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**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**JAMES STREET APARTMENTS, LLC PROJECT**

**TRANSCRIPT OF PROCEEDINGS**

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**CLOSING DATE: DECEMBER 22, 2011**

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**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**JAMES STREET APARTMENTS, LLC PROJECT**

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- 24 Closing Memorandum
- 25 General Certificate of the Agency relating to incumbency and signatures of officers, execution and delivery of Agency Documents to which it is a party, no litigation and continued existence, with the following items included as exhibits:

Exhibit "A" - Chapter 641 of the Laws of 1979 of the State of New York, as amended

Exhibit "B" - Certificate of Establishment of the Agency and Certificates of appointment of current members

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Exhibit "E" - Inducement Resolution

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Exhibit "I" - Resolution

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- 26           General Certificate of the Company relating to capacity and signatures of officers, execution and delivery of the Documents to which it is a party, no litigation and approval, with the following items included as exhibits:
- Exhibit “A” - Articles of Organization
  - Exhibit “B” - Operating Agreement
  - Exhibit “C”    Good Standing Certificate
  - Exhibit “D”    Company Resolution
- 27           Opinion of Hiscock & Barclay, LLP, special counsel to the Agency, addressed to the Company and the Agency.
- 28           Opinion of Susan Sturman Jennings, Esq., counsel to the Company, the Manager and the Sole Member addressed to the Agency, the Company and the Lenders.

**JAMES STREET APARTMENTS, LLC**

**AND**

**CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT AGENCY**

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**COMPANY LEASE AGREEMENT**

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**DATED AS OF DECEMBER 22, 2011**

## COMPANY LEASE AGREEMENT

**THIS COMPANY LEASE AGREEMENT** (the "*Company Lease*"), made and entered into as of December 22, 2011, by and between **JAMES STREET APARTMENTS, LLC** (the "*Company*"), a limited liability company organized under the laws of the State of New York with an office at 183 East Main Street, Suite 600, Rochester, New York 14604, and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the "*Agency*"), a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, with an office at 333 West Washington Street, Suite 130, Syracuse, New York 13202.

### WITNESSETH:

**WHEREAS**, Title 1 of Article 18-A of the New York General Municipal Law (the "*Enabling Act*") was duly enacted into law as Chapter 1030 of the New York Laws of 1969; and

**WHEREAS**, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages, and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip, and dispose of land and any buildings or other improvements, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, or industrial purposes, in order to advance the job opportunities, health, general prosperity, and economic welfare of the people of the State of New York and to improve their standard of living; and

**WHEREAS**, the Enabling Act further authorizes each such agency to lease or sell any or all of its properties, to mortgage and pledge any or all of its properties, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof; and

**WHEREAS**, the Agency was created pursuant to and in accordance with the provisions of the Enabling Act by Chapter 641 of the Laws of 1979 of the State of New York (collectively with the Enabling Act, the "*Act*") and is empowered under the Act to undertake the Project (as hereinafter defined); and

**WHEREAS**, the Agency, by resolution adopted on April 19, 2011, agreed, at the request of the Company to undertake a project (the "*Project*") consisting of: (A)(i) the Agency's acquisition of a leasehold interest in an approximate 0.51 acre parcel of improved real property located at 615 James Street ("Leavenworth Apartments") and an approximate 0.50 acre parcel of improved real property located at 622 James Street ("Kasson Apartments") in the City of Syracuse, New York, and more fully described in the attached Exhibit "A", (the "*Land*"); (ii) the reconstruction and renovation of: (a) an approximately 51,602 square foot seven (7) story building ("Leavenworth Apartments") for mixed income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 37,138 square foot, seven (7) story building ("Kasson

Apartments” and together with the Leavenworth Apartments the “Apartments”) for mixed income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on land and jointly housing 83 units of housing, each apartment building containing laundry and storage facilities together with on-site parking for residents (collectively, the “Facility”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the “Equipment”) and together with the Land and the Facility, the (“*Project Facility*”); and (B) the granting of certain financial assistance in the form of exemptions from real property tax, and sales and use taxation (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, improvement and equipping of the Project Facility; and (D) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Company is the current owner of the Project Facility; and

**WHEREAS**, the Agency proposes to assist the Company’s acquisition, reconstruction, renovation and equipping of the Project Facility, and grant the Financial Assistance to the Project by, among other things, (1) appointing the Company as its agent with respect to the Project Facility; (2) accepting an interest in the Project Facility from the Company pursuant to this Company Lease; and (3) subleasing the Project Facility to the Company pursuant to the Agency Lease; and

**WHEREAS**, the Agency now proposes to lease the Project Facility from the Company pursuant to the terms and conditions set forth herein; and

**WHEREAS**, all things necessary to constitute this Company Lease a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution, and delivery of this Company Lease have, in all respects, been duly authorized;

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree, and bind themselves as follows, to wit:

## **ARTICLE I**

### **DEFINITIONS**

#### **1.1 DEFINITIONS.**

For all purposes of this Company Lease and any agreement supplemental thereto, all defined terms indicated by the capitalization of the first letter of such term shall have the meanings specified in the Table of Definitions attached to the Agency Lease as Exhibit “C” thereto except as otherwise expressly defined herein or the context hereof otherwise requires.

## **1.2 INTERPRETATION.**

In this Company Lease, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “herein,” “hereunder,” and any similar terms as used in this Company Lease refer to this Company Lease; the term “heretofore” shall mean before and the term “hereafter” shall mean after the date of this Company Lease;

(b) Words of masculine gender shall mean and include correlative words of feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa; and

(c) Any certificates, letters, or opinions required to be given pursuant to this Company Lease shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law, or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Company Lease.

## **ARTICLE II**

### **DEMISE; PREMISES; TERM**

#### **2.1 DEMISE.**

The Company hereby leases to the Agency, and the Agency hereby leases from the Company, the Project Facility for the stated term for the rents, covenants and conditions set forth herein subject only to the Permitted Encumbrances.

#### **2.2 DESCRIPTION OF PREMISES LEASED.**

The leased premises is the Land and the Project Facility described in the recitals of this Company Lease and as more fully described on **Exhibit “A”** attached hereto.

#### **2.3 TERM.**

The Project is leased for a term which shall commence as of December 22, 2011, and shall end on the expiration or earlier termination of the Agency Lease.

#### **2.4 MANDATORY CONVEYANCE.**

At the expiration of the term hereof or any extension thereof by mutual agreement, or as otherwise provided in the Agency Lease, this Company Lease shall automatically expire without any further action by the parties hereto, and the Agency shall confirm in writing the termination of its interest in the Project under this Company Lease and the Agency Lease. The Company hereby irrevocably designates the Agency as its attorney-in-fact, coupled with an interest, for the purpose of executing, delivering and recording terminations of leases and bill of sale together with any other documents therewith and to take such other and

further actions reasonably necessary to confirm the termination of the Agency's interest in the Project.

## **2.5 CONSIDERATION.**

The Agency is paying to the Company concurrently with the execution hereof consideration of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Company.

## **2.6 REPRESENTATIONS AND COVENANTS OF THE COMPANY.**

The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of New York State, has the power to enter into this Company Lease and the other Company Documents and to carry out its obligations hereunder and thereunder, and has duly authorized the execution, delivery, and performance of this Company Lease and the other Company Documents.

(b) This Company Lease and the other Company Documents constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Company, enforceable in accordance with their respective terms.

(c) The Company is the present owner of the Project Facility.

(d) Neither the execution and delivery of this Company Lease and the other Company Documents, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the provisions thereof will:

(1) Result in a breach of, or conflict with any term or provision in, the Company's Articles of Organization or Operating Agreement; or

(2) Require consent under (which has not been heretofore received) or result in a breach of or default under any credit agreement, indenture, purchase agreement, mortgage, deed of trust, commitment, guaranty, or other agreement or instrument to which the Company is a party or by which the Company or any of its property may be bound or affected; or

(3) Conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any Governmental Authority or court (domestic or foreign) having jurisdiction over the Company or any of the property of the Company.

(e) So long as the Agency holds an interest in the Project Facility, the Project Facility is and will continue to be a "project" (as such quoted term is defined in the Act), and the Company will not take any action (or omit to take any action required by the Company Documents or which the Agency, together with Agency's counsel, advise the Company in writing

should be taken), or allow any action to be taken, which action (or omission) would in any way cause the Project Facility not to constitute a “project” (as such quoted term is defined in the Act).

(f) The Company shall cause all notices as required by law to be given and shall comply or cause compliance with all laws, ordinances, municipal rules, and regulations and requirements of all Governmental Authorities applying to or affecting the construction, reconstruction, equipping and operation of the Project Facility (the applicability of such laws, ordinances, rules, and regulations to be determined both as if the Agency were the owner of the Project Facility and as if the Company, were the owner of the Project Facility), and the Company will defend and save the Agency and its officers, members, agents (other than the Company), and employees harmless from all fines and penalties due to failure to comply therewith.

(g) The Company shall perform, or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency (which is within the control of the Company) under and pursuant to the Agency Lease, this Company Lease and the other Company Documents and shall defend, indemnify, and hold harmless the Agency and its members, officers, agents (other than the Company), servants, and employees from and against every expense, liability, or claim arising out of the failure of the Company to fulfill its obligations under the provisions of this Section 2.6.

(h) The Company restates and affirms the representations, warranties and covenants set forth in Section 2.2 of the Agency Lease.

### **ARTICLE III**

#### **DISPUTE RESOLUTION**

##### **3.1 GOVERNING LAW.**

This Company Lease shall be governed in all respects by the laws of the State of New York.

##### **3.2 WAIVER OF TRIAL BY JURY.**

THE COMPANY AND THE AGENCY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY DISPUTE ARISING UNDER THIS COMPANY LEASE, AND THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS COMPANY LEASE.

### **ARTICLE IV**

#### **MISCELLANEOUS CLAUSES**

##### **4.1 NOTICES.**

All notices, demands or communications given under this Company Lease shall be sent to the parties at the addresses set forth below or at such other addresses as the parties may

designate by written notice and shall be by prepaid registered or certified mail, return receipt request, and shall be deemed given on the date two (2) days after the date mailed:

(a) To the Agency:

City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202  
Attn: Chairman

With copies to:

City of Syracuse  
233 East Washington Street  
Syracuse, New York 13202  
Attn: Corporation Counsel

(b) To the Company:

James Street Apartments, LLC  
183 East Main Street, Suite 600  
Rochester, New York 14604  
Attn: Andrew Bodewes

With copies to:

Conifer Realty, LLC  
183 East Main Street, Suite 600  
Rochester, New York 14604  
Attn: Susan Sturman Jennings, Esq.

and

Conifer 2011 Tax Credit Fund, LP  
c/o Red Stone Equity Partners, LLC  
200 Public Square, Suite 1550  
Cleveland, Ohio 44114  
Attn: General Counsel

#### **4.2 NO RECOURSE UNDER THIS COMPANY LEASE.**

No provision, covenant or agreement contained herein, in any other agreement entered into in connection herewith, or any obligations herein imposed, upon the Agency, or any breach thereof, shall constitute or give rise to or impose upon the Agency, a debt or other pecuniary liability or a charge upon its general credit, and all covenants, stipulations, promises, agreements and obligations of the Agency contained in this Company Lease shall be deemed to

be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, office, employee or agent of the Agency in his individual capacity.

#### **4.3 ENTIRE AGREEMENT.**

This Company Lease contains the entire agreement between the parties and all prior negotiations and agreements are merged in this Company Lease. This Company Lease may not be changed, modified or discharged, in whole or in part, except by a written instrument executed by the party against whom enforcement of the change, modification or discharge is sought.

#### **4.4 AGENCY REPRESENTATIONS.**

The Company expressly acknowledges that neither the Agency nor the Agency's directors, members, employees or agents has made or is making, and the Company, in executing and delivering this Company Lease, is not relying upon warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Company Lease, and no rights, easements or licenses are or shall be acquired by the Company by implication or otherwise unless expressly set forth in this Company Lease.

#### **4.5 BINDING EFFECT.**

This Company Lease shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

#### **4.6 PARAGRAPH HEADINGS.**

Paragraph headings are for convenience only and shall not affect the construction or interpretation of this Company Lease.

#### **4.7 CONSENT TO AGENCY LEASE; SUBORDINATION.**

The Company hereby consents to the sublease by the Agency of the Project Facility to the Company pursuant to the Agency Lease. The Company acknowledges and agrees that this Company Lease and the Agency Lease shall be subordinate in all respects to any Mortgages.

#### **4.8 HOLD HARMLESS PROVISIONS**

(a) The Company hereby releases the Agency and its members, officers, agents, and employees from, agree that the Agency and its members, officers, agents, and employees shall not be liable for, and agree to indemnify, defend, and hold the Agency and its members, officers, agents, and employees harmless from and against any and all claims arising as a result of the Agency's undertaking of the Project, including, but not limited to:

(1) Liability for loss or damage to Property or bodily injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project

Facility, or arising by reason of or in connection with the occupation or the use thereof, or the presence on, in, or about the Project Facility;

(2) Liability arising from or expense incurred by the Agency's acquisition of a leasehold interest in the Project Facility and the subleasing of the Project Facility, including, without limiting the generality of the foregoing, all liabilities or claims arising as a result of the Agency's obligations under the Agency Lease, this Company Lease or the Mortgages;

(3) All claims arising from the exercise by the Company of the authority conferred upon it and performance of the obligations assumed under Article II hereof;

(4) All causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities, or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents, or employees.

The foregoing indemnities shall apply notwithstanding the fault or negligence (other than gross negligence or willful misconduct) on the part of the Agency or any of its officers, members, agents, servants, or employees and irrespective of any breach of statutory obligation or any rule of comparative or apportioned liability.

(b) In the event of any claim against the Agency or its members, officers, agents, or employees by any employee of the Company, or any contractor of the Company, or anyone directly or indirectly employed by any of them, or any one for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Company such contractor under workers' compensation laws, disability benefit laws, or other employee benefit laws.

(c) Notwithstanding any other provisions of this Company Lease, the obligations of the Company pursuant to this Section 4.8 shall remain in full force and effect after the termination of the Agency Lease and this Company Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution relating to the matters herein described may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents (other than the Company), or employees, relating thereto.

