Defaulting Member”** shall have the meaning provided in Section 3.11.

**“Defaulting Repurchase Option”** shall have the meaning provided in Section 9.2(a).

**“Deficit”** shall have the meaning provided in Section 2.3.

**“Depreciation”** means, for each Fiscal Year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable for federal income tax purposes with respect to an asset for such Fiscal Year or other period, except that if the Book Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year or other period, Depreciation shall be an amount that bears the same relationship to the Book Value of such asset as the depreciation, amortization, or other cost recovery deduction computed for tax purposes with respect to such asset for such period bears to the adjusted tax basis for such asset, or if such asset has a zero adjusted tax basis, Depreciation shall be determined with reference to the initial Book Value of such asset using any reasonable method selected by the Special Limited Member, but not less than depreciation allowable for tax purposes for such Fiscal Year.

**“Disposition Fee”** means one point five percent (1.5%) of the gross sales price in connection with a sale or disposition of the Project.

**“DLLCA”** shall have the meaning provided in Recital A.

**“Entity”** means any general partnership, limited partnership, corporation, trust, business trust, cooperative, limited liability company, limited liability partnership, cooperative, or association or any other form of incorporated or unincorporated business association which is a legal Entity under applicable law. For the avoidance of doubt, the term “Entity” shall include any housing authority under Chapter 392 of the Texas Local Government Code (“Chapter 392”) and any legal Entity under applicable law sponsored or ultimately controlled by a housing authority established pursuant to Chapter 392.

**“Event of Bankruptcy”** means, with respect to any Person any of the following: (i) if such Person shall file a voluntary petition in bankruptcy or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for himself under the present or any future federal bankruptcy act or any other present or future applicable federal, state, or other statute or law relating to bankruptcy, insolvency, or other relief for debtors, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver, conservator, or liquidator of itself or of all or any substantial part of its properties or its



interest in the Company (the term “acquiesce” as used herein includes but is not limited to the failure to file a petition or motion to vacate or discharge any order, judgment, or decree within thirty (30) days after such order, judgment or decree); or (ii) if a court of competent jurisdiction shall enter in an order, judgment or decree approving a petition filed against such Person seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state, or other statutes or law relating to bankruptcy, insolvency, or other relief for debtors and such Person shall acquiesce in the entry of such order, judgment, or decree, or if such Person shall suffer the entry of any order for relief under Title 11 of the United States Code and such order, judgment, or decree shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or if any trustee, receiver, conservator, or liquidator of such Person or of all or any substantial part of its properties or its interest in the Company shall be appointed without the consent or acquiesce of said Person and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive); or (iii) if such Person shall make an assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors.

**“Event of Default”** means, as to any Member, the occurrence of any of the following:

- (i) An Event of Bankruptcy shall occur as to such Member;
- (ii) Such Member gives notice to any governmental body or court of insolvency or pending insolvency or suspension of operations;
- (iii) A breach of Article VIII by such Member or any Person holding a direct or indirect interest in such Member;
- (iv) An act of fraud, misappropriation or embezzlement by such Member in respect of the Company or any of the funds of either Entity or of the Project or other property of either Entity;
- (v) An act of dishonesty, willful misconduct or gross negligence by such Member in the performance of its duties under this Agreement or by any Affiliate of such Member under any Affiliate Contract;
- (vi) Any breach or default by such Member in the performance of its duties or obligations under this Agreement not specified above or below in this definition, and such breach or default is not cured to the reasonable approval of the non-defaulting party within any cure period set forth herein or, if no cure period is otherwise provided herein, such breach or default is not cured within thirty (30) days after notice from the non-defaulting Member of such breach or default or such longer period as may be reasonably required given the nature of such breach or default, but not to exceed ninety (90) days, provided that in any such event the breaching or defaulting Member commences to cure any such breach or default as soon as reasonably possible and thereafter diligently pursues such cure to completion, but the extended cure period will only continue as long as neither the Company, the Project nor the non-defaulting Member’s Membership Interest is in

imminent danger or jeopardy of loss of a material governmental permit, imposition of a lien in excess of \$50,000, a material physical loss, notice from any lender to the Company or from any party under any Housing Agreement or any other Housing Requirements or any other material agreement of the Company of a default by the Company under its agreement(s) with such third party if such default is due to or arises out of the relevant breach or default by such Member hereunder, loss of tenants as a result of such breach or default, material damage or destruction, or material civil liability or violation of criminal law as a result of such breach, and the Company has not been made whole by the breaching Member within said cure period for any losses suffered by the Company as a result of such breach or default;

(vii) A material uncured default occurs and is continuing by the Company under any mortgage encumbering any of the Project, and any such default is the result of an act or omission of such Member of its duties or responsibilities under this Agreement;

(viii) The failure of such Member or Affiliate to timely file or to timely provide to the other Members any tax return or financial information to be filed and/or provided as required by Section 6.4 or Article VII (unless such failure is caused by such other Member); or

(ix) A default by such Member or any of its Affiliates under the Property Management Agreement or under any Affiliated Contract beyond applicable notice and grace periods thereunder, if any.

**“Financial Statements”** means the financial statements of the Company prepared in accordance with the requirements of Article VII, as audited and/or reviewed by the Accountants.

**“Fiscal Year”** shall have the meaning provided in Section 6.3.

**“Formation Date”** shall have the meaning provided in Recital A.

**“Ground Lease”** means the Ground Lease dated or to be dated on or about the date of this Agreement, between the Company and CCHA.

**“Hazardous Materials”** means any or all of the following: explosives, radioactive materials, petroleum, asbestos, asbestos containing materials, PCBs, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” or “toxic substances” under any applicable federal or state law or regulation.

**“Hazardous Materials Law”** means all applicable federal, state or local laws, ordinance, regulation or common law relating to any Hazardous Materials.

**“Housing Agreements”** means, collectively, the Ground Lease, and any governmental use agreement covering the Project.

**“Housing Requirements”** means all restrictions and all other requirements under any Housing Agreements, and the covenants, agreements and other obligations of the Company under Section 4.3 of the Ground Lease for the Project acquired or to be acquired by the Company, and any requirements to maintain the Real Estate Tax Exemption.