(d) For purposes of this Section 4.8, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

#### **4.9 NO RECOURSE; SPECIAL OBLIGATION.**

The obligations and agreements of the Agency contained herein and in the other Agency Documents and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent, or employee of the Agency in his individual capacity; and the members, officers, agents, and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State New York or of the City of Syracuse, and neither the State of New York nor the City of Syracuse shall be liable hereon or thereon. Further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived, and to be derived from, the lease, sale, or other disposition of the Project Facility, other than revenues derived from or constituting Unassigned Rights. No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or thereunder shall be sought or enforced against the Agency unless:

(a) The party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than ten days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(b) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses; and

(c) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents, or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents, and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents, and employees against all liability expected to be incurred as a result of compliance with such request.

Any failure to provide notice, indemnity, or security to the Agency pursuant to this Section 4.9 shall not alter the full force and effect of any Event of Default under the Agency Lease.

(d) For purposes of this Section 4.9, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

#### **4.10 MERGER OF AGENCY.**

(a) Nothing contained in this Company Lease shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to any other body corporate and politic and public instrumentality of the State of New York, or political subdivision thereof, which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger, or assignment, the due and punctual performance and observance of all the agreements and conditions of this Company Lease to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(b) As of the date of any such consolidation, merger, or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger, or assignment as the Company reasonably may request.

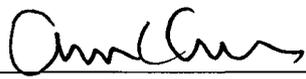
*[Signature page to follow]*

IN WITNESS WHEREOF, the Company and the Agency have duly executed this Company Lease, as of the day and year first above written.

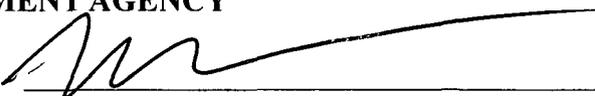
**JAMES STREET APARTMENTS, LLC**

By: James Street Managing Member, LLC

By: Conifer Realty, LLC

By:   
\_\_\_\_\_  
Andrew I. Crossed  
Executive Vice President

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
\_\_\_\_\_  
William M. Ryan, Chairman

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ONONDAGA )

On the 6<sup>th</sup> day of December, 2011, before me, the undersigned, personally appeared **Andrew I. Crossed**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Lori L McRobbie  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 14

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ONONDAGA )

On the 5<sup>th</sup> day of December, 2011, before me, the undersigned, personally appeared **William M. Ryan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Lori L McRobbie  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 14

**EXHIBIT A**  
**DESCRIPTION OF REAL PROPERTY**

## LEGAL DESCRIPTION

PARCEL ONE (615 James Street, Syracuse, NY, TA#017.00-19-05)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Number 1 of Block Number 31 in said City, bounded and described as follows:

BEGINNING AT A POINT, said point being North 55 degrees 44 minutes 50 seconds East a distance of 116.20" from the intersection of the northerly line of James Street with the easterly line of McBride Street.

THENCE North 30 degrees 29 minutes 10 seconds West for a distance of 264.27 feet to a point on the southerly line of East Willow Street;

THENCE North 55 degrees 44 minutes 50 seconds East for a distance of 83.80 feet along the southerly line of East Willow Street to a point;

THENCE South 30 degrees 29 minutes 10 seconds East for a distance of 264.27 feet to a point on the northerly line of James Street;

THENCE South 55 degrees 44 minutes 50 seconds West for a distance of 83.80 feet TO THE POINT AND PLACE OF BEGINNING.

and

PARCEL TWO (622 James Street, Syracuse, NY, TA#103.00-05-04)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Block 33 in said City, bounded and described as follows, viz:

BEGINNING at a point in the southeasterly line of James Street 188 feet northeasterly along said street line from the northeasterly line of N. McBride Street;

thence along said southeasterly line of James Street N. 55° 44' 50" E., 74.53 feet to a point;

thence S. 30° 45' 40" E., 125.00 feet to a point;

thence S. 55° 44' 50" W., 19.00 feet to a point;

thence S. 30° 45' 40" E., 92.76 feet to a point;

thence N. 59° 14' 20" E., 66.00 feet to a point;

thence S. 30° 45' 40" E., 104.09 feet to a point;

thence S. 59° 14' 20" W., 90.73 feet to a point;

thence N. 34° 07' 00" W., 179.73 feet to a point;

thence S. 55° 44' 50" W., 12.00 feet to a point;

thence N. 34° 07' 00" W., 140.00 feet to the point and place of beginning.

TOGETHER WITH the benefits, in common with others, over a 15 foot right of way known as Wilkinson Avenue running westerly to N. McBride Street as recited in deeds at Liber 276, page 39, Liber 924, page 275 and Liber 2443, page 599.

**MEMORANDUM OF  
COMPANY LEASE AGREEMENT**

***NAME AND ADDRESS OF LESSOR:*** James Street Apartments, LLC  
183 East Main Street, Suite 600  
Rochester, New York 14604

***NAME AND ADDRESS OF LESSEE:*** City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202

***DESCRIPTION OF LEASED PREMISES:***

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, being more particularly described in Exhibit "A" annexed hereto, together with the improvements thereon.

***DATE OF EXECUTION OF COMPANY LEASE AGREEMENT:***

As of December 22, 2011

***TERM OF COMPANY LEASE AGREEMENT:***

The Company Lease Agreement shall be in effect for a term commencing as of December 1, 2011, and terminating on October 2, 2027 unless sooner terminated as provided therein.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 22<sup>nd</sup> day of December, 2011.

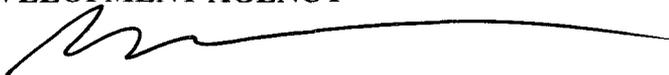
**JAMES STREET APARTMENTS, LLC**

**By: James Street Managing Member, LLC**

**By: Conifer Realty, LLC**

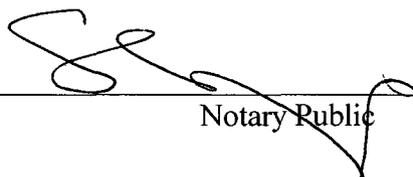
By:   
Andrew I. Crossed, Executive Vice President

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ONONDAGA )

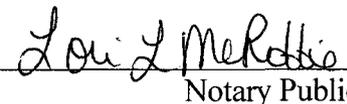
On the 6<sup>th</sup> day of December, 2011, before me, the undersigned, personally appeared **Andrew I. Crossed**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ONONDAGA )

**S. STURMAN JENNINGS**  
Notary Public, State of New York  
No. 021E6096835  
Qualified in Monroe County 2015  
Commission Expires August 11, 2015

On this 5<sup>th</sup> day of December, 2011, before me, the undersigned, personally appeared **William M. Ryan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

**LORI L. McROBBIE**  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 14

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE LAND**

## LEGAL DESCRIPTION

PARCEL ONE (615 James Street, Syracuse, NY, TA#017.00-19-05)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Number 1 of Block Number 31 in said City, bounded and described as follows:

BEGINNING AT A POINT, said point being North 55 degrees 44 minutes 50 seconds East a distance of 116.20" from the intersection of the northerly line of James Street with the easterly line of McBride Street.

THENCE North 30 degrees 29 minutes 10 seconds West for a distance of 264.27 feet to a point on the southerly line of East Willow Street;

THENCE North 55 degrees 44 minutes 50 seconds East for a distance of 83.80 feet along the southerly line of East Willow Street to a point;

THENCE South 30 degrees 29 minutes 10 seconds East for a distance of 264.27 feet to a point on the northerly line of James Street;

THENCE South 55 degrees 44 minutes 50 seconds West for a distance of 83.80 feet TO THE POINT AND PLACE OF BEGINNING.

and

PARCEL TWO (622 James Street, Syracuse, NY, TA#103.00-05-04)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Block 33 in said City, bounded and described as follows, viz:

BEGINNING at a point in the southeasterly line of James Street 188 feet northeasterly along said street line from the northeasterly line of N. McBride Street;

thence along said southeasterly line of James Street N. 55° 44' 50" E., 74.53 feet to a point;

thence S. 30° 45' 40" E., 125.00 feet to a point;

thence S. 55° 44' 50" W., 19.00 feet to a point;

thence S. 30° 45' 40" E., 92.76 feet to a point;

thence N. 59° 14' 20" E., 66.00 feet to a point;

thence S. 30° 45' 40" E., 104.09 feet to a point;

thence S. 59° 14' 20" W., 90.73 feet to a point;

thence N. 34° 07' 00" W., 179.73 feet to a point;

thence S. 55° 44' 50" W., 12.00 feet to a point;

thence N. 34° 07' 00" W., 140.00 feet to the point and place of beginning.

TOGETHER WITH the benefits, in common with others, over a 15 foot right of way known as Wilkinson Avenue running westerly to N. McBride Street as recited in deeds at Liber 276, page 39, Liber 924, page 275 and Liber 2443, page 599.



New York State Department of Taxation and Finance

## Combined Real Estate Transfer Tax Return Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax

Effective September 1, 2003, use this 7/03 version of Form TP-584; previous versions may no longer be used.

See instructions (TP-584-I) before completing this form. Please print or type.

**Schedule A — Information relating to conveyance**

Grantor/Transferor <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input checked="" type="checkbox"/> Other	Name (if individual; last, first, middle initial) James Street Apartments, LLC	Social security number _____
	Mailing address 183 East Main Street, Suite 600	Social security number _____
	City State ZIP code Rochester NY 14604	Federal employer ident. number 27   3472526
	Name (if individual; last, first, middle initial) CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY	Social security number _____
Grantee/Transferee <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input checked="" type="checkbox"/> Other	Mailing address 333 West Washington Street, Suite 130	Social security number _____
	City State ZIP code Syracuse New York 13202	Federal employer ident. number 52   1380308

Location and description of property conveyed

Tax map designation			Address	City/village	Town	County
Section	Block	Lot				
017.	19	05.0	615 James Street 622 James Street	Syracuse		Onondaga
103.	05	04.0				

Type of property conveyed (check applicable box)

1 <input type="checkbox"/> one- to three-family house 2 <input type="checkbox"/> Residential cooperative 3 <input type="checkbox"/> Residential condominium 4 <input type="checkbox"/> Vacant land	5 <input type="checkbox"/> Commercial/Industrial 6 <input type="checkbox"/> Apartment building 7 <input type="checkbox"/> Office building 8 <input checked="" type="checkbox"/> Other <u>housing/mixed use</u>	Date of conveyance <table border="1" style="display: inline-table; text-align: center;"> <tr> <td style="width: 30px;">12</td> <td style="width: 30px;">22</td> <td style="width: 30px;">2011</td> </tr> <tr> <td>month</td> <td>day</td> <td>year</td> </tr> </table>	12	22	2011	month	day	year	Percentage of real property conveyed which is residential real property _____% <i>(see instructions)</i>
12	22	2011							
month	day	year							

Condition of conveyance (check all that apply)

- |  |  |  |
|--|--|--|
| a. <input type="checkbox"/> Conveyance of fee interest<br>b. <input type="checkbox"/> Acquisition of a controlling interest (state percentage acquired _____%)<br>c. <input type="checkbox"/> Transfer of a controlling interest (state percentage transferred) _____%<br>d. <input type="checkbox"/> Conveyance to cooperative housing corporation<br>e. <input type="checkbox"/> Conveyance pursuant to or in lieu of foreclosure or enforcement of security interest (attach Form TP-584.1, Schedule E) | f. <input type="checkbox"/> Conveyance which consists of a mere change of identity or form of ownership or organization (attach Form TP-584.1, Schedule F)<br>g. <input type="checkbox"/> Conveyance for which credit for tax previously paid will be claimed (attach Form TP-584.1, Schedule G)<br>h. <input type="checkbox"/> Conveyance of cooperative apartment(s)<br>i. <input type="checkbox"/> Syndication<br>j. <input type="checkbox"/> Conveyance of air rights or development rights<br>k. <input type="checkbox"/> Contract assignment | l. <input type="checkbox"/> Option assignment or surrender<br>m. <input type="checkbox"/> Leasehold assignment or surrender<br>n. <input checked="" type="checkbox"/> Leasehold grant<br>o. <input type="checkbox"/> Conveyance of an easement<br>p. <input type="checkbox"/> Conveyance for which exemption from transfer tax is claimed (complete Schedule B, Part III)<br>q. <input type="checkbox"/> Conveyance of property partly within and partly outside the state<br>r. <input type="checkbox"/> Other (describe) _____ |
|--|--|--|

For recording officer's use	Amount Received Schedule B, Part I \$ _____ Schedule B, Part II \$ _____	Date received	Transaction number
-----------------------------	--	---------------	--------------------

**Schedule B – Real estate transfer tax return (Article 31 of the Tax Law)**

**Part I – Computation of tax due**

- 1 Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, check the exemption claimed box, enter consideration and proceed to Part III)  **Exemption claimed**
- 2 Continuing lien deduction (see instructions if property is taken subject to mortgage or lien)
- 3 Taxable consideration (subtract line 2 from line 1)
- 4 Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3
- 5 Amount of credit claimed (see instructions and attach Form TP-584.1, Schedule G)
- 6 Total tax due\* (subtract line 5 from line 4)

1.		\$	00
2.			
3.			
4.		\$	00
5.			
6.		\$	00

**Part II – Computation of additional tax due on the conveyance of residential real property for \$1 million or more**

- 1 Enter amount of consideration for conveyance (from Part I, line 1)
- 2 Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A)
- 3 Total additional transfer tax due\* (multiply line 2 by 1% (0.1))

1.		
2.		
3.		

**Part III – Explanation of exemption claimed on Part I, line 1 (check any boxes that apply)**

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada) ..... a
- b. Conveyance is to secure a debt or other obligation ..... b
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance ..... c
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts ..... d
- e. Conveyance is given in connection with a tax sale ..... e
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F ..... f
- g. Conveyance consists of deed of partition ..... g
- h. Conveyance is given pursuant to the federal Bankruptcy Act ..... h
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property ..... i
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment ..... j
- k. Conveyance is not a conveyance within the meaning of section 1401(e) of Article 31 of the Tax Law (attach documents supporting such claim) ..... k
- l. Other (attach explanation) Leasehold grant with term of less than 49 years ..... l

\*Please make check(s) payable to the county clerk where the recording is to take place. If the recording is to take place in New York City, make check(s) payable to the **NYC Department of Finance**. If a recording is not required, send this return and your check(s) made payable to the **Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

**Schedule C – Credit Line Mortgage Certificate (Article 11 of the Tax Law)**

Complete the following only if the interest being transferred is a fee simple interest.

I (we) certify that: (check the appropriate box)

- 1.  The real property being sold or transferred is not subject to an outstanding credit line mortgage.
- 2.  The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
  - The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
  - The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
  - The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee or other officer of a court.
  - The maximum principal amount secured by the credit line mortgage is \$3,000,000 or more and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

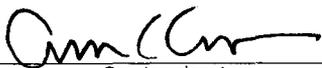
**Please note:** for purposes of determining whether the maximum principal amount secured is \$3,000,000 or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.

- Other (attach detailed explanation).
- 3.  The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
  - A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
  - A check has been drawn payable for transmission to the credit line mortgagee or his agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
- 4.  The real property being transferred is subject to an outstanding credit line mortgage recorded in \_\_\_\_\_ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is \_\_\_\_\_. No exemption from tax is claimed and the tax of \_\_\_\_\_ is being paid herewith. (Make check payable to county clerk where deed will be recorded or, if the recording is to take place in New York City, make check payable to the **NYC Department of Finance**.)

**Signature (both the grantor(s) and grantee(s) must sign)**

The undersigned certify that the above information contained in schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of his/her knowledge, true and complete.

James Street Apartments  
 By: James Street Managing Member, LLC  
 By: Conifer Realty, LLC

  
 \_\_\_\_\_  
 Grantee signature  
 Andrew I. Crossed

Executive  
Vice President  
 Title

Title

City of Syracuse Industrial  
 Development Agency

  
 \_\_\_\_\_  
 Grantee signature  
 William M. Ryan

Chairman  
 Title

**Reminder:** Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you checked e, f, or g in Schedule A, did you complete TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place or, if the recording is in New York City, to the *NYC Department of Finance*? If no recording is required, send your check(s), made payable to the *Department of Taxation and Finance*, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

**Schedule D – Certification of exemption from the payment of estimated personal income tax (Article 22, Tax Law section 663)**

Complete the following only if a fee simple interest is being transferred by an individual or estate or trust.

**Part I – New York State residents**

If you are a New York State resident transferor(s)/seller(s) listed in Schedule A of Form TP-584 (or an attachment to Form TP-584), you must sign the certification below. If one or more transferors/sellers of the property is a resident of New York State, **each** resident transferor/seller must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

**Certification of resident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property, the transferor(s)/seller(s) as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law section 663(a) upon the sale or transfer of this property.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

**Note:** A resident of New York State may still be required to pay estimated tax under section 685(c), but not as a condition of recording a deed.

**Part II – Nonresidents of New York State**

If you are a nonresident of New York State listed as a transferor/seller in Schedule A of Form TP-584 (or an attachment to Form TP-584) but are not required to pay estimated tax because one of the exemptions below applies under section 663(d) of the Tax Law, check the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor(s)/seller(s), that transferor(s)/seller(s) is not required to pay estimated personal income tax to New York State under section 663 of the Tax Law. **Each** nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must use Form IT-2663, *Application for Certification for Recording of Deed and Nonresident Estimated Income Tax Payment Voucher*.

**Exemption for nonresident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property, the transferor(s)/seller(s) (grantor) of this property was a nonresident of New York State, but is not required to pay estimated tax under Tax Law section 663 due to one of the following exemptions:

- The property being sold or transferred was used exclusively as the transferor's/seller's principal residence (within the meaning of section 121 of the Internal Revenue Code) from \_\_\_\_\_ to \_\_\_\_\_ (see instructions).  
Date Date
- The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.
- The transferor or transferee is an agency or authority of the United States of America, an agency or authority of the state of New York, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**JAMES STREET APARTMENTS, LLC**

---

**AGENCY LEASE AGREEMENT**

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**DATED AS OF DECEMBER 22, 2011**

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EXHIBIT "B" DESCRIPTION OF EQUIPMENT  
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## AGENCY LEASE AGREEMENT

**THIS AGENCY LEASE AGREEMENT**, dated as of December 22, 2011 (the "**Agency Lease**"), by and between the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a body corporate and politic and a public instrumentality of the State of New York, having its office at 333 West Washington Street, Suite 130, Syracuse, New York 13202 (the "**Agency**"), and **JAMES STREET APARTMENTS, LLC**, a New York limited liability company, having an address at 183 East Main Street, Suite 600, Rochester, New York 14604 (the "**Company**").

### WITNESSETH:

**WHEREAS**, the Agency is authorized and empowered by Title I of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act, among other things, to: (i) make contracts and leases, and to execute such documents as necessary or convenient, with a public or private person, firm, partnership, or corporation; (ii) to acquire, construct, reconstruct, lease, improve, maintain, equip or furnish one or more projects (as defined in the Act); and (iii) to sell, lease and otherwise dispose of any such property; and

**WHEREAS**, the Agency, by resolution adopted on April 19, 2011 agreed, at the request of the Company to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest in two parcels of improved real property including an approximately .51 acre parcel located at 615 James Street (Leavenworth Parcel) and an approximately .50 acre parcel located at 622 James Street (Kasson Parcel) (collectively, the "**Land**"); (ii) the reconstruction and renovation of: (a) an approximately 51,602 square foot seven (7) story building ("**Leavenworth Apartments**") for mixed-income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 37,138 square foot, seven (7) story building ("**Kasson Apartments**") and together with the Leavenworth Apartments the "**Apartments**") for mixed-income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on the Land and jointly housing 83 units of housing, each Apartment containing laundry and storage facilities together with on-site parking for residents (collectively, the "**Facility**"); (iii) the

acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the “*Equipment*”, together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax and sales and use taxation (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, improvement and equipping of the Project Facility; and (D) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Agency proposes to assist the Company’s acquisition, reconstruction, renovation and equipping of the Project Facility and grant the Financial Assistance to the Project by, among other things, (1) accepting a leasehold interest in the Project Facility from the Company and (2) subleasing the Project Facility to the Company pursuant to this Agency Lease; and

**WHEREAS**, the Company has leased the Project Facility to the Agency pursuant to the Company Lease Agreement dated as of December 22, 2011 (the “*Company Lease*”); and

**WHEREAS**, the Agency now proposes to sublease the Project Facility to the Company pursuant to the terms and conditions herein set forth; and

**WHEREAS**, all things necessary to constitute this Agency Lease a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution, and delivery of this Agency Lease have, in all respects, been duly authorized;

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree, and bind themselves as follows, to wit:

## **ARTICLE I**

### **DEFINITIONS**

#### **1.1 DEFINITIONS.**

For all purposes of this Agency Lease and any agreement supplemental thereto, all defined terms indicated by the capitalization of the first letter of such term shall have the meanings specified in the Table of Definitions attached hereto as **Exhibit “C”** except as otherwise expressly defined herein or the context hereof otherwise requires.

#### **1.2 INTERPRETATION.**

In this Agency Lease, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “herein,” “hereunder,” and any similar terms as used in this Agency Lease refer to this Agency Lease; the term “heretofore” shall mean before and the term “hereafter” shall mean after the date of this Agency Lease;

(b) Words of masculine gender shall mean and include correlative words of feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa; and

(c) Any certificates, letters, or opinions required to be given pursuant to this Agency Lease shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law, or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Agency Lease.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS

#### 2.1 REPRESENTATIONS OF THE AGENCY.

The Agency makes the following representations to the Company as the basis for the undertakings on its part herein contained:

(a) The Agency is duly established under the provisions of the Act and has the power to enter into this Agency Lease and to carry out its obligations hereunder. Based upon the representations of the Company as to the utilization of the Project Facility, the Project Facility will constitute a “project,” as such quoted term is defined in the Act. By proper official action, the Agency has been duly authorized to execute, deliver, and perform this Agency Lease and the other Agency Documents.

(b) Neither the execution and delivery of this Agency Lease, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the provisions of this Agency Lease and the other Agency Documents by the Agency will conflict with or result in a breach by the Agency of any of the terms, conditions, or provisions of the Act, the By-Laws of the Agency, or any order, judgment, restriction, agreement, or instrument to which the Agency is a party or by which it is bound or will constitute a default by the Agency under any of the foregoing.

(c) By resolution adopted on April 19, 2011, the Agency determined that the Project constitutes a “Type II” action as that term is defined under SEQRA, and therefore no further review is required;

(d) The acquisition of a leasehold interest in the Project Facility by the Agency and the designation of the Company as the Agency’s agent will be an inducement to the Company to acquire, construct, reconstruct, and equip the Project Facility in the City of Syracuse, thereby promoting and preserving the job opportunities, general prosperity and economic welfare of the inhabitants of the City of Syracuse in furtherance of the purposes of the Act.

(e) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act.

(f) The Project Facility is located in a “highly distressed area” as defined in Section 854 of the Act.

(g) Undertaking the Project will serve the public purposes of the Act by advancing the job opportunities, health, general prosperity and economic welfare of the people of the City of Syracuse and improving their standard of living.

## **2.2 REPRESENTATIONS AND COVENANTS OF THE COMPANY.**

The Company represents, warrants and covenants to the Agency as follows:

(a) The Company is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of New York, has the power to enter into this Agency Lease and the other Company Documents and to carry out its obligations hereunder and thereunder, and has duly authorized the execution, delivery, and performance of this Agency Lease and the other Company Documents.

(b) This Agency Lease and the other Company Documents constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Company, enforceable in accordance with their respective terms.

(c) The Company is the present owner of the Project Facility.

(d) Neither the execution and delivery of this Agency Lease and the other Company Documents, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the provisions thereof will:

(1) Result in a breach of, or conflict with any term or provision in, the Company’s Articles of Organization or Operating Agreement;

(2) Require consent under (which has not been heretofore received) or result in a breach of or default under any credit agreement, indenture, purchase agreement, mortgage, deed of trust, commitment, guaranty, or other agreement or instrument to which the Company is a party or by which the Company or any of its property may be bound or affected; or

(3) Conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any Governmental Authority or court (domestic or foreign) having jurisdiction over the Company or any of the property of the Company.

(e) The providing of Financial Assistance to the Project by the Agency:

(1) Has been an important consideration in the Company's decision to acquire and reconstruct the Project Facility in the City of Syracuse;

(2) Will not result in the removal of an industrial or manufacturing plant or commercial activity of any Project Facility occupant from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of any user, occupant, or proposed user or occupant of the Project Facility located within the State, except as permitted by the Act; and

(3) Will preserve or increase the overall number of permanent, private sector jobs in the State.

(f) So long as the Agency holds a leasehold interest in the Project Facility, the Project Facility is and will continue to be a "project" (as such quoted term is defined in the Act), and the Company will not take any action (or omit to take any action required by the Company Documents or which the Agency, together with Agency's counsel, advise the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way cause the Project Facility not to constitute a "project" (as such quoted term is defined in the Act).

(g) The Company shall cause all notices as required by law to be given and shall comply or cause compliance with all laws, ordinances, municipal rules, and regulations and requirements of all Governmental Authorities applying to or affecting the construction, reconstruction, equipping and operation of the Project Facility (the applicability of such laws, ordinances, rules, and regulations to be determined both as if the Agency were the owner of the Project Facility and as if the Company, were the owner of the Project Facility), and the Company will defend and save the Agency and its officers, members, agents (other than the Company), and employees harmless from all fines and penalties due to failure to comply therewith.

(h) The Agency's undertaking of the Project and the provision of Financial Assistance for the Project will not have a significant impact on the environment within the meaning of SEQRA. The Company hereby covenants to comply with all mitigating measures, requirements, and conditions, if any, enumerated with respect to the Project Facility in any other approvals issued by any other Governmental Authority.

(i) The Company has, or will have as of the first date of reconstruction and equipping, all permits, licenses, and governmental approvals and consents for the reconstruction and equipping of the Project Facility.

(j) The Company will not sublease the whole or any portion of the Project Facility for an unlawful purpose.

(k) No part of the Project Facility will be located outside of the City.

(l) The Company shall perform, or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency (which is within the control of the

Company) under and pursuant to this Agency Lease, the Company Lease and the other Company Documents and shall defend, indemnify, and hold harmless the Agency and its members, officers, agents (other than the Company), servants, and employees from and against every expense, liability, or claim arising out of the failure of the Company to fulfill its obligations under the provisions of this Section 2.2.

(m) The Project Facility is located in a “highly distressed area” as defined in Section 854 of the Act.

(n) The Company agrees that except as is otherwise provided by collective bargaining contracts or agreements applicable to the Project, new employment opportunities created as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project is located. The Company further agrees that except as is otherwise provided by collective bargaining contracts or agreements applicable to the Project, it will first consider persons eligible to participate in the Federal Job Training Partnership (P.L. No. 97-300) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the Department of Labor for such new employment opportunities.

### **ARTICLE III**

#### **CONVEYANCE OF LEASEHOLD INTEREST IN PROJECT FACILITY**

##### **3.1 AGREEMENT TO CONVEY LEASEHOLD INTEREST TO COMPANY.**

The Company has conveyed to the Agency, pursuant to the Company Lease, a leasehold interest in the Land, as more fully described in **Exhibit “A”** attached hereto, and an interest in the Equipment, as more fully described in **Exhibit “B”** attached hereto. Under this Agency Lease, the Agency will convey, or will cause to be conveyed, to the Company, a leasehold interest in the Project Facility subject to Permitted Encumbrances.

##### **3.2 USE OF PROJECT FACILITY.**

Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in any manner not otherwise prohibited by this Agency Lease, the Company Lease and other Company Documents, provided that such use causes the Project Facility to qualify or continue to qualify as a “project” under the Act.

### **ARTICLE IV**

#### **RECONSTRUCTION AND EQUIPPING OF THE PROJECT**

##### **4.1 RECONSTRUCTION AND EQUIPPING OF THE PROJECT FACILITY.**

(a) The Company shall promptly construct, reconstruct and equip the Project Facility, in one or more phases, and to the extent practicable, utilize local contractors and

suppliers for the construction, reconstruction, rehabilitation and equipping of the Project Facility. For purposes of this Agency Lease, the term "*Local*" shall mean Onondaga, Oswego, Madison and Oneida Counties. The Company agrees that such Local contractors shall be provided the opportunity to bid on contracts placed for bid on and after the date of this Agency Lease Agreement related to the Project Facility.