**“HUD”** means the United States Department of Housing and Urban Development.

**“Immediate Family”** means, with respect to any individual, his or her parents, spouse, descendants, or spouse of a descendant, and any trusts principally for the benefit of any of the foregoing; with respect to any trust, any beneficiary of such trust or any member, as described above, of the Immediate Family of any such beneficiary; and any Entity or Entities all of the beneficial owners of which are any one or more of such individuals and trusts described immediately above.

**“Improvements”** means all improvements to the Real Property for the 240-unit multi-family housing project located on the Real Property, as the same may be further rehabilitated, together with all fixtures, tenant improvements and appurtenances now or later to be located on the Real Property and/or in such improvements.

**“Interim Capital Transaction”** means any Capital Transaction other than a Terminating Capital Transaction.

**“Investor Member”** shall have the meaning provided in the Preamble.

**“Investor Obligations”** shall have the meaning provided in Section 3.1(g).

**“JAMS”** shall have the meaning provided in Section 11.14(b).

**“Laws”** shall have the meaning provided in Section 3.1(a)(x).

**“Lender”** means an individual or financial institution that provides Loans to the Company from time to time, their successors and/or assigns.

**“Lending Rate”** shall mean the rate provided in the Loan Agreement but in no event higher than the highest rate permitted by applicable law.

**“Loan”** means those certain loans made by the Lender to the Company from time to time, which are secured by, among other things, a deed of trust on the Real Property.

**“Loan Agreement”** means the those certain agreements made from time to time by and between Company and Lender.

**“Loan Documents”** means any note, mortgage, deed of trust and any other document executed by the Company, now or in the future, evidencing or securing the Loan or any other loan to the Company or to which any of the Real Property or any of any such Entity’s other Property is bound.

**“Major Decisions”** shall have the meaning provided in Section 3.2.



**“Managing Member”** means the Person named as a **Managing Member** in the Preamble of this Agreement and to any other Person who becomes an additional, substitute or replacement **Managing Member** as permitted by this Agreement. “Managing Members” shall refer collectively to the Person named as the Managing Member in this Agreement and to any other Persons who become additional, substitute or replacement Managing Members as permitted by this Agreement.

**“Managing Member Restrictions”** shall have the meaning provided in Section 3.1.

**“Member”** means each of the Managing Member, the Special Limited Member and the Investor Member, and each of their respective permitted successors and assigns, and **“Members”** shall refer collectively to the Special Limited Member and the Investor Member and each of their respective permitted successors and assigns.

**“Membership Interests”** means the interest of a Member in the Company, including legal and beneficial interests and the rights, duties and obligations of a Member.

**“Member Minimum Gain”** means an amount, with respect to each Member Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Treasury Regulation §1.704-2(i)(3).

**“Member Nonrecourse Debt”** means any Company indebtedness that would be a Nonrecourse Liability if such debt were not attributed to a loan made or guaranteed by a Member within the meaning of Treasury Regulation §1.704-2(b)(4), or by a Person related to a Member, within the meaning of Treasury Regulation §1.752-4(b).

**“Member Nonrecourse Deductions”** has the meaning set forth in Treasury Regulation §1.704-2(i)(2). The amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt for a Company taxable year equals the excess, if any, of the net increase, if any, in the amount of Member Minimum Gain attributable to such Member Nonrecourse Debt during that fiscal year over the aggregate amount of any distributions during that taxable year to the Member that bears the economic risk of loss for such Member Nonrecourse Debt to the extent such distributions are from the proceeds of such Member Nonrecourse Debt and are allocable to an increase in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulation §1.704-2(i)(2).

**“Net Cash Flow”** of the Company, with respect to any relevant period, means the amount by which (a) the gross cash receipts of the Company during such period from all sources whatsoever, including, without limitation, rents of every kind and nature whatsoever, operating expense, tax and similar periodic tenant reimbursements, contributions and charges (but not including any tenant reimbursements or other payments which are not for the actual occupancy of an apartment or other premises or items used therein, thus excluding, without limitation, any payments for damages, any form of deposits or security and any other special reimbursements or payments), and all other revenues derived from or received on account of the operation of the Project, and any amounts released from the reserves described in clause (v) below, but excluding all of the following: security deposits (unless and until applied to rental obligations of tenants

under leases, but not if applied to damages or other losses caused by tenants), Capital Contributions, the proceeds of a Capital Transaction (other than proceeds of any other third party debt used to pay operating expenses of the Project), insurance proceeds and condemnation awards (other than rental or business interruption insurance proceeds), exceed (b) the aggregate of (i) all cash expenditures for operating costs and expenses and capital expenditures of the Company (including the Asset Management Fee and Ground Lease Fee accrued for the applicable year but excluding charges for depreciation, amortization and other expenses not paid in cash, and any expenditures from the reserve described in clause (v) below or from any other reserves established by the Company), (ii) all costs and expenses during such period in connection with the recovery of insurance proceeds or condemnation awards (except to the extent deducted in determining capital proceeds), (iii) all management and leasing fees as described in or otherwise permitted by this Agreement, including but not limited to the Property Management Fee, (iv) all debt service, including principal, interest, and other amounts paid, deposited or payable during such period on all indebtedness of the Company, and (v) any reserves required to be established or maintained for the relevant measuring period pursuant to any Loan Documents or other agreements binding on the Company or by which any of them or the Project is bound for real estate taxes, operating expenses, repairs, replacements, capital improvements, restoration and renovation, and any other reserves contained in the Approved Budget, all to the extent actually so set aside during such Fiscal Year, to the extent funded from receipts which are included in the definition of Net Cash Flow.