(b) The Agency hereby confirms the appointment of the Company as its true and lawful agent to perform under the following authority in compliance with the terms, purposes, and intent of this Agency Lease and the other Company Documents, and the Company hereby accepts such appointment:

(1) To reconstruct, renovate and equip the Project Facility, in one or more phases, and to acquire the Equipment;

(2) To make, execute, acknowledge, and deliver any contracts, orders, receipts, writings, and instructions with any other Persons and, in general, to do all things which may be requisite or proper, all for the construction, reconstruction and equipping of the Project Facility with the same powers and with the same validity as the Agency could do if acting in its own behalf, provided that the Agency shall have no liability for the payment of any sums due thereunder;

(3) To pay all fees, costs, and expenses incurred in the construction, reconstruction and equipping of the Project Facility from funds made available therefor from the funds of the Company; and

(4) To ask, demand, sue for, levy, recover, and receive all such sums of money, debts, dues, and other demands whatsoever which may be due, owing, and payable to the Agency under the terms of any contract, order, receipt, or writing in connection with the construction, reconstruction and equipping of the Project Facility and to enforce the provisions of any contract, agreement, obligation, bond, or other performance security.

(c) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1, provided, however, that the Agency shall have no liability for the payment of any sums due thereunder.

(d) The Company has given, or will give or cause to be given, all notices and have complied, or will comply or cause compliance with, all laws, ordinances, rules, regulations, and requirements of all Governmental Authorities applying to or affecting the conduct of work on the Project Facility (the applicability of such laws, ordinances, rules, and regulations to be determined both as if the Agency were the owner of the Project Facility and as if the Company were the owner of the Project Facility), and the Company will defend, indemnify, and save the Agency and its officers, members, agents, servants, and employees harmless from all fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.

(e) The Agency agrees to use commercially reasonable efforts to cooperate with the Company in obtaining grants to apply to a portion of the Project costs, provided that nothing contained in the Agency Documents shall be deemed to obligate the Agency to apply its own funds to Project costs.

#### **4.2 COMPLETION OF PROJECT FACILITY.**

(a) The Company will proceed with due diligence to acquire, reconstruct, renovate and equip the Project Facility. Completion of the acquisition, reconstruction, renovation and equipping of the Project Facility shall be evidenced by a certificate signed by an Authorized Representative of the Company and approved by the Agency, stating:

(1) The date of such completion;

(2) That all labor, services, materials, and supplies used therefor and all costs and expenses in connection therewith have been paid;

(3) That the Company has good and valid title to all Property constituting the Project Facility subject to the interest of the Agency therein and to this Agency Lease and the Company Lease; and

(4) That the Project Facility is ready for occupancy, use, and operation for its intended purposes.

(b) Notwithstanding the foregoing, such certificate may state that (1) it is given without prejudice to any rights of the Company against third parties which exist at the date of such certificate or which may subsequently come into being; (2) it is given only for the purposes of this Section 4.2; and (3) no Person other than the Agency may benefit therefrom.

(c) Such certificate shall be accompanied by (1) copy of a certificate of occupancy, if required, and any and all permissions, licenses, or consents required of Governmental Authorities for the occupancy, operation, and use of the Project Facility for its intended purposes; and (2) Lien releases from the Company's contractor and any subcontractors under a contract with a price in excess of \$100,000.

#### **4.3 COSTS OF COMPLETION PAID BY COMPANY.**

(a) The Company agrees to complete the Project and to pay in full all costs of the reconstruction and equipping of the Project Facility.

(b) No payment by the Company pursuant to this Section 4.3 shall entitle the Company to any diminution or abatement of any amounts payable by the Company under this Agency Lease.

#### **4.4 REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN, AND THEIR SURETIES.**

In the event of a default by any contractor, subcontractor, or materialman under any contract made by them in connection with reconstruction and equipping of the Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company against the contractor, subcontractor, or materialman so in default and against each surety for the performance of such contract. The Company may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman, or surety which the Company deems reasonably necessary. The Company shall advise the Agency of any actions or proceedings taken hereunder. No such suit shall relieve the Company of any of its obligations under this Agency Lease and the other Company Documents.

#### **4.5 COOPERATION IN EXECUTION OF ADDITIONAL MORTGAGES AND MODIFICATIONS OF MORTGAGES.**

The Agency agrees, upon written request of an Authorized Representative of the Company and subject to the provisions of the Act, to use its commercially reasonable efforts to execute and deliver such instruments and documents as shall be approved by counsel to the Agency and as may be required in connection with the Company's financing or refinancing for **the costs of reconstruction and equipping** of the Project Facility, provided that:

(a) No Event of Default under this Agency Lease, the Company Lease or the PILOT Agreement, or any of the Mortgages shall have occurred and be continuing; and

(b) The execution and delivery of such documents by the Agency (i) is permitted by law in effect at the time; and (ii) will serve the public purposes of the Act; and

(c) The Company will be responsible for and shall pay, from the proceeds thereof or otherwise, the Agency's fee and the costs and expenses of the Agency incidental to such additional financing, refinancing or modification thereof, including without limitation the reasonable attorneys' fees of the Agency; and

(d) The documents to be signed by the Agency shall contain the provisions set forth in Sections 8.2 and 11.11 hereof and shall not impose any duties or obligations upon the Agency except as may be acceptable to the Agency.

## ARTICLE V

### AGREEMENT TO LEASE PROJECT FACILITY; RENTAL PAYMENTS

#### 5.1 AGREEMENT TO LEASE PROJECT FACILITY.

In consideration of the Company's covenant herein to make rental payments, and the other covenants of the Company contained herein, including the covenant to make additional rent and other payments required hereby, the Agency hereby agrees to lease to the Company, and the Company hereby agrees to lease from the Agency, the Project Facility for and during the term provided herein and upon and subject to the terms and conditions herein set forth and subject to Permitted Encumbrances.

The Agency's acceptance of the leasehold interest in and to the Property pursuant to the Company Lease, and its acquisition and holding of said leasehold interest were effected and performed solely at the request of the Company pursuant to the requirements of the Act. The Agency hereby transfers and conveys all of its beneficial and equitable interests, if any, in the Property to the Company, except for its Unassigned Rights. As a result, the parties hereby acknowledge and agree that subject to the terms and conditions of this Agency Lease, the Company has all of the equitable and beneficial ownership and other interest in the Property (except for the Unassigned Rights), and will have all the equitable and beneficial ownership and other interest in the Project Facility (except for the Unassigned Rights), such that the Company, and not the Agency, shall have an:

- (i) unconditional obligation to bear the economic risk of depreciation and diminution in value of the Project Facility due to obsolescence or exhaustion, and shall bear the risk of loss if the Project Facility is destroyed or damaged;
- (ii) unconditional obligation to keep the Project Facility in good condition and repair;
- (iii) unconditional and exclusive right to the possession of the Project Facility, and shall have sole control of and responsibility for the Project Facility;
- (iv) unconditional obligation to maintain insurance coverage on, and such reserves with respect to, the Project Facility as may be required by the Company and the Agency and any Mortgagee with respect to the Project;
- (v) unconditional obligation to pay all taxes levied on, or payments in lieu thereof, and assessments made with respect to, the Project Facility;
- (vi) subject to the Unassigned Rights, unconditional and exclusive right to receive rental and any other income and other benefits of the Project Facility and from the operation of the Project;

(vii) unconditional obligation to pay for all of the capital investment in the Project Facility;

(viii) unconditional obligation to bear all expenses and burdens of the Project Facility and to pay for all maintenance and operating costs in connection with the Project Facility; and

(ix) unconditional and exclusive right to include all income earned from the operation of the Project Facility and claim all deductions and credits generated with respect to the Project Facility on its annual federal, state and local tax returns.

## 5.2 TERM OF LEASE; EARLY TERMINATION; SURVIVAL.

(a) The term of this Agency Lease shall commence on the date hereof and continue in full force and effect until the final payment under the PILOT Schedule is tendered in October, 2027, unless earlier terminated as provided herein.

(b) The Company shall have the option, at any time during the term of this Agency Lease, to terminate this Agency Lease. In the event that the Company shall exercise its option to terminate this Agency Lease pursuant to this Section 5.2(b), the Company shall file with the Agency and the Mortgagees a certificate stating the Company's intention to do so pursuant to this Section 5.2(b) and to comply with the requirements set forth in Section 5.2(c) hereof.

(c) As a condition to the effectiveness of the Company's exercise of its right to early termination, the following payments shall be made:

(1) **To the Agency:** an amount certified by the Agency as sufficient to pay all unpaid fees and expenses of the Agency incurred under this Agency Lease and the PILOT Agreement (including, but not limited to those in connection with the early termination of this Agency Lease); and

(2) **To the Appropriate Person:** an amount sufficient to pay all other fees, expenses or charges, if any, then due and payable under this Agency Lease and the other Agency Documents.

(d) The certificate required to be filed pursuant to Section 5.2(b), setting forth the provision thereof permitting early termination of this Agency Lease shall also specify the date upon which the payments pursuant to subdivision (c) of this Section 5.2 shall be made, which date shall not be less than thirty (30) nor more than sixty (60) days from the date such certificate is filed with the Agency and the Mortgagees.

(e) Contemporaneously with the termination of this Agency Lease in accordance with Sections 5.1 or 5.2 hereof, the Company Lease and the PILOT Agreement shall terminate. The Agency shall, upon payment by the Company of the amounts pursuant to Section 5.2(c) above, deliver to the Company all documents furnished to the Agency by the Company and reasonably necessary to evidence termination of the Company Lease and Agency Lease, without representation or warranty, subject to the following: (1) any Liens to which such

Project Facility was subject when conveyed to the Agency, (2) any Liens created at the request of the Company or to the creation of which the Company consented or in the creation of which the Company acquiesced, (3) any Permitted Encumbrances, and (4) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Agency Lease.

### **5.3 RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE.**

(a) The Company shall pay basic rental payments for the Project Facility consisting of (i) to the Commissioner of Finance of the City on behalf of the Agency in an amount sufficient to pay the sums due under the PILOT Agreement at the times and in the manner provided under the PILOT Agreement; and (ii) to each Mortgagee an amount equal to the debt service and other amounts becoming due and payable under the applicable Mortgages, if any, and the indebtedness secured thereby on the due date thereof in the manner and as provided for therein.

(b) The Company shall pay to the Agency, as additional rent, within ten (10) days after the receipt of a demand therefor from the Agency, the sum of the reasonable expenses of the Agency and the officers, members, agents, and employees thereof incurred by the reason of the Agency's lease or sublease of the Project Facility or in connection with the carrying out of the Agency's duties and obligations under this Agency Lease, the Company Lease or any of the other Agency Documents and any other fee or expense of the Agency with respect to the Project Facility, or any of the other Agency Documents, the payment of which is not otherwise provided for under this Agency Lease. Any sums not received by the Agency on the due date therefore shall accrue interest at the annual rate set forth in the last sentence of Section 6.4.

(c) The Company agrees to make the above-mentioned payments, within ten (10) days of receipt of written notice of same, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event that the Company shall fail to make or cause to be made any of the payments required under this Agency Lease, the item or installment not so paid shall continue as an obligation of the Company until such item or installment is paid in full.

### **5.4 NATURE OF OBLIGATIONS OF COMPANY HEREUNDER.**

(a) The obligations of the Company to make the payments required by this Agency Lease and to perform and observe any and all of the other covenants and agreements on its part contained herein are general obligations of the Company and are absolute and unconditional irrespective of any defense or any rights of set-off, recoupment, or counterclaim it may otherwise have against the Agency. The Company agrees that it will not suspend, discontinue, or abate any payment required by, or fail to observe any of its other covenants or agreements contained in this Agency Lease, or terminate this Agency Lease at any time prior to termination or expiration of the PILOT Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the reconstruction and equipping of the Project Facility, any defect in the title, design, operation, merchantability, fitness, or condition of the Project Facility, or any part thereof, or in the suitability of the Project Facility, or any part thereof, for the Company's purposes or needs, or failure of consideration for,

destruction of or damage to, or Condemnation of title to, or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State of New York, or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with this Agency Lease or the Company Lease.

(b) Nothing contained in this Section 5.4 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Agency Lease or the Company Lease, and in the event the Agency should fail to perform any such agreement, the Company may institute such action against the Agency as the Company may deem necessary to compel performance (subject to the provisions of Section 11.11).

## **ARTICLE VI**

### **MAINTENANCE, MODIFICATIONS, TAXES, AND INSURANCE**

#### **6.1 MAINTENANCE AND MODIFICATIONS OF PROJECT FACILITY.**

The Company shall:

(a) Keep the Project Facility in good condition and repair and preserve the same against waste, loss, damage, and depreciation, ordinary wear and tear excepted;

(b) Make all necessary repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural, or non-structural, foreseen or unforeseen) which is damaged, destroyed, or condemned; and

(c) Operate the Project Facility in a sound and economic manner.

#### **6.2 TAXES, ASSESSMENTS, AND UTILITY CHARGES.**

(a) The Company shall pay as the same respectively become due:

(1) All taxes and governmental charges of any kind, whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project Facility;

(2) All utility and other charges, including "service charges," incurred or imposed for the operation, maintenance, use, occupancy, upkeep, and improvement of the Project Facility, the non-payment of which would create, or entitle the obligee to impose, a Lien on the Project Facility;

(3) All assessments and charges of any kind whatsoever lawfully made by any Governmental Authority for public improvements; and

(4) All payments of taxes or payments in lieu of taxes required to be made to the Agency under the terms of the PILOT Agreement or any other agreement with respect thereto. Notwithstanding anything herein to the contrary, the Company acknowledges

and agrees that until such time as the Project Facility is removed from the tax roll, that date intended to be as of January 1, 2013, the Company shall pay all taxes as if the Project Facility were privately owned, irrespective of the Agency's interest therein.

(b) The Company may in good faith actively contest any such taxes, assessments, and other charges, provided that (1) the Company shall have first notified the Agency of such contest; (2) no Event of Default under this Agency Lease or any of the other Company Documents shall have occurred and be continuing; and (3) the Company shall have set aside adequate reserves for any such taxes, assessments, and other charges. If the Company demonstrates to the satisfaction of the Agency and certifies to the Agency by delivery of a written certificate, that the non-payment of any such items will not endanger any part of the Project Facility or subject the Project Facility, or any part thereof, to loss or forfeiture, the Company may permit the taxes, assessments, and other charges so contested to remain unpaid during the period of such contest and any appeal therefrom. Otherwise, such taxes, assessments, or charges shall be paid promptly by the Company or secured by the Company's posting a bond in form and substance satisfactory to the Agency.

(c) Notwithstanding anything herein or in the PILOT Agreement to the contrary, the Company shall pay taxes on the Project Facility as if privately owned up through and including December 31, 2012 at which time the PILOT Agreement and attendant schedule shall become effective.

### **6.3 INSURANCE REQUIRED.**

During the term of this Agency Lease, the Company shall maintain or cause to be maintained insurance with respect to the Project Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type and as required of the Agency, paying (as the same becomes due and payable) all premiums with respect thereto, including:

(a) Insurance against loss or damage by fire, lightning, and other casualties customarily insured against (with a uniform standard extended coverage endorsement), such insurance to be in an amount not less than the full replacement value of the completed Project Facility, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company.

(b) Workers' compensation insurance, disability benefits' insurance, and each other form of insurance which the Company is required by law to provide covering loss resulting from injury, sickness, disability, or death of employees of the Company who are located at or assigned to the Project Facility;

(c) A policy of commercial general liability insurance with a \$1,000,000 combined single limit for bodily injury including death and property damage, including but not limited to, contractual liability under this Agency Lease and personal injury, with blanket excess liability coverage in an amount not less than \$2,000,000, covering the Project Facility and the Company's and the Agency's use or occupancy thereof against all claims on account of bodily injury or death and property damage occurring upon, in or about the Project Facility or in

connection with the ownership, maintenance, use and/or occupancy of the Project Facility and all appurtenant areas.

#### **6.4 ADDITIONAL PROVISIONS RESPECTING INSURANCE.**

All insurance required by Section 6.3 shall be with insurance companies of recognized financial standing selected by the Company and licensed to write such insurance in the State of New York. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other Persons engaged in businesses similar in size, character, and other respects to those in which the Company are engaged. All policies evidencing such insurance except the Workers' Compensation policy shall name the Company as insured and the Agency as an additional insured, as its interests may appear, and shall provide for at least thirty (30) days' prior written notice to the Agency of cancellation, reduction in policy limits, or material change in coverage thereof. Certificates satisfactory in form and substance evidencing all insurance required hereby shall be delivered to the Agency before the Closing Date. The Company shall deliver or cause to be delivered to the Agency on or before the first business day of each December thereafter a certificate dated not earlier than the immediately preceding December 1 reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Section 6.3. The Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agency Lease each year throughout the term of this Agency Lease.

All premiums with respect to the insurance required by Section 6.3 shall be paid by the Company, provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Agency, together with interest at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is less.

#### **6.5 APPLICATION OF NET PROCEEDS OF INSURANCE.**

The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.3 shall be applied as follows:

(a) The Net Proceeds of the insurance required by subsection 6.3(a) shall be paid and applied as provided in Section 7.1 hereof; and

(b) The Net Proceeds of the insurance required by subsections 6.3(b) and 6.3(c) shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

#### **6.6 PAYMENTS IN LIEU OF REAL ESTATE TAXES.**

The Company, the City and the Agency have entered into a PILOT Agreement with respect to payments in lieu of real estate taxes.

## ARTICLE VII

### DAMAGE, DESTRUCTION, AND CONDEMNATION

#### 7.1 DAMAGE OR DESTRUCTION.

(a) If any of the Mortgages shall be in effect or any of the Mortgagees shall have any interest in the Project Facility arising under or related to one of the Mortgages, whether by foreclosure or otherwise and the Project Facility shall be damaged or destroyed, in whole or in part, then insurance proceeds shall be paid to one or more of the Mortgagees, as applicable, and shall be applied by the applicable Mortgagee at its option either to the reduction of the indebtedness secured by the applicable Mortgage or to the restoration or repair of the Project Facility, provided that there shall be no abatement or reduction in amounts payable to the Agency hereunder. If the Mortgages shall not be in effect and the Mortgagees shall have no interest in the Project Facility and the Project Facility shall be damaged or destroyed, in whole or in part:

(1) There shall be no abatement or reduction in the amounts payable by the Company under this Agency Lease or otherwise (whether or not the Project Facility is replaced, repaired, rebuilt, or restored); and

(2) The Company shall promptly give notice thereof to the Agency;  
and

(3) Except as otherwise provided in subsections 7.1(b) and 7.1(c) hereof, upon receipt of the insurance proceeds, the Company shall promptly replace, repair, rebuild, or restore the Project Facility to substantially the same condition as existed prior to such damage or destruction, with such changes, alterations, and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations, or modifications do not change the nature of the Project Facility, such that it does not constitute a "project" (as such quoted term is defined in the Act); and in the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding, or restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds.

(b) If the Mortgages shall not be in effect and the Mortgagees shall have no interest in the Project Facility, then notwithstanding anything to the contrary contained in subsection 7.1(a), the Company shall not be obligated to replace, repair, rebuild, or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection 7.1(a) if the Company shall notify the Agency that, in the Company's sole judgment, the Company does not deem it practical or desirable to replace, repair, rebuild, or restore the Project Facility. In such event, the lesser of (1) the total amount of the Net Proceeds collected under any and all policies of insurance covering the damage to or destruction of the Project Facility, or (2) any other sums payable to the Agency pursuant to this Agency Lease and the other Agency Documents, shall be applied to the repayment of all amounts due to the Agency under this Agency Lease, the Company Lease, the PILOT Agreement and other Agency Documents. If the Net Proceeds collected under any and all policies of insurance are less than

the amount necessary to repay any and all amounts payable to the Agency, the Company shall pay the difference between such amounts and the Net Proceeds of all such insurance settlements so that any and all amounts payable under this Agency Lease, the PILOT Agreement, the Company Lease and the other Agency Documents to the Agency shall be paid in full. If all amounts due under this Agency Lease, the Mortgages, the PILOT Agreement, the Company Lease and the other Agency Documents are paid in full, all such Net Proceeds, or the balance thereof, shall be paid to the Company for its purposes.

(c) The Company and the Mortgagees may adjust all claims under any policies of insurance required by subsections 6.3(a) and 6.3(c) hereof with the prior written consent of the Agency, which consent shall not be unreasonably withheld.

## **7.2 CONDEMNATION.**

(a) If the Mortgages shall be in effect or the Mortgagees shall have any interest in the Project Facility arising under or related to the Mortgages, whether by foreclosure or otherwise and title to, or the use of, all, substantially all or less than substantially all of the Project Facility shall be taken by Condemnation, then Condemnation proceeds shall be paid to the Mortgagees and shall be applied by the Mortgagees at its option either to the reduction of the indebtedness secured by the Mortgages or to the restoration of the Project Facility, provided that there shall be no abatement or reduction in amounts payable to the Agency hereunder. If the Mortgages shall not be in effect and the Mortgagees shall have no interest in the Project Facility and if title to, or the use of, less than substantially all of the Project Facility shall be taken by Condemnation:

(1) There shall be no abatement or reduction in the amounts payable by the Company under this Agency Lease or otherwise (whether or not the Project Facility is restored); and

(2) The Company shall promptly give notice thereof to the Agency;  
and

(3) Except as otherwise provided in subsections 7.2(b) and 7.2(c) hereof, upon receipt of the Condemnation proceeds, the Company shall promptly restore the Project Facility (excluding any part of the Project Facility taken by Condemnation) to substantially the condition and value as an operating entity as existed prior to such Condemnation; and the Company shall nonetheless complete such restoration and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds.

(b) If the Mortgages shall not be in effect and the Mortgagees shall have no interest in the Project Facility and if title to, or the use of, less than substantially all of the Project Facility shall be taken by Condemnation, then notwithstanding anything to the contrary contained in subsection 7.2(a), the Company shall not be obligated to restore the Project Facility, and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection 7.2(a) if the Company shall notify the Agency that, in the Company's sole judgment, the Company does not deem it practical or desirable to restore the Project Facility. In such event, the lesser of (1) the Net Proceeds of any Condemnation award, or (2) the amount necessary to

pay the Agency pursuant to this Agency Lease, the Company Lease, the PILOT Agreement and the other Agency Documents, shall be applied to payment of all amounts due to the Agency under this Agency Lease, the Company Lease, the PILOT Agreement and other Agency Documents. If the Net Proceeds of any Condemnation award are less than the amount necessary to pay any and all amounts payable to the Agency, the Company shall pay the difference between such amounts and the Net Proceeds of such Condemnation award so that any and all amounts payable under this Agency Lease, the Company Lease, the PILOT Agreement and other Agency Documents to the Agency shall be paid in full. If all amounts due under this Agency Lease, the Company Lease, the Mortgages, the PILOT Agreement and the other Agency Documents have been paid in full, all such Net Proceeds or the balance thereof shall be paid to the Company for its purposes.

(c) The Company and the Mortgagees with the prior written consent of the Agency (which consent shall not be unreasonably withheld), shall have sole control of any Condemnation proceeding with respect to the Project Facility, or any part thereof, and may negotiate the settlement of any such proceeding.

### **7.3 ADDITIONS TO PROJECT FACILITY.**

All replacements, repairs, rebuilding, or restoration made pursuant to Sections 7.1 or 7.2 hereof, whether or not requiring the expenditure of the Company's own moneys, shall automatically become part of the Project Facility as if the same were specifically described herein.

## **ARTICLE VIII**

### **SPECIAL COVENANTS**

#### **8.1 NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS."**

THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY, OR FITNESS OF THE PROJECT FACILITY, OR ANY PART THEREOF, OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

#### **8.2 HOLD HARMLESS PROVISIONS.**

(a) The Company hereby releases the Agency and its members, officers, agents and employees from, agrees that the Agency and its members, officers, agents and employees shall not be liable for, and agrees to indemnify, defend, and hold the Agency and its

members, officers, agents and employees harmless from and against any and all claims arising as a result of the Agency's undertaking the Project, including, but not limited to:

(1) Liability for loss or damage to Property or bodily injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project Facility, or arising by reason of or in connection with the occupation or the use thereof, or the presence on, in, or about the Project Facility;

(2) Liability arising from or expense incurred by the Agency's acquisition of a leasehold interest in the Project Facility and the subleasing of the Project Facility, including, without limiting the generality of the foregoing, all liabilities or claims arising as a result of the Agency's obligations under this Agency Lease, the Company Lease or any Mortgages;

(3) All claims arising from the exercise by the Company of the authority conferred upon it and performance of the obligations assumed under Section 4.1 hereof;

(4) All causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities, or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents or employees.

The foregoing indemnities shall apply notwithstanding the fault or negligence (other than gross negligence or willful misconduct) on the part of the Agency or any of its officers, members, agents, servants or employees and irrespective of any breach of statutory obligation or any rule of comparative or apportional liability.

(b) In the event of any claim against the Agency or its members, officers, agents, or employees by any employee of the Company, or any contractor of the Company, or anyone directly or indirectly employed by any of them, or any one for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefit laws, or other employee benefit laws.

(c) To effectuate the provisions of this Section 8.2, the Company agrees to provide for and insure, in the liability policies required by Section 6.3, its liabilities assumed pursuant to this Section 8.2.

(d) Notwithstanding any other provisions of this Agency Lease, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Agency Lease and the Company Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution relating to the matters herein described may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses

and charges incurred by the Agency, or its officers, members, agents or employees relating thereto.

(e) For purposes of this Section 8.2 and Section 11.11 hereof, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

### **8.3 RIGHT OF ACCESS TO PROJECT FACILITY.**

During the term of this Agency Lease, the Company agrees that the Agency and its duly authorized agents shall have the right to enter upon and to examine and inspect the Project Facility.

### **8.4 MAINTENANCE OF EXISTENCE.**

During the term of this Agency Lease, the Company will maintain its existence and will not dissolve or otherwise dispose of all or substantially all of its assets.

### **8.5 AGREEMENT TO PROVIDE INFORMATION**

During the term of this Agency Lease, and no less frequently than annually, the Company agrees, whenever reasonably requested by the Agency or the Agency's auditor, to provide and certify, or cause to be certified, such information concerning the Company, its finances, job creation and other topics as the Agency from time to time reasonably considers necessary or appropriate including, but not limited to those reports, in substantially the form as set forth in **Exhibit "D"** attached hereto, and such other information necessary as to enable the Agency to make any reports required by law or governmental regulation.

### **8.6 BOOKS OF RECORD AND ACCOUNT; FINANCIAL STATEMENTS.**

During the term of this Agency Lease, the Company agrees to maintain proper accounts, records, and books, in which full and correct entries shall be made in accordance with generally accepted accounting principles, of all business and affairs of the Company.

### **8.7 COMPLIANCE WITH ORDERS, ORDINANCES, ETC.**

(a) The Company agrees that it will, during any period in which the amounts due under this Agency Lease remain unpaid, promptly comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter affect the Company's obligations hereunder or be applicable to the Project Facility, or any part thereof, or to any use, manner of use, or condition of the Project Facility, or any part thereof, the applicability of the same to be determined both as if the Agency were the owner of the Project Facility and as if the Company were the owner of the Project Facility.

(b) Notwithstanding the provisions of subsection 8.7(a), the Company may, in good faith, actively contest the validity or the applicability of any requirement of the nature referred to in said subsection 8.7(a), provided that the Company shall have first notified the Agency of such contest, no Event of Default shall be continuing under this Agency Lease, or any of the other Company Documents; and such contest and failure to comply as such requirement shall not subject the Project Facility to loss or forfeiture. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom unless the Agency or its members, officers, agents, or employees may be liable for prosecution for failure to comply therewith, in which event the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

## **8.8 DISCHARGE OF LIENS AND ENCUMBRANCES.**

During the term of this Agency Lease, the Company hereby covenants that, except for Permitted Encumbrances, the Company agrees not to create, or suffer to be created, any Lien, except for Permitted Encumbrances, on the Project Facility, or any part thereof. The Company shall promptly notify the Agency of any Permitted Encumbrances created, or suffered to be created, on the Project Facility.