“**Net Profit**” and “**Net Loss**” means, for each taxable year or other period, an amount equal to the Company’s taxable income or loss for such taxable year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

- (i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profit or Net Loss pursuant to this definition shall be added to such taxable income or loss;
- (ii) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures under Treasury Regulation §1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Net Profit or Net Loss pursuant to this definition shall be subtracted from such taxable income or loss;
- (iii) Gain or loss resulting from any disposition of any Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of such property rather than its adjusted tax basis;
- (iv) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation;
- (v) In the event the Book Value of any Company asset is adjusted as provided in **Schedule IV**, the amount of such adjustment shall be taken into account as gain

or loss from the disposition of such asset for purpose of computing Net Profit and Net Loss; and

(vi) Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Paragraphs 1 and 2 of **Schedule IV** hereof shall not be taken into account in computing Net Profit or Net Loss for purposes of allocations under Sections 5.1, and 5.2 and if otherwise included in the calculation pursuant to the above, shall be appropriately added to or deducted from, as the case may be, such amounts so as to not be included in the calculations of Net Profits and Net Losses.

If the Company's Net Profit or Loss for any Fiscal Year, as determined in the manner provided above, is a positive amount, such amount shall be the Company's Net Profit for such Fiscal Year, and, if negative, such amount shall be the Company's Net Loss for such Fiscal Year.

**"Net Profits and Net Losses from a Capital Transaction"** means the Net Profit or Net Loss from any such Capital Transaction, and in determining such Net Profit or Net Loss, the cost and expenses of such Capital Transaction shall be deducted.

**"Net Profits and Net Losses from Operations"** means Net Profits or Net Losses determined as provided in the definition of Net Profits and Net Losses above except that Net Profit and Net Loss from Capital Transactions shall not be taken into account.

**"Non-Discretionary Expenditures"** means funds needed to meet any or all of the following obligations of the Company which funds are not available from receipts or reserves of the Company or from borrowings of the Company, and which funds the Special Limited Member is not obligated to expend for other identified obligations of the Company and which are not already specifically committed or reserved for other commitments of the Company, it being agreed that funds of the Company shall first be used for the following obligations (without priority among them) to the exclusion of other obligations of the Company:

- (i) Property Management Fee;
- (ii) real estate taxes and assessments on any Property of the Company;
- (iii) payments required to be made pursuant to any mortgage on, or any ground lease of, the Real Property or to make payments on any other indebtedness of the Company, as well as the expense of curing any default under any such mortgage or ground lease or other indebtedness;
- (iv) insurance premiums;
- (v) any alteration, repair or replacement required by any present or future law, ordinance, order, rule, regulation or requirement of any federal, state or municipal government, department, commission, board or officer, or any order, rule or regulation of the National Board of Fire Underwriters or any other body exercising similar functions;



(vi) any amount required to be paid pursuant to any final order, judgment, or decree of any court or governmental body having jurisdiction; and

(vii) any amount required to fulfill any contractual obligations of the Company with any Entity which is not a Member or an Affiliate of a Member, including without limitation, any obligations under the Housing Agreements.

**“Nonrecourse Deductions”** has the meaning set forth in Treasury Regulation §1.704-2(b)(1) and 1.704-2(c). The amount of Nonrecourse Deduction for a taxable year equals the net increase, if any, in the amount of Partnership Minimum Gain during that taxable year over the aggregate amount of any distributions during that taxable year of proceeds of a Nonrecourse Liability that are allocable to an increase in Partnership Minimum Gain, determined according to the provisions of Treasury Regulation §1.704-2(c).

**“Nonrecourse Liability”** has the meaning set forth in Treasury Regulation §1.752-1(a)(2).

**“OFAC”** means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

**“Partially Adjusted Capital Account”** means, as to each Member as of the end of the applicable period for which the calculation is to be made, the Capital Account of such Member as of the beginning of the applicable period, adjusted as provided for elsewhere in this Agreement for all contributions and all distributions made as to the period ending on the last day of the applicable period and for any allocations to be made for the applicable period pursuant to **Schedule IV**, but before making any allocations pursuant to **Section 5.1(a)**.

**“Partnership Minimum Gain”** has the meaning set forth in Treasury Regulation §§1.704-2(b) (2) and 1.704-2(d).

**“Partnership Representative”** shall have the meaning provided in **Section 6.4(c)**.

**“Patriot Act”** shall have the meaning provided in **Section 1.8**.

**“Percentage Interest”** shall be the percentage interest of each Member in the Company set forth in **Schedule I**, as such shall be amended from time to time to reflect the withdrawal or admission of Members, and any change in the Percentage Interest of any Member for any other reason.

**“Person”** means any natural person or any Entity and, where the context so admits, the heirs, executors, administrators, legal representatives, successors and/or assigns of any such Person.

**“Preferred Capital Contribution”** shall have the meaning provided in **Section 2.3(a)**.

**“Premises”** shall have the meaning given it in the Ground Lease.

**“Prime Rate”** means a floating daily variable rate of interest published from time to time by the Wall Street Journal (or a similar agreed upon publication if unavailable), as its prime rate for the United States of America without reference to prime interest rates of any other publications

or of any financial institutions. Any change in the Prime Rate for purposes of this Agreement shall take effect on the day of the publication by the Wall Street Journal of its updated Prime Rate.

**“Project”** means the Real Property and the Improvements and all furnishings, equipment and personal property used in connection with the operation thereof.

**“Project Documents”** means any and all documents (including, without limitation, the Loan Documents) relating to the financing, development, use or operation of the Project, as any such documents may be amended from time to time.

**“Property”** shall mean all of the assets owned or held by the Company from time to time.

**“Property Management Agreement”** means, individually and collectively (as the context may require), the property management agreements in effect as to the Project, subject to the prior approval of the Special Limited Member. The Special Limited Member shall cause any Property Management Agreement to include language requiring the Property Manager to ensure that no tenant or potential tenant is discriminated against based on source of income.

**“Property Management Fee”** means the aggregate fee paid by Company to the Property Manager equal to no more than 5% of the gross revenues from the Project, as set forth in the Property Management Agreement.

**“Property Manager”** means, individually and collectively (as the context may require), each and every Person which at any time and from time to time is the property manager under a Property Management Agreement.

**“Real Estate Tax Exemption”** shall mean that certain exemption from ad valorem taxes pursuant to Section 11.11 of the Texas Tax and Texas Local Government Code Section 392.

**“Real Property”** means the direct or indirect interest or interests, from time to time, of the Company in that certain real property described in **Schedule II** attached hereto, referred to herein as “Azure Apartments”, all appurtenances thereof, and all personal property used in connection with the ownership and operation thereof, and any other property contiguous thereto in which the Company now has or hereafter acquires an interest.

**“Replacement Managing Member”** shall have the meaning provided in Section 3.7.

**“Replacement Reserve”** means an amount required by the Lender under the terms of the Loan Documents.

**“Replacement Reserve Account”** means a segregated Company bank account established at a bank selected and controlled by the Special Limited Member to hold the Replacement Reserve, unless required to be held by the Lender.

**“Returns”** shall have the meaning provided in Section 6.4(a).

**“Securities Act”** means the U.S. Securities Act of 1933, as amended (together with the rules and regulations promulgated thereunder).

“**SRO**” means a self-regulatory organization.

“**Supportive Services Agreement**” has the meaning provided in 3.2(e).

“**Target Balance**” means, as to each Member, as of the end of the applicable period for which the calculation is to be made, a balance in such Member’s Capital Account equal to the amount such Member would receive in liquidation of the Company if all the assets of the Company were sold (on the last day of the applicable period) for their respective Book Values and the proceeds of such sale, including any cash on hand, were applied pursuant to Section 4.3 (herein referred to as a “**Hypothetical Liquidation Event**”), said balance then reduced by the amount of income, loss and gain, or items thereof, that would be allocated to such Member pursuant to Schedule IV upon the occurrence of a Hypothetical Liquidation Event. In addition, in calculating upon a Hypothetical Liquidation Event the effect of satisfaction of any liabilities of the Company which are either Nonrecourse Liabilities or Member Nonrecourse Debt, such liability satisfaction shall be limited to the Book Value of the assets securing each such liability.

“**Terminating Capital Transaction**” means a sale, exchange, condemnation, eminent domain taking, casualty or other disposition of all or substantially all of the assets of the Company and shall include the receipt and collection of notes, if any, and payments thereon or any other consideration received or to be received by the Company upon a sale, exchange or other disposition of all or substantially all of the assets of the Company, and all activities reasonably related to any of the above including activities which were included in the dissolution, termination and winding-up of the affairs of the Company (but not in any event including therein the operation and the winding-up of the Company affairs).

“**Transfer**” or “**Transferred**” or any other capitalized grammatical variation thereof, means the sale, exchange, issuance, assignment, distribution, encumbrance, hypothecation, gift, pledge, retirement, resignation, or other Withdrawal, transfer or other disposition or alienation, whether absolute, contingent or collateral, in any way of all or any part of any Membership Interest in the Company or, as the context may require, an interest in any Entity which holds a Membership Interest in the Company. Transfer shall specifically, without limitation of the above, include assignments and distributions resulting from death, incompetency, bankruptcy, liquidation and dissolution.

“**Treasury Regulation(s)**” means any proposed, temporary and/or final Federal income tax regulations promulgated by the United States Department of the Treasury, as such may have been or may hereafter be amended from time to time, and/or any corresponding provisions of any succeeding law and/or regulation, and all relevant and applicable revenue rulings, revenue procedures, notices and other official promulgations.

“**Withdrawal**” (including the terms “**Withdraw**,” “**Withdrawn**” and “**Withdrawing**”) means, as to a Member, the occurrence of such Member’s death, the adjudication of insanity such Member’s or incompetence, the occurrence with respect to such Member of an Event of Bankruptcy, dissolution or liquidation, or the voluntary or involuntary withdrawal or retirement of such Member from the Company for any reason, including Managing Member’s and/or the Special Limited Member’s inability to continue serving as a Managing Member or the Special Limited Member due to any provision of applicable law or this Agreement.



The definitions set forth in the DLLCA shall be applicable, to the extent not inconsistent herewith, to define terms not defined herein and to supplement definitions contained herein.

*(End of Schedule)*

SCHEDULE I  
OPERATING AGREEMENT  
OF TX Azure Apartments 1, LLC

<u>Member</u>	<u>Percentage Interest</u>
<b><u>Managing Member</u></b> Azure Apartments-CCHA, LLC c/o Corpus Christi Housing Authority 3701 Ayers Street Corpus Christi, Texas 78415 Attention: Chief Executive Officer	.005%
<u>With a copy to:</u> Anderson, Lehrman, Barre & Maraist, LLP 1001 Third Street, Suite 1 Corpus Christi, Texas 78404 Attention: R. Bryan Stone, Esq.	
<b><u>Investor Member:</u></b> Sundance Bay Income and Growth OP, LP 1240 E 2100 S STE 300 Salt Lake City, UT 84106	99.495%
<u>With a copy to:</u> Holland & Knight LLP 1180 West Peachtree Street, NW, Suite 1800 Atlanta, Georgia 30309 Attention: Allison Dyer Email: allison.dyer@hklaw.com	
<b><u>Special Limited Member:</u></b> <b>TX Azure Apartments SLM, LLC</b> 1240 E 2100 S STE 300 Salt Lake City, UT 84106	.50%
<u>With a copy to:</u> Holland & Knight LLP 1180 West Peachtree Street, NW, Suite 1800 Atlanta, Georgia 30309 Attention: Allison Dyer Email: allison.dyer@hklaw.com	

*(End of Schedule)*

SCHEDULE II  
OPERATING AGREEMENT  
OF  
TX Azure Apartments 1, LLC

Real Property Description

Lot One (1), Block One (1), SAN MARIN, a subdivision situated in the City of Corpus Christi, Nueces County, Texas, commonly known as San Marin Apartments, as shown by the map or plat thereof, recorded in Volume 57, Page 193, Map Records of Nueces County, Texas and being more particularly described by metes and bounds as follows, to-wit:

All that certain tract, piece or parcel of land containing 9.5316 acres (415,196 sq. ft.) of land, more or less, and being portion of that certain 90.043 acre tract deeded to Tristar Development, Inc., recorded in Volume 1919, Page 216, Deed Records of Nueces County, Texas:

BEGINNING at a found 5/8th inch iron rod being the most Easterly corner of Lot 1, Block 1, of said San Marin, same being a point in the Northwest line of South Staples Street (F.M. 2444) (100 feet wide);

THENCE South 28 degrees 56 minutes 00 seconds West, along said Northwest line of South Staples Street, a distance of 150.00 feet to a found 5/8th inch iron rod for corner of the herein described tract, said corner also being the most Easterly corner of Lot 2, Block 1, of said San Marin;

THENCE North 61 degrees 04 minutes 00 seconds West, departing said line along the Northeasterly line of said Lot 2, a distance of 150.00 feet to a found 5/8th inch iron rod for corner of the herein described tract;

THENCE South 28 degrees 56 minutes 00 seconds West, along the Northwesterly line of said Lot 2, a distance of 200.00 feet to a set 5/8th inch iron rod for corner of the herein described tract;

THENCE South 61 degrees 04 minutes 00 seconds East, along the Southwesterly line of said Lot 2, a distance of 150.00 feet to a found 5/8th inch iron rod returning to said Northwest line of South Staples Street for corner of the herein described tract, said corner also being the most southerly corner of said Lot 2;

THENCE South 28 degrees 56 minutes 00 seconds West, along said Northwest line of South Staples Street, a distance of 433.23 feet to a set 5/8th inch iron rod for corner, a point of curvature of a curve to the right;

THENCE in a Southwesterly direction, around a curve to the right whose radius equals 15.00 feet, having a central angle of 89 degrees 58 minutes 35 seconds, an arc length of 23.56 feet, a chord bearing South 73 degrees 56 minutes 43 seconds West, 21.21 feet to a set 5/8th inch iron rod for corner in the Northeast line of Henderson Street (60 feet wide), the most Southerly corner of the herein described tract;



THENCE North 61 degrees 02 minutes 35 seconds West, along the Northeast line of said Henderson Street, a distance of 627.27 feet to a set 5/8th inch iron rod for corner, a point of curvature of a curve to the right;

THENCE in a Northwesterly direction, around a curve to the right whose radius equals 10.00 feet, having a central angle of 90 degrees 00 minutes 15 seconds, an arc length of 15.71 feet, a chord bearing North 16 degrees 02 minutes 42 seconds West, 14.14 feet to a set 5/8th inch iron rod for corner, the most Westerly corner of the herein described tracts;

THENCE North 28 degrees 57 minutes 10 seconds East, along the Northwest line of said San Marin, a distance of 557.29 feet to a found 5/8th inch iron rod for corner of the herein described tract, same being a point in the Southwesterly line of said Stonehenge Unit 1 Subdivision;

THENCE South 61 degrees 02 minutes 50 seconds East, along said Southwesterly line, a distance of 326.00 feet to a found 5/8th inch iron rod for corner of the herein described tract;

THENCE North 28 degrees 57 minutes 10 seconds East, along said Southwesterly line, a distance of 230.89 feet to a found 5/8th inch iron rod for corner of the herein described tract;

THENCE South 61 degrees 02 minutes 50 seconds East, along a Southwesterly line, a distance of 326.00 feet returning the POINT OF BEGINNING of the herein described tract containing 9.5316 acres (415,196 sq. ft.) of land, more or less.

.

SCHEDULE III  
OPERATING AGREEMENT  
OF  
TX Azure Apartments 1, LLC

Major Decisions

The following are Major Decisions requiring the Consent of the Members:

1. As to the Company, the adoption of, and any amendment or other change in, the Approved Budget or making, authorizing or otherwise incurring any expenditures not within the Approved Budget; provided, however, the Special Limited Member shall be entitled to make the following expenditures relating to the Project regardless of whether the same is provided for in the Approved Budget: expenditures incurred as a result of an emergency posing imminent danger to persons or property or an emergency requiring an immediate response under applicable law (and in the event of any such emergency expenditure, the Special Limited Member shall reasonably promptly notify the Investor Member).
2. As to the Company, the approval or entry into (a) any property management agreement, and (b) any operating or vendor contracts which do not contain any unrestricted cancellation right, without cause and, without penalty or fee, on not more than one month's prior written notice, and, without limitation of clause 12 below, any contract or other agreement requiring payments in excess of \$100,000 in a twelve (12) month period, and any material amendment or other modification to, or termination of, any such property management agreement or other contract or agreement.
3. The creation of and any additions to reserves of the Company, except as provided in the Approved Budget or as required under any Loan Documents or by any agreement which the Company is a party to or by which it or the Project is bound.
4. Changing or permitting to be changed in any substantial way the accounting process and procedures employed in keeping the books of account or preparing financial statements with respect to the operation or management of the Company or the Project.
5. Hiring or terminating the Accountants, any attorneys, consultants, or other third party professionals except as permitted by the Approved Budget, and, even if within the Approved Budget, the approval of the Person retained where the estimated cost of such retention in any instance exceeds \$100,000.
6. Subject to the provisions of Section 3.2(b), Section 3.2(c), and Section 3.2(d) any change in the current use or income mix of the Project and any increases or decreases in the scheduled rent charged for any apartments in the Project; subject, however, to the provisions of Section 3.2(b), Section 3.2(c), and Section 3.2(d).
7. Approval of the standard form of occupancy lease and any material changes thereto, the entering into any lease for the Project, other than a lease of a residential apartment to an

occupant, or a lease for laundry facilities on the Project, subject to any other applicable limitations or restrictions under any other provisions of this Agreement.

8. The borrowing of, or agreeing to borrow, any money or otherwise incurring or agreeing to incur any indebtedness on behalf of the Company, whether on a secured or unsecured basis, or encumbering, hypothecating or otherwise incurring a mortgage, deed of trust or other lien upon the Project or any other property of the Company, all material documents in connection with any of the above, the material modification of the terms of any borrowing or indebtedness, and the retention or termination of any mortgage broker, finder or similar agent by or on behalf of the Company in connection with any of the above.