## **8.9 PERFORMANCE BY AGENCY OF COMPANY'S OBLIGATIONS.**

Should the Company fail to make any payment or to do any act as herein provided, the Agency may, but need not, upon ten (10) days' prior written notice to or demand on the Company and without releasing the Company from any obligation herein, make or do the same, including, without limitation, appearing in and defending any action purporting to affect the rights or powers of the Company, or the Agency and paying all expenses, including, without limitation, reasonable attorneys' fees; and the Company shall pay immediately upon demand all sums so expended by the Agency under the authority hereof, together with the interest thereon at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is less.

# **ARTICLE IX**

## **ASSIGNMENTS; MERGER OF AGENCY**

### **9.1 ASSIGNMENT OF AGENCY LEASE.**

This Agency Lease may not be assigned by the Company, in whole or in part, nor all or any part of the Project Facility subleased, nor any part of the Project Facility sold, leased, transferred, conveyed or otherwise disposed of without the prior written consent of the Agency, which consent shall not be unreasonably withheld. Any assignment of this Agency Lease shall not effect a release of the Company from its obligations hereunder or under the PILOT Agreement. Any assignment of this Agency Lease or sublease of the Project Facility shall be subject to this Agency Lease. The prior consent of the Agency shall not be required for any sublease of the office space or any residential dwelling units in the Project Facility in the ordinary course of the Company's business, provided such lease or other occupancy agreement is subject to the Agency Lease and the use thereof will not cause the Project to fail to constitute a "project" under the Act.

## **9.2 MERGER OF AGENCY.**

(a) Nothing contained in this Agency Lease shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to any other body corporate and politic and public instrumentality of the State of New York, or political subdivision thereof, which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger, or assignment, the due and punctual performance and observance of all the agreements and conditions of this Agency Lease to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(b) Promptly following the effective date of any such consolidation, merger, or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger, or assignment as the Company reasonably may request.

## **ARTICLE X**

### **EVENTS OF DEFAULT AND REMEDIES**

#### **10.1 EVENTS OF DEFAULT DEFINED.**

The following shall be "Events of Default" under this Agency Lease, and the terms "Event of Default" or "Default" shall mean, whenever they are used in this Agency Lease, any one or more of the following events:

(a) A default by the Company in the due and punctual payment of the amounts specified to be paid pursuant to subsection 5.3; or

(b) Failure by the Company to maintain the insurance required by Section 6.3;  
or

(c) A default in the performance or the observance of any other of the covenants, conditions, or agreements on the part of the Company in this Agency Lease and the continuance thereof for a period of thirty (30) days after written notice is given by the Agency or, if such covenant, condition, or agreement is capable of cure but cannot reasonably be cured within such thirty-day period, the failure of the Company to commence to cure within such thirty-day period and to prosecute the same with due diligence and cure the same within an additional thirty (30) days; or

(d) The occurrence of an "Event of Default" under any Mortgage, the PILOT Agreement, Company Lease or any of the other Company Documents which is not timely cured as provided therein; or

(e) The Company shall conceal, remove, or permit to be concealed or removed any part of its Property with intent to hinder, delay, or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance, or similar law, or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid, or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within sixty (60) days from the date thereof; or

(f) By order of a court of competent jurisdiction, a trustee, receiver, or liquidator of the Project Facility, or any part thereof, or of the Company shall be appointed and such order shall not be discharged or dismissed within sixty (60) days after such appointment; or

(g) The filing by the Company of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy statute; the failure by the Company within sixty (60) days to lift any execution, garnishment, or attachment of such consequence as will impair the Company's ability to carry out its obligations hereunder; the commencement of a case under Title 11 of the United States Code against the Company as the debtor, or commencement under any other federal or state bankruptcy statute of a case, action, or proceeding against the Company, and continuation of such case, action, or proceeding without dismissal for a period of sixty (60) days; the entry of an order for relief by a court of competent jurisdiction under Title 11 of the United States Code or any other federal or state bankruptcy statute with respect to the debts of the Company; or in connection with any insolvency or bankruptcy case, action, or proceeding, appointment by final order, judgment, or decree of a court of competent jurisdiction of a receiver or trustee of the whole or a substantial portion of the Property of the Company unless such order, judgment, or decree is vacated, dismissed, or dissolved within sixty (60) days of its issuance.

## **10.2 REMEDIES ON DEFAULT.**

(a) Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

- (1) Terminate this Agency Lease;
- (2) Terminate the Company Lease;
- (3) Terminate the PILOT; or

(4) Take any other action at law or in equity, which may appear necessary or desirable to collect any amounts then due, or thereafter to become due, hereunder or under the PILOT Agreement and to enforce the Agency's right to terminate this Agency Lease, the Company Lease and the PILOT Agreement.

(b) No action taken pursuant to this Section 10.2 shall relieve the Company from its obligations to make all payments required by Sections 5.3(b) and 8.2 hereof.

(c) The Company's investor member shall have the right, but not the obligation, to cure any Event of Default and the Agency agrees to accept such performance as if it were undertaken by the Company itself.

### **10.3 REMEDIES CUMULATIVE.**

No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agency Lease or the PILOT Agreement, or now or hereafter existing at law or in equity to collect any amounts then due, or thereafter to become due, hereunder and thereunder and to enforce the Agency's right to terminate this Agency Lease, the PILOT Agreement and the Company Lease. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article 10, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Agency Lease.

### **10.4 AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.**

In the event the Company should Default under any of the provisions of this Agency Lease and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

### **10.5 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.**

In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## **ARTICLE XI**

### **MISCELLANEOUS**

#### **11.1 NOTICES.**

All notices, certificates, and other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended recipient or by overnight courier or such other means as shall provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the Person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

(a) If to the Agency, to:

City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202  
Attention: Chairman

With a copy to:

City of Syracuse  
233 East Washington Street  
Syracuse, New York 13202  
Attention: Corporation Counsel

(b) If to the Company, to:

James Street Apartments, LLC  
183 East Main Street, Suite 600  
Rochester, New York 14604  
Attn: Andrew Bodewes

With a copy to:

Conifer Realty, LLC  
183 East Main Street, Suite 600  
Rochester, New York 14604  
Attn: Susan Sturman Jennings, Esq.

and

Conifer 2011 Tax Credit Fund, LP  
c/o Red Stone Equity Partners, LLC  
200 Public Square, Suite 1550  
Cleveland, Ohio 44114  
Attn: General Counsel

The Agency and the Company, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, and other communications shall be sent.

## **11.2 BINDING EFFECT.**

This Agency Lease shall inure to the benefit of and shall be binding upon the Agency and the Company and, as permitted by this Agency Lease, upon their respective heirs, successors and assigns.

## **11.3 SEVERABILITY.**

If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall for any reason be held, or shall in fact be, inoperative, unenforceable, or contrary to law in any particular circumstance; such circumstance shall not render the provision in question inoperative or unenforceable in any other circumstance. Further, if any one or more of the sentences, clauses, paragraphs, or sections herein is contrary to law, then such covenant(s) or agreement(s) shall be deemed severable of remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Agency Lease.

## **11.4 AMENDMENTS, CHANGES, AND MODIFICATIONS.**

This Agency Lease may not be amended, changed, modified, altered, or terminated except by an instrument in writing signed by the parties hereto.

## **11.5 EXECUTION OF COUNTERPARTS.**

This Agency Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

## **11.6 APPLICABLE LAW.**

This Agency Lease shall be governed exclusively by the applicable laws of the State of New York.

## **11.7 WAIVER OF TRIAL BY JURY.**

THE COMPANY AND THE AGENCY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY DISPUTE ARISING UNDER THIS AGENCY LEASE, AND THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGENCY LEASE.

## **11.8 SUBORDINATION.**

This Agency Lease shall be subject and subordinate to the Company Lease and the Mortgages in all respects.

## **11.9 SURVIVAL OF OBLIGATIONS.**

(a) The obligations of the Company to provide the indemnity required by Section 8.2 hereof shall survive the termination of this Agency Lease and all such payments after such termination shall be made upon demand of the party to whom such payment is due.

(b) The obligations of the Company to provide the indemnity required by Section 8.2 shall survive until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency or its officers, members, agents (other than the Company) or employees relating thereto.

#### **11.10 TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING.**

The Table of Contents and the Section headings in this Agency Lease have been prepared for convenience of reference only and shall not control, affect the meaning of, or be taken as an interpretation of any provision of this Agency Lease.

#### **11.11 NO RECOURSE; SPECIAL OBLIGATION.**

The obligations and agreements of the Agency contained herein and in the other Agency Documents and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent or employee of the Agency in his individual capacity; and the members, officers, agents and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State New York or of the City of Syracuse, and neither the State of New York nor the City of Syracuse shall be liable hereon or thereon. Further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived, and to be derived from, the lease, sale, or other disposition of the Project Facility, other than revenues derived from or constituting Unassigned Rights. No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or thereunder shall be sought or enforced against the Agency unless:

(a) The party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(b) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses; and

(c) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

Any failure to provide notice, indemnity, or security to the Agency pursuant to this Section 11.11 shall not alter the full force and effect of any Event of Default under this Agency Lease.

(d) For purposes of this Section 11.11, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

**IN WITNESS WHEREOF**, the Agency and the Company have caused this Agency Lease to be executed in their respective names by their duly authorized representatives.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: 

\_\_\_\_\_  
William M. Ryan, Chairman

**JAMES STREET APARTMENTS, LLC**

By: James Street Managing Member, LLC

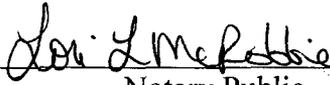
By: Conifer Realty, LLC

By: 

\_\_\_\_\_  
Andrew I. Crossed  
Executive Vice President

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ONONDAGA )

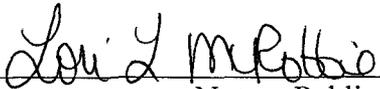
On the 5<sup>th</sup> day of December in the year 2011 before me, the undersigned, personally appeared **William M. Ryan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ONONDAGA )

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 14

On the 10<sup>th</sup> day of December in the year 2011 before me, the undersigned, personally appeared **Andrew I. Crossed** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 14

**EXHIBIT "A"**

**REAL PROPERTY DESCRIPTION**

## LEGAL DESCRIPTION

PARCEL ONE (615 James Street, Syracuse, NY, TA#017.00-19-05)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Number 1 of Block Number 31 in said City, bounded and described as follows:

BEGINNING AT A POINT, said point being North 55 degrees 44 minutes 50 seconds East a distance of 116.20" from the intersection of the northerly line of James Street with the easterly line of McBride Street.

THENCE North 30 degrees 29 minutes 10 seconds West for a distance of 264.27 feet to a point on the southerly line of East Willow Street;

THENCE North 55 degrees 44 minutes 50 seconds East for a distance of 83.80 feet along the southerly line of East Willow Street to a point;

THENCE South 30 degrees 29 minutes 10 seconds East for a distance of 264.27 feet to a point on the northerly line of James Street;

THENCE South 55 degrees 44 minutes 50 seconds West for a distance of 83.80 feet TO THE POINT AND PLACE OF BEGINNING.

and

PARCEL TWO (622 James Street, Syracuse, NY, TA#103.00-05-04)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Block 33 in said City, bounded and described as follows, viz:

BEGINNING at a point in the southeasterly line of James Street 188 feet northeasterly along said street line from the northeasterly line of N. McBride Street;

thence along said southeasterly line of James Street N. 55° 44' 50" E., 74.53 feet to a point;

thence S. 30° 45' 40" E., 125.00 feet to a point;

thence S. 55° 44' 50" W., 19.00 feet to a point;

thence S. 30° 45' 40" E., 92.76 feet to a point;

thence N. 59° 14' 20" E., 66.00 feet to a point;

thence S. 30° 45' 40" E., 104.09 feet to a point;

thence S. 59° 14' 20" W., 90.73 feet to a point;

thence N. 34° 07' 00" W., 179.73 feet to a point;

thence S. 55° 44' 50" W., 12.00 feet to a point;

thence N. 34° 07' 00" W., 140.00 feet to the point and place of beginning.

TOGETHER WITH the benefits, in common with others, over a 15 foot right of way known as Wilkinson Avenue running westerly to N. McBride Street as recited in deeds at Liber 276, page 39, Liber 924, page 275 and Liber 2443, page 599.

## EXHIBIT "B"

### DESCRIPTION OF EQUIPMENT

All articles of personal property, all machinery, apparatus, equipment, appliances, floor coverings, furniture, furnishings, supplies, materials, fittings and fixtures of every kind and nature whatsoever and all appurtenances acquired by James Street Apartments, LLC (the "*Company*") now or hereafter attached to, contained in or used or acquired in connection with the Land (as defined in the Agency Lease) and/or the Project Facility (as defined in the Agency Lease) or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunch room facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

## EXHIBIT "C"

### TABLE OF DEFINITIONS

The following terms shall have the meanings set forth below, unless the context or use clearly indicate another or different meaning and the singular form of such defined words and terms shall include the plural and vice versa:

**Act:** means the New York State Industrial Development Agency Act (N.Y. Gen. Municipal Law §§ 850 et seq.) as amended, together with Section 926 of the N.Y. General Municipal Law, as amended from time to time.

**Agency:** means the City of Syracuse Industrial Development Agency and its successors and assigns.

**Agency Documents:** means the Agency Lease, the Company Lease, the PILOT Agreement, the Mortgages and any other documents executed by the Agency in connection with the Project or the Financial Assistance granted in connection therewith.

**Agency Lease:** means the Agency Lease Agreement dated as of December 22, 2011, by and between the Agency and the Company, as the same may be amended or supplemented from time to time.

**Authorized Representative:** means for the Agency, the Chairman or Vice Chairman of the Agency; for the Company, its Member or Managing Member or any officer designated in a certificate signed by an Authorized Representative of such Company and, for either the Agency or the Company, any additional persons designated to act on behalf of the Agency or the Company by written certificate furnished by the designating party containing the specimen signature of each designated person.

**City:** means the City of Syracuse.

**Closing Date:** means December 22, 2011.

**Closing Memorandum:** means the closing memorandum of the Agency relating to the Project.

**Company:** means James Street Apartments, LLC, a limited liability company, organized and existing under the laws of the State of New York having an address at 183 East Main Street, Suite 600, Rochester, New York 14604, and its permitted successors and assigns.

**Company Documents:** means the Company Lease, the Agency Lease, the PILOT Agreement, the Environmental Compliance Agreement, the Mortgages and any other documents

executed by the Company in connection with the Project or the Financial Assistance granted in connection therewith.

**Company Lease:** means the Company Lease Agreement dated as of December 22, 2011 from the Company to the Agency, pursuant to which the Company leased the Project Facility to the Agency, as the same may be amended or supplemented from time to time.

**Condemnation:** means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any governmental entity or other Person acting under governmental authority.

**County:** means the County of Onondaga in the State of New York.

**Environmental Compliance Agreement:** means the Environmental Compliance and Indemnification Agreement dated as of December 22, 2011 by the Company to the Agency.

**Equipment:** means all materials, machinery, furnishings, fixtures and equipment installed or used at the Project Facility, as of the Closing Date and thereafter acquired for or installed in, or upon, the Project Facility, as more fully described in **Exhibit "B"** to the Agency Lease.

**Facility:** means the building and other improvements located or to be constructed on the Land.

**Financial Assistance:** has the meaning given to such term in Section 854(14) of the Act.

**Governmental Authority:** means any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign.

**Land:** means the improved real property located at 615 James Street and 622 James Street in the City of Syracuse, County of Onondaga, New York, more particularly described on **Exhibit "A"** attached to the Agency Lease.

**Lien:** means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including, but not limited to, a security interest arising from a mortgage, encumbrance, pledge, conditional sale, or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases, and other similar title exceptions and encumbrances, including, but not limited to mechanics, materialmen, warehousemen, and carriers liens and other similar encumbrances effecting real property. For purposes hereof, a Person shall be deemed to be the owner of any property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the property has been retained by or vested in some other person for security purposes.

**Mortgage 1:** means the Mortgage dated December 22, 2011 from the Agency and the Company to Mortgagee 1 and to be recorded in the Onondaga County Clerk's office simultaneously with the Memorandum of Agency Lease, covering the Project Facility and securing Note 1.

**Mortgage 2:** means the Mortgage dated December 22, 2011 from the Agency and the Company to Mortgagee 2 and to be recorded in the Onondaga County Clerk's office simultaneously with the Memorandum of Agency Lease, covering the Project Facility and securing Note 2.

**Mortgage 3:** means the Mortgage dated December 22, 2011 from the Agency and the Company to Mortgagee 3 and to be recorded in the Onondaga County Clerk's office simultaneously with the Memorandum of Agency Lease, covering the Project Facility and securing Note 3.

**Mortgages:** means collectively, Mortgage 1, Mortgage 2 and Mortgage 3.

**Mortgagee:** means either Mortgagee 1, Mortgagee 2 or Mortgagee 3, as applicable.

**Mortgagee 1:** means the New York State Housing Finance Agency (HFA) having its principal place of business at 641 Lexington Avenue, New York, New York 10022, and its successors and assigns and being the lender under Note 1.

**Mortgagee 2:** means the New York State Housing Finance Agency (HFA) having its principal place of business at 641 Lexington Avenue, New York, New York 10022, and its successors and assigns and being the lender under Note 2.

**Mortgagee 3:** means City of Syracuse acting through its Department of Neighborhood and Business Development, having an office at City Hall Commons, 233 East Washington Street, Syracuse, New York 13202 and its successors and assigns and being the lender under Note 3.

**Mortgagees:** means collectively, Mortgagee 1, Mortgagee 2 and Mortgagee 3.

**Net Proceeds:** means so much of the gross proceeds with respect to which that term is used as remain after payment of all expenses, costs and taxes (including attorneys' fees) incurred in obtaining such gross proceeds.

**Note 1:** means the note in the principal amount of \$8,775,000 given by the Company to Mortgagee 1.

**Note 2:** means the note in the principal amount of \$850,000 given by the Company to Mortgagee 2.

**Note 3:** means the note in the principal amount of \$2,000,000 given by the Company to Mortgagee 3.

**Permitted Encumbrances:** means (A) utility, access and other easements and rights of way, and restrictions, encroachments and exceptions, that benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) artisans', mechanics', materialmen's, warehousemen's, carriers', landlords', bankers', workmen's compensation, unemployment compensation and social security, and other similar Liens to the extent permitted by the Agency Lease, (C) Liens for taxes (1) to the extent permitted by the Agency Lease or (2) at the time not delinquent, (D) any Lien on the Project Facility obtained through any Agency Document or Company Document or the Mortgages, (E) Liens of judgments or awards in respect of which an appeal or proceeding for review shall be pending (or is pending within ten days after entry) and a stay of execution shall have been obtained (or is obtained within ten days after entry), or in connection with any claim or proceeding, (F) Liens on any Property hereafter acquired by the Company or any subsidiary which liens are created contemporaneously with such acquisition to secure or provide for the payment or financing of any part of the purchase price thereof, (G) Liens consisting solely of restrictions under any applicable laws or any negative covenants in any applicable agreements (but only to the extent that such restrictions and covenants do not prohibit the execution, delivery and performance by the Company of the Agency Lease and the Mortgages, and (H) existing mortgages or encumbrances on the Project Facility as of the Closing Date or thereafter incurred with the consent of the Mortgagees.

**Person:** means an individual, partnership, corporation, limited liability company, trust, or unincorporated organization, and any government or agency or political subdivision or branch thereof.

**PILOT Agreement:** means the Payment in Lieu of Taxes Agreement dated as of December 22, 2011 among the City, the Agency and the Company, as amended or supplemented from time to time.

**Plans and Specifications:** means the plans and specifications approved by the Mortgagee relating to the reconstruction and equipping of the Project Facility.

**Pledge and Assignment:** means any pledge and assignment from the Agency, accepted by one of the Mortgagees and acknowledged by the Company, in conjunction with the financing of the Mortgages on the Project Facility.

**Project Facility:** means the Land, the Facility, and the Equipment.

**Property or Properties:** means any interest in any kind of property or asset, whether real, personal, or mixed, or tangible or intangible.

**Resolution:** means the Agency's resolutions adopted on April 19, 2011 authorizing the undertaking of the Project, authorizing the payment in lieu of taxes schedule and authorizing the execution and delivery of certain documents in connection with the Project.

**SEQRA:** means the State Environmental Quality Review Act constituting Article 8 of the State Environmental Conservation Law and the regulations promulgated thereunder, as amended.

**State:** means the State of New York.

**Unassigned Rights:** means:

(i) the right of the Agency in its own behalf to receive all opinions of counsel, reports, financial statements, certificates, insurance policies, binders or certificates, or other notices or communications, if any, required to be delivered to the Agency under the Agency Lease;

(ii) the right of the Agency to grant or withhold any consents or approvals required of the Agency under the Agency Lease;

(iii) the right of the Agency to enforce or otherwise exercise in its own behalf all agreements of the Company with respect to ensuring that the Project Facility shall always constitute a qualified "project" as defined in and as contemplated by the Act;

(iv) the right of the Agency to require indemnity from any Person;

(v) the right of the Agency in its own behalf (or on behalf of the appropriate taxing authorities) to enforce, receive amounts payable under or otherwise exercise its rights under Sections 2.2(g), 2.2(l), 4.1, 5.2, 5.3(a)(i) (with respect to amounts due under the PILOT Agreement), 5.3(b), 5.4, 6.2, 6.3, 6.4, 6.5, 7.1, 7.2, 8.2, 8.3, 8.5, 8.7, 8.8, 8.9, 10.2, 10.3, 10.4, and 11.11 of the Agency Lease and Sections 4.8 and 4.9 of the Company Lease; and

(vi) the right of the Agency in its own behalf to declare an Event of Default under Article X of the Agency Lease or with respect to any of the Agency's Unassigned Rights.

Notwithstanding the foregoing, to the extent the obligations of the Company under Sections of the Agency Lease listed in (i) through (vi) above do not relate to the payment of moneys to the Agency for its own account or to the members, officers, agents and employees of the Agency for their own accounts, such obligations, upon assignment of the Agency Lease by the Agency to the Mortgagee pursuant to the Pledge and Assignment, shall be deemed to and shall constitute obligations of the Company to the Agency and the Mortgagee, jointly and severally.

**EXHIBIT "D"**

**FORM OF ANNUAL REPORTING REQUIREMENTS**

SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY  
333 West Washington Street, Suite 130, Syracuse, New York 13202

Date

COMPANY  
COMPANY ADDRESS

Dear :

Our auditors, , CPAs are conducting an audit of our financial statements for the year ended December 31, . In connection with that audit, we request that you furnish certain information directly to our auditor with regard to the following security issued by/through the City of Syracuse Industrial Development Agency:

Sale - Leaseback Financing

Project:

Date of Financing:

Principal Amount Financed:

Maturity Date:

Original Interest Rate:

Please provide the following information as of December 31, [year]:

Name of Lender

Debt Retired in [year] Yes/No

Debt Refinanced in [year] Yes/No

(If Yes, please update information in Paragraph 1 above)

Debt in Default as of [date] Yes/No

Current Interest Rate(s)

Rate range, if Variable

Principal balance outstanding as of [date]

Principal payments made during [year]

Payments in Lieu of Taxes (PILOT)

paid in [year]

New York State/Local Sales

Tax Exemptions Claimed: [year]  
New York State Mortgage Recording  
Tax Exemption: [year]

Form of Syracuse Industrial Development Agency — Project Jobs Data [year]

From:

To: \_\_\_\_\_, CPAs

Re:

The following jobs information is furnished to you with regard to the above cited project:  
Full Time Equivalent (FTE) Jobs Created and Retained – [year]

# of Current FTE Employees as of [closing date]    # of FTE Jobs Created during [year]    # of  
FTE Jobs Retained during [year]    # of FTE Construction  
Jobs Created during [year]

Comments:

Signature

Print Name

Title

Date

**MEMORANDUM OF  
AGENCY LEASE AGREEMENT**

***NAME AND ADDRESS OF LESSOR:*** City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202

***NAME AND ADDRESS OF LESSEE:*** James Street Apartments, LLC  
183 East Main Street, Suite 600  
Rochester, New York 14604

***DESCRIPTION OF LEASED PREMISES:***

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, being more particularly described in Exhibit "A" annexed hereto, together with the improvements thereon.

***DATE OF EXECUTION OF AGENCY LEASE AGREEMENT:***

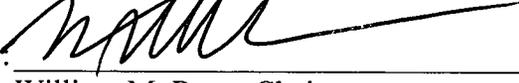
As of December 22, 2011

***TERM OF AGENCY LEASE AGREEMENT:***

The Agency Lease Agreement shall be in effect for a term, commencing as of December 1, 2011 and terminating on October 2, 2027 unless sooner terminated as provided therein.

IN WITNESS WHEREOF, the parties hereto, have respectively executed this memorandum as of the \_\_\_ day of December, 2011.

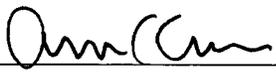
**CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT AGENCY**

By:   
\_\_\_\_\_  
William M. Ryan, Chairman

**JAMES STREET APARTMENTS, LLC**

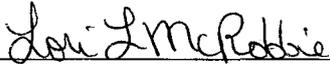
By: James Street Managing Member, LLC

By: Conifer Realty, LLC

By:   
\_\_\_\_\_  
Andrew I. Crossed, Executive Vice President

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF ONONDAGA )

On this 5<sup>th</sup> day of December, 2011, before me, the undersigned, personally appeared, **William M. Ryan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 2014

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF ONONDAGA )

On this 6<sup>th</sup> day of December, 2011, before me, the undersigned, personally appeared **Andrew I. Crossed**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

S. STURMAN JENNINGS  
Notary Public, State of New York  
No. 02JE6096835  
Qualified in Monroe County  
Commission Expires August 11, 2015

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE LAND**

## LEGAL DESCRIPTION

PARCEL ONE (615 James Street, Syracuse, NY, TA#017.00-19-05)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Number 1 of Block Number 31 in said City, bounded and described as follows:

BEGINNING AT A POINT, said point being North 55 degrees 44 minutes 50 seconds East a distance of 116.20" from the intersection of the northerly line of James Street with the easterly line of McBride Street.

THENCE North 30 degrees 29 minutes 10 seconds West for a distance of 264.27 feet to a point on the southerly line of East Willow Street;

THENCE North 55 degrees 44 minutes 50 seconds East for a distance of 83.80 feet along the southerly line of East Willow Street to a point;

THENCE South 30 degrees 29 minutes 10 seconds East for a distance of 264.27 feet to a point on the northerly line of James Street;

THENCE South 55 degrees 44 minutes 50 seconds West for a distance of 83.80 feet TO THE POINT AND PLACE OF BEGINNING.

and

PARCEL TWO (622 James Street, Syracuse, NY, TA#103.00-05-04)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Block 33 in said City, bounded and described as follows, viz:

BEGINNING at a point in the southeasterly line of James Street 188 feet northeasterly along said street line from the northeasterly line of N. McBride Street;

thence along said southeasterly line of James Street N. 55° 44' 50" E., 74.53 feet to a point;

thence S. 30° 45' 40" E., 125.00 feet to a point;

thence S. 55° 44' 50" W., 19.00 feet to a point;

thence S. 30° 45' 40" E., 92.76 feet to a point;

thence N. 59° 14' 20" E., 66.00 feet to a point;

thence S. 30° 45' 40" E., 104.09 feet to a point;

thence S. 59° 14' 20" W., 90.73 feet to a point;

thence N. 34° 07' 00" W., 179.73 feet to a point;

thence S. 55° 44' 50" W., 12.00 feet to a point;

thence N. 34° 07' 00" W., 140.00 feet to the point and place of beginning.

TOGETHER WITH the benefits, in common with others, over a 15 foot right of way known as Wilkinson Avenue running westerly to N. McBride Street as recited in deeds at Liber 276, page 39, Liber 924, page 275 and Liber 2443, page 599.



Recording office time stamp

New York State Department of Taxation and Finance

## Combined Real Estate Transfer Tax Return Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax

Effective September 1, 2003, use this 7/03 version of Form TP-584; previous versions may no longer be used.

See instructions (TP-584-I) before completing this form. Please print or type.