9. Any decision regarding the disposition, repair, rebuilding, restoration, or redevelopment of the Project following a casualty or taking or eminent domain proceeding, or the use of the proceeds of any such casualty, taking or proceeding, and the settlement of, and the taking of all actions as to the recovery of, or any claim related to, the payment or potential payment of any insurance proceeds or the payment of any awards or damages arising out of the exercise of eminent domain or any other proceedings involving any governmental authority, and all decisions as to the use or other disposition of any such proceeds, but only to the extent that any of the foregoing involves one or a series of amounts or payments that exceed \$100,000 in the aggregate over any twelve (12) month period.

10. The approval of (i) any and all additions, rebuilding, restoration, renovation or remodeling of the Project or any portion thereof (“**Capital Projects**”), and any material additions, amendments, change orders and modifications to any of the foregoing, but only to the extent that the foregoing involves one or a series of payments that exceed \$100,000 in the aggregate over any twelve (12) month period; and (ii) all construction, architectural and other contracts and agreements for, and all plans and specifications and drawings for, any such Capital Projects.

11. As to the Company, lending funds or extending credit to, or guarantying the obligation of, any Person.

12. As to the Company, commencing, making a counterclaim, and all material decisions as to the defense of, compromising, agreeing or consenting to, settling, discontinuing, releasing, or taking, or determining not to take, any other material action in any civil litigation, arbitration, mediation or other legal or quasi-legal proceedings or counterclaims (other than mandatory counterclaims) or any other dispute, and retaining or terminating counsel and other professionals and consultants in connection therewith, other than litigation, arbitration and other legal or quasi-legal proceedings (i) with tenants, subtenants, or other occupants of the Project in the ordinary course involving otherwise approved lease terminations, etc., where it is not anticipated that the proceedings will involve counter-claims or other material controversies, (ii) with service providers or others not involving claims or counterclaims in excess of \$100,000, and (iii) as to any matter which is fully covered by insurance, without regard to any deductible amounts applicable, unless such deductible amount exceeds \$100,000 or where the total amount in controversy is greater than \$500,000, regardless of the amount of the Company’s uninsured exposure.



13. The acquisition, sale, transfer, conveyance, mortgage, pledge or other assignment, absolute or collateral, or other disposition, or the granting of any options, rights of offer or refusal of any nature whatsoever, of any or all or substantially all of, or any portion of, any of the Project or of any other assets of the Company, in connection with the liquidation of the Company's assets, after dissolution, or the determination to defer the sale of any of the assets of the Company after dissolution of the Company.

14. Entering into, amending, modifying, or terminating any contract or agreement between the Company and the Special Limited Member and/or Managing Member or any of its Affiliates, and then only if: (i) the compensation paid by the Company for such goods or services is paid only for goods and services actually provided to the Company and only after such goods or services have been provided, (ii) the goods or services to be furnished shall be reasonably necessary to the Company and otherwise would have been obtained from an unaffiliated Person, (iii) the terms for the furnishing of such goods or services shall be at least as favorable to the Company as would be obtainable in an arms-length transaction with an affiliated Person, and (iv) all arrangements for the provisions of such goods or services to the Company by the Special Limited Member and/or the Managing Member or any of its Affiliates has been fully disclosed to and received Consent of the Investor Member and the Special Limited Member or the Managing Member, as applicable, with the knowledge of the Investor Member that such arrangement is with the Special Limited Member and/or the Managing Member or an Affiliate of the Special Limited Member and/or the Managing Member.

15. Entering into, amending, or terminating any easement, restrictive covenant, or other instrument or agreement affecting title to the Project other than routine utility easements.

16. The making of any material tax elections or the making of a tax election or adoption of any tax accounting method that disproportionately affects the Investor Member as compared to the other Members and the settlement of any claimed deficiency in connection with any tax return of the Company.

17. The admission of an additional Member, except as part of a Transfer permitted by Article VIII, the sale or issuance of any equity interest in the Company (including options, warrants and other convertible interests).

18. The merger or consolidation of the Company or the business of the Company.

19. Changing the purposes of the Company, or engaging in any other business or activity not included within the purposes of the Company, or taking any action which, or failing to take any action where the failure to take such action, would materially adversely affect the ability of the Company to carry its ordinary business.

20. Dissolving the Company or the taking of any actions in contemplation thereof, other than as provided in Article X, or the taking of any actions or entering into any transaction which would have the effect of dissolving the Company or adopting a plan of liquidation pursuant to Article X with respect to the Project.

21. Performing any act in contravention of this Agreement or taking, or failing to take any act the result of which would be to cause a breach of this Agreement.

22. Filing or responding to any filing of a petition by or against the Company for a proceeding under any bankruptcy, insolvency, reorganization or similar act, or the filing of any consent to any such proceeding against the Company, or any decision not to contest the filing of any such proceeding against the Company, or taking any action under applicable bankruptcy, insolvency or similar laws with respect to the Company, including, without limitation, making a general assignment for the benefit of creditors or appointing or acquiescing in the appointment of a custodian, receiver or trustee for all or any part of the assets of the Company.

23. Any matter in any way relating to the Company which is not either a matter which is part of the day-to-day operation of the Project or the day-to-day maintenance of the existence of the Company.

24. Any amendment, modification, enforcement, extension, or termination of, or waiver under, or the exercise by the Company, of any of its rights, options or consent or approval rights under the Ground Lease.

25. Entering into, and enforcing the Company's rights and remedies under, all leases, agreements and applicable deeds, easements, conditions, covenants and restrictions, loan documents, insurance policies, management agreements and service contracts (including, without limitation, any utility agreements, laundry leases, and all other agreements relating to the day-to-day operation of the Project), and instituting as necessary, and defending, any claims, demands or legal proceedings involving the Company through legal counsel engaged in accordance with the other terms of this Agreement;

*(End of Schedule)*

SCHEDULE IV  
OPERATING AGREEMENT  
OF  
TX Azure Apartments 1, LLC

Tax Allocation and other Tax Provisions

1. Special Allocations. The following special allocations shall be made in the following order:

(a) Nonrecourse Deductions. Nonrecourse Deductions for any taxable year or other period shall be allocated among the Members in proportion to each Member's Percentage Interest in the Company. Solely for purposes of determining each Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Treasury Regulation §1.752-3(a)(3), each Members' interest in Company profits shall be equal to its Percentage Interest in the Company.

(b) Minimum Gain Chargeback. Except as otherwise provided in Treasury Regulations §1.704-2(f), notwithstanding any other provision of Article V or this **Schedule IV**, if there is a net decrease in Partnership Minimum Gain during any taxable year, each Member shall be specially allocated items of Company income and gain for such taxable year (and, if necessary, subsequent taxable years) in an amount equal to each such Member's share of the net decrease in Partnership Minimum Gain, as such share is determined in accordance with Treasury Regulation §1.704-2(g). The items of Company income and gain to be so allocated shall be determined in accordance with Treasury Regulation §§1.704-2(f)(6) and §1.704-2(j)(2). This Paragraph 1(b) is intended to comply with the minimum gain chargeback requirement of Treasury Regulation §1.704-2(f) and shall be interpreted consistently therewith, including the exceptions to the minimum gain chargeback requirements set forth in Treasury Regulations §§1.704-2(f)(2) and (3).

(c) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions, as defined in and determined under Treasury Regulation §1.704-2(i)(2), for any taxable year or other period shall be allocated to the Member or Members which bear the economic risk of loss with respect to Member Nonrecourse Debt, to which such Member Nonrecourse Deductions are attributable, in accordance with Treasury Regulation §1.704-2(i)(1).

(d) Member Minimum Gain Chargeback. Except as otherwise provided in Treasury Regulation §1.704-2(i)(4), notwithstanding any other provision of Article V or this **Schedule IV** (other than Paragraph 1(b) of this **Schedule IV**), if there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Member who has a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulation §1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to each such Member's share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Debt, said aggregate net decrease determined in accordance with Treasury Regulation §1.704-2(i)(4). The items of Company income and gain to be so allocated shall be determined in accordance with Treasury Regulation §1.704-2(i)(4) and



1.704-2(j)(2)(ii). This Paragraph 1(d) is intended to comply with the Member Minimum Gain chargeback requirement in Treasury Regulation §1.704-2(i)(4) and shall be interpreted consistently therewith, including the exceptions set forth in Treasury Regulation §1.704(f)(2) and (3) to the extent applicable.

(e) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulation §§1-704-1(b)(2)(ii)(d)(4), (5) or (6), respectively, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account deficit of such Member as quickly as possible, provided that an allocation pursuant to this Paragraph 1(e) shall be made only if and to the extent that such Member would have an Adjusted Capital Account deficit after all other allocations provided for in Article V and this Schedule IV have been tentatively made as if this Paragraph 1(e) were not in this Agreement.

(f) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulation §1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to said Section of the Regulations.

2. Regulatory Compliance; Curative Allocations. The allocations set forth in Paragraphs 1(a) through (f) of this Schedule IV (the “**Regulatory Allocations**”) are intended to comply with certain requirements of Treasury Regulations Sections 1.704-1(b) and 1.704-2, and shall be interpreted in a manner consistent with such Treasury Regulations. The Regulatory Allocations may not be consistent with the manner in which the Members intend to divide Company distributions, as reflected by Article IV. Accordingly, the Special Limited Member, is authorized to further allocate Profits, Losses, items of each thereof and other items among the Members in a reasonable manner so as to prevent the Regulatory Allocations from distorting the manner in which Company distributions would be divided among the Members under Article IV but for application of the Regulatory Allocations. In general, such reallocation will be accomplished by specially allocating other Profits, Losses and items of income, gain, loss and deduction, to the extent they exist, among the Members so that the net amount of the Regulatory Allocations and the special allocations made under this Paragraph 2 to each Member is zero. This may be accomplished in any reasonable manner that is consistent with Code Section 704 and the related Treasury Regulations.

3. Tax Allocations.

(a) In accordance with Code Section 704(c) and the Regulations thereunder, depreciation, amortization, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Book Value, such allocation to be made in any manner

which is permissible under said Code Section 704(c) and the Regulations thereunder and under Code Section 704(b) as determined between the Managing Member, with the Consent of the Special Limited Member, and the contributing Member.

(b) In the event the Book Value of any Company asset is adjusted pursuant to the definition thereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Book Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

(c) Except as otherwise provided in Paragraphs 3(a) and (b) above, for federal income tax purposes, each item of income, gain, loss and deduction shall be allocated among the Members in the same manner as its correlative item of “book” income, gain, loss or deduction has been allocated pursuant to the other provisions of Article V and this **Schedule IV**.

(d) Any elections or other decisions relating to such allocations shall be made in a manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to Paragraphs 3(a), (b) and (c) above are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member’s Capital Account or share of Net Profit, Net Loss or items of either thereof, or distributions pursuant to any provision of this Agreement.

#### 4. Other Allocation Rules.

(a) For purposes of determining the Net Profit, Net Loss, or any other items allocable to any period, Net Profit, Net Loss, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Special Limited Member using any permissible method under Code Section 706 and the Regulations thereunder.

(b) Except as otherwise provided in this Agreement, all items of Company income, gain, loss, deduction and any other allocations not otherwise provided for shall be divided among the Members and in the same proportions as they share Net Profit or Net Loss, as the case may be, for the taxable year.

(c) The Members are aware of the income tax consequences of the allocations made by Article V and this **Schedule IV** and hereby agree to be bound by the provisions of Article V and this **Schedule IV** in reporting their shares of Company income and loss for income tax purposes.

*(End of Schedule)*

# **EXHIBIT J**

**CCHA 392.055 POLICY**



# CORPUS CHRISTI HOUSING AUTHORITY



May 14, 2025

Daniel De Leon  
1201 Leopard  
Corpus Christi, TX 78374

Dear Mr. De Leon,

This letter is in response to your recent public information request.

Please provide the most recent "policy guidelines" adopted by the Corpus Christi Housing Authority as referenced in Texas Local Government Code Sec. 392.055.

**In response to 392.055 (a) An authority may rent or lease housing only to persons of low income.**

The Corpus Christi Housing Authority (CCHA) provides rental assistance through the Section 8 Project-Based Voucher (PBV) and the Housing Choice Voucher Tenant-Based Voucher (TBV) programs. The PBV program includes the Public Housing program that was converted under the Rental Assistance Demonstration (RAD) program. The TBV program allows eligible families to rent units in the open rental market.

Both of these are federal programs with federal regulations governing these programs regarding income and rent requirements. Income limits are described under the Code of Federal Regulations 24 CFR 982.201 and Chapter 4-III. C. describes the CCHA selection process. The following summarizes income guidelines.

To be income-eligible, the applicant must be a family in any of the following categories:

- A "very low income" family.
- A "low-income" family that is "continuously assisted" under the 1937 Housing Act.
- A low-income or moderate-income family that is displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing. (A family admitted in this category are not counted for income targeting purposes.

HUD requires extremely low-income (ELI) families make up at least 75 percent of the families admitted to the HCV program during the CCHA's fiscal year. ELI families are those with annual incomes at or below the federal poverty level or 30 percent of the area median income, whichever number is higher.

The 2025 Income Limits for the Corpus Christi Metropolitan Area are provided for your reference.

**In response to 392.055 (a) An authority may rent or lease housing only to persons of low income and only at rentals that persons of low income can afford.**

Under the PBV and TBV programs, on average, families pay between 30-40 percent of their adjusted income towards rent.



**In response to 392.055 (b) An authority may not rent or lease housing to a tenant that consists of a greater number of rooms than the number the authority considers necessary to provide safe and sanitary housing to the proposed occupants without overcrowding.**

Chapter 5.II.B of the CCHA Administrative Plan describes the policy for determining the unit (voucher) size.

For each family, the CCHA determines the appropriate number of bedrooms under the CCHA subsidy standards and enters the family unit size on the voucher that is issued to the family. The family unit size does not dictate the size of unit the family must actually lease, nor does it determine who within a household will share a bedroom/sleeping room.

***The following requirements apply when the CCHA determines family unit size:***

The subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.

- The subsidy standards must be consistent with space requirements under the housing quality standards.
- The subsidy standards must be applied consistently for all families of like size and composition.
- A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size.
- A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family.
- Any live-in aide (approved by the CCHA to reside in the unit to care for a family member who is disabled or is at least 50 years of age) must be counted in determining the family unit size.
- Unless a live-in-aide resides with a family, the family unit size for any family consisting of a single person must be either a zero- or one-bedroom unit, as determined under the CCHA subsidy standards.

The CCHA will assign one bedroom for each two persons within the household, except in the following circumstances:

1. Head of Household is entitled to their own bedroom.
2. Persons of the opposite sex (other than spouses) will be allocated separate bedrooms. Live-in aides will be allocated a separate bedroom.
3. Single person families will be allocated one bedroom.

The CCHA will reference the following chart in determining the appropriate voucher size for a family:  
Voucher Size - Persons in Household (Minimum – Maximum)

- |   |               |
|---|---------------|
| 1 | Bedroom 1-2   |
| 2 | Bedrooms 2-4  |
| 3 | Bedrooms 3-6  |
| 4 | Bedrooms 4-8  |
| 5 | Bedrooms 6-10 |

Please feel free to reach out to me with any questions.

Best regards,



Gary Allsup  
President and CEO



# FY 2025 INCOME LIMITS DOCUMENTATION SYSTEM

[HUD.gov](#) [HUD User Home](#) [Data Sets](#) [Fair Market Rents](#) [Section 8 Income Limits](#) [MTSP Income Limits](#) [HUD LIHTC Database](#)

## FY 2025 Income Limits Summary

FY 2025 Income Limit Area	Median Family Income	FY 2025 Income Limit Category	Persons in Family							
			1	2	3	4	5	6	7	8
<b>Corpus Christi, TX HUD Metro FMR Area</b>	\$82,700	Very Low (50%) Income Limits (\$)	28,950	33,100	37,250	<b>41,350</b>	44,700	48,000	51,300	54,600
		Extremely Low Income Limits (\$)*	17,400	21,150	26,650	<b>32,150</b>	37,650	43,150	48,650	54,150
		Low (80%) Income Limits (\$)	46,350	52,950	59,550	<b>66,150</b>	71,450	76,750	82,050	87,350

NOTE: **Nueces County** is part of the **Corpus Christi, TX HUD Metro FMR Area**, so all information presented here applies to all of the Corpus Christi, TX HUD Metro FMR Area. HUD generally uses the Office of Management and Budget (OMB) area definitions in the calculation of income limit program parameters. However, to ensure that program parameters do not vary significantly due to area definition changes, HUD has used custom geographic definitions for the Corpus Christi, TX HUD Metro FMR Area.



# **EXHIBIT K**

**SAMPLE CCHA DELAWARE LLC**

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 11:05 AM 11/12/2024  
FILED 11:05 AM 11/12/2024  
SR 20244182268 - File Number 10003329

**CERTIFICATE OF FORMATION  
OF  
Azure Apartments-CCHA, LLC**

**FIRST:** The name of the limited liability company is: Azure Apartments-CCHA, LLC

**SECOND:** Its registered office in the State of Delaware is located at 16192 Coastal Highway, Lewes, Delaware 19958, County of Sussex. The registered agent in charge thereof is Harvard Business Services, Inc.

IN WITNESS WHEREOF, the undersigned, being fully authorized to execute and file this document have signed below and executed this Certificate of Formation on this November 12, 2024.

  
Bryan Stone, Authorized Person