### Schedule A — Information relating to conveyance

Grantor/Transferor <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input checked="" type="checkbox"/> Other	Name (if individual; last, first, middle initial) City Of Syracuse Industrial Development Agency	Social security number _____
	Mailing address 333 West Washington Street, Suite 130	Social security number _____
	City _____ State _____ ZIP code _____ Syracuse New York 13202	Federal employer ident. number 52   1380308
Grantee/Transferee <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input checked="" type="checkbox"/> Other	Name (if individual; last, first, middle initial) James Street Apartments, LLC	Social security number _____
	Mailing address 183 East Main Street, Suite 600	Social security number _____
	City _____ State _____ ZIP code _____ Rochester NY 14604	Federal employer ident. number 27   3472526

Location and description of property conveyed

Tax map designation			Address	City/village	Town	County
Section	Block	Lot				
017.	19	05.0	615 James Street 622 James Street	Syracuse		Onondaga
103.	05	04.0				

Type of property conveyed (check applicable box)

1 <input type="checkbox"/> one- to three-family house 2 <input type="checkbox"/> Residential cooperative 3 <input type="checkbox"/> Residential condominium 4 <input type="checkbox"/> Vacant land	5 <input type="checkbox"/> Commercial/Industrial 6 <input type="checkbox"/> Apartment building 7 <input type="checkbox"/> Office building 8 <input checked="" type="checkbox"/> Other <u>housing/mixed use</u>	Date of conveyance <table border="1" style="display: inline-table; text-align: center;"> <tr> <td style="width: 30px;">12</td> <td style="width: 30px;">22</td> <td style="width: 30px;">2011</td> </tr> <tr> <td>month</td> <td>day</td> <td>year</td> </tr> </table>	12	22	2011	month	day	year	Percentage of real property conveyed which is residential real property _____% <i>(see instructions)</i>
12	22	2011							
month	day	year							

Condition of conveyance (check all that apply)

- |   |  |  |
|---|--|--|
| a. <input type="checkbox"/> Conveyance of fee interest<br>b. <input type="checkbox"/> Acquisition of a controlling interest (state percentage acquired _____%)<br>c. <input type="checkbox"/> Transfer of a controlling interest (state percentage transferred) _____%)<br>d. <input type="checkbox"/> Conveyance to cooperative housing corporation<br>e. <input type="checkbox"/> Conveyance pursuant to or in lieu of foreclosure or enforcement of security interest (attach Form TP-584.1, Schedule E) | f. <input type="checkbox"/> Conveyance which consists of a mere change of identity or form of ownership or organization (attach Form TP-584.1, Schedule F)<br>g. <input type="checkbox"/> Conveyance for which credit for tax previously paid will be claimed (attach Form TP-584.1, Schedule G)<br>h. <input type="checkbox"/> Conveyance of cooperative apartment(s)<br>i. <input type="checkbox"/> Syndication<br>j. <input type="checkbox"/> Conveyance of air rights or development rights<br>k. <input type="checkbox"/> Contract assignment | l. <input type="checkbox"/> Option assignment or surrender<br>m. <input type="checkbox"/> Leasehold assignment or surrender<br>n. <input checked="" type="checkbox"/> Leasehold grant<br>o. <input type="checkbox"/> Conveyance of an easement<br>p. <input type="checkbox"/> Conveyance for which exemption from transfer tax is claimed (complete Schedule B, Part III)<br>q. <input type="checkbox"/> Conveyance of property partly within and partly outside the state<br>r. <input type="checkbox"/> Other (describe) _____ |
|---|--|--|

For recording officer's use	Amount Received Schedule B, Part I \$ _____ Schedule B, Part II \$ _____	Date received	Transaction number
-----------------------------	--	---------------	--------------------

**Schedule B – Real estate transfer tax return (Article 31 of the Tax Law)**

**Part I – Computation of tax due**

- 1 Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, check the exemption claimed box, enter consideration and proceed to Part III) .....  **Exemption claimed**
- 2 Continuing lien deduction (see instructions if property is taken subject to mortgage or lien) .....
- 3 Taxable consideration (subtract line 2 from line 1) .....
- 4 Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3 .....
- 5 Amount of credit claimed (see instructions and attach Form TP-584.1, Schedule G) .....
- 6 Total tax due\* (subtract line 5 from line 4) .....

1.	\$	00
2.		
3.		
4.	\$	00
5.		
6.	\$	00

**Part II – Computation of additional tax due on the conveyance of residential real property for \$1 million or more**

- 1 Enter amount of consideration for conveyance (from Part I, line 1) .....
- 2 Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A) ..
- 3 Total additional transfer tax due\* (multiply line 2 by 1% (0.1)) .....

1.		
2.		
3.		

**Part III – Explanation of exemption claimed on Part I, line 1 (check any boxes that apply)**

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada) ..... a
- b. Conveyance is to secure a debt or other obligation ..... b
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance ..... c
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts ..... d
- e. Conveyance is given in connection with a tax sale ..... e
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F ..... f
- g. Conveyance consists of deed of partition ..... g
- h. Conveyance is given pursuant to the federal Bankruptcy Act ..... h
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property ..... i
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment ..... j
- k. Conveyance is not a conveyance within the meaning of section 1401(e) of Article 31 of the Tax Law (attach documents supporting such claim) ..... k
- l. Other (attach explanation) Leasehold interest of less than 49 years ..... l

\*Please make check(s) payable to the county clerk where the recording is to take place. If the recording is to take place in New York City, make check(s) payable to the **NYC Department of Finance**. If a recording is not required, send this return and your check(s) made payable to the **Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

**Schedule C – Credit Line Mortgage Certificate (Article 11 of the Tax Law)**

Complete the following only if the interest being transferred is a fee simple interest.

I (we) certify that: (check the appropriate box)

1.  The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2.  The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
  - The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
  - The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
  - The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee or other officer of a court.
  - The maximum principal amount secured by the credit line mortgage is \$3,000,000 or more and the real property being sold or transferred is not principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

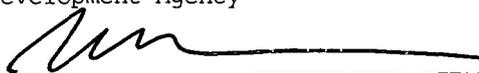
**Please note:** for purposes of determining whether the maximum principal amount secured is \$3,000,000 or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.

  - Other (attach detailed explanation).
3.  The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
  - A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
  - A check has been drawn payable for transmission to the credit line mortgagee or his agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
4.  The real property being transferred is subject to an outstanding credit line mortgage recorded in \_\_\_\_\_ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is \_\_\_\_\_. No exemption from tax is claimed and the tax of \_\_\_\_\_ is being paid herewith. (Make check payable to county clerk where deed will be recorded or, if the recording is to take place in New York City, make check payable to the NYC Department of Finance.)

**Signature (both the grantor(s) and grantee(s) must sign)**

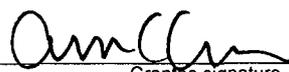
The undersigned certify that the above information contained in schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of his/her knowledge, true and complete.

City of Syracuse Industrial  
Development Agency

  
\_\_\_\_\_  
Grantor signature  
William M. Ryan

Chairman  
Title

James Street Apartments  
By: James Street Managing Member, LLC  
By: Conifer Realty, LLC

  
\_\_\_\_\_  
Grantee signature  
Andrew I. Crossed

Executive Vice  
President  
Title

\_\_\_\_\_  
Grantee signature

\_\_\_\_\_  
Grantor signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**Reminder:** Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you checked e, f, or g in Schedule A, did you complete TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place or, if the recording is in New York City, to the NYC Department of Finance? If no recording is required, send your check(s), made payable to the Department of Taxation and Finance, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

**Schedule D – Certification of exemption from the payment of estimated personal income tax (Article 22, Tax Law section 663)**

Complete the following only if a fee simple interest is being transferred by an individual or estate or trust.

**Part I – New York State residents**

If you are a New York State resident transferor(s)/seller(s) listed in Schedule A of Form TP-584 (or an attachment to Form TP-584), you must sign the certification below. If one or more transferors/sellers of the property is a resident of New York State, **each** resident transferor/seller must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

**Certification of resident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property, the transferor(s)/seller(s) as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law section 663(a) upon the sale or transfer of this property.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

**Note:** A resident of New York State may still be required to pay estimated tax under section 685(c), but not as a condition of recording a deed.

**Part II – Nonresidents of New York State**

If you are a nonresident of New York State listed as a transferor/seller in Schedule A of Form TP-584 (or an attachment to Form TP-584) but are *not required to pay estimated tax because one of the exemptions below applies under section 663(d) of the Tax Law*, check the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor(s)/seller(s), that transferor(s)/seller(s) is not required to pay estimated personal income tax to New York State under section 663 of the Tax Law. **Each** nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must use Form IT-2663, *Application for Certification for Recording of Deed and Nonresident Estimated Income Tax Payment Voucher*.

**Exemption for nonresident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property, the transferor(s)/seller(s) (grantor) of this property was a nonresident of New York State, but is not required to pay estimated tax under Tax Law section 663 due to one of the following exemptions:

- The property being sold or transferred was used exclusively as the transferor's/seller's principal residence (within the meaning of section 121 of the Internal Revenue Code) from \_\_\_\_\_ to \_\_\_\_\_ (see instructions).  
Date Date
- The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.
- The transferor or transferee is an agency or authority of the United States of America, an agency or authority of the state of New York, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

**BILL OF SALE TO AGENCY**

**JAMES STREET APARTMENTS, LLC**, a New York limited liability company with an address at 183 East Main Street, Suite 600, Rochester New York 14604 (the "**Company**"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Company from the City of Syracuse Industrial Development Agency, a public benefit corporation organized and existing pursuant to the laws of the State of New York (the "**Agency**"), having its office at 333 West Washington Street, Suite 130, Syracuse, New York 13202, the receipt of which is hereby acknowledged by the Company, hereby sells, transfers, and delivers unto the Agency, its successors and assigns, all those materials, machinery, equipment, fixtures and furnishings now owned or hereafter acquired by the Company in connection with the Project Facility, as described in the Agency Lease entered between the Agency and the Company dated as of December 22, 2011 (the "**Agency Lease**"), and as listed on "**Exhibit A**" attached hereto.

**TO HAVE AND HOLD** the same unto the Agency, its successors and assigns, forever.

The Company hereby represents and warrants that it is the true and lawful owner of the personal property being conveyed hereby, that all of the foregoing are free and clear of all liens, security interests, and encumbrances, except for Permitted Encumbrances, as defined in the Agency Lease, and that the Company has the right to sell the same as aforesaid; and the Company covenants that it will warrant and defend title to the same for the benefit of the Agency and its successors and assigns against the claims and demands of all persons.

**IN WITNESS WHEREOF**, the Company has caused this instrument to be executed by its duly authorized representative on the date indicated beneath the signature of such representative and dated this 22<sup>nd</sup> day of December, 2011.

**JAMES STREET APARTMENTS, LLC**

By: James Street Managing Member, LLC

By: Conifer Realty, LLC

By:   
Andrew I. Crossed  
Executive Vice President

## EXHIBIT "A"

### DESCRIPTION OF THE EQUIPMENT

All articles of personal property, all machinery, apparatus, equipment, appliances, floor coverings, furniture, furnishings, supplies, materials, fittings and fixtures of every kind and nature whatsoever and all appurtenances acquired by **JAMES STREET APARTMENTS, LLC** (the "*Company*") now or hereafter attached to, contained in or used or acquired in connection with the Project Facility (as defined in the Agency Lease or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunch room/kitchen facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/22/2011

<b>PRODUCER</b> The Flanders Group West Brook Building 2850 Clover Street Pittsford, NY 14534	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC #</b>
<b>INSURED</b> Conifer Realty, LLC 183 East Main St 6th Floor Rochester, NY 14604	INSURER A: <b>The Hartford</b>	<b>29424</b>
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRC	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
		<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE	\$
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
						MED EXP (Any one person)	\$
						PERSONAL & ADV INJURY	\$
						GENERAL AGGREGATE	\$
						PRODUCTS - COMP/OP AGG	\$
		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident)	\$
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
						OTHER THAN EA ACC	\$
						AUTO ONLY: AGG	\$
		<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE	\$
						AGGREGATE	\$
							\$
							\$
<b>A</b>		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	<b>01WBGNH2170</b>	<b>12/31/10</b>	<b>12/31/11</b>	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER	
						E.L. EACH ACCIDENT	\$1,000,000
						E.L. DISEASE - EA EMPLOYEE	\$1,000,000
						E.L. DISEASE - POLICY LIMIT	\$1,000,000
		OTHER					

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**  
 Named Insured: James Street Apartments, LLC  
 Location: 615 & 622 James Street, Syracuse, NY 13203

<b>CERTIFICATE HOLDER</b> City of Syracuse Industrial Agency 233 E. Washington Street Syracuse, NY 13202	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Christie S. McViePer</i>
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## **IMPORTANT**

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/4/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Conner Strong & Buckelew Companies, Inc. 2005 Market Street Suite 310 Philadelphia PA 19103	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 877-396-3800      FAX (A/C, No): 856-642-7708 E-MAIL ADDRESS:														
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: Travelers Casualty and Surety Co of</td> <td>31194</td> </tr> <tr> <td>INSURER B: National Union Fire Ins CoPittsburg</td> <td>19445</td> </tr> <tr> <td>INSURER C: Navigators Insurance Company</td> <td>42307</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Travelers Casualty and Surety Co of	31194	INSURER B: National Union Fire Ins CoPittsburg	19445	INSURER C: Navigators Insurance Company	42307	INSURER D:		INSURER E:		INSURER F:
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INSURER F:															
<b>INSURED</b> James Street Apartments, LLC 183 E. Main Street, Suite 600 Rochester, NY 14604															

**COVERAGES**

CERTIFICATE NUMBER: 613343744

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			GL4572068	11/1/2011	11/1/2012	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$20,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			CA1469469	11/1/2011	11/1/2012	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			PH11UMR7018801V	11/1/2011	11/1/2012	EACH OCCURRENCE \$25,000,000 AGGREGATE \$25,000,000 \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N <input checked="" type="checkbox"/> N/A If yes, describe under DESCRIPTION OF OPERATIONS below						WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Theft Inside/Transit Emp. Theft/3rd Party ERISA			105539836	11/1/2011	11/1/2012	\$250,000 Limit \$1,000 Ret. \$1,000,000 Limit \$10,000 Ret. \$1,000,000 Limit \$0 Ret.

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)**

Conifer Realty, LLC, Conifer Management, LLC, and Conifer LLC, are listed as Additional Named Insureds. RE: James Street Apartments, Kasson Apartments, 622 James Street, Syracuse, NY 13203 and Leavenworth Apts, 615 James Street, Syracuse, NY 13203. Certificate holder is included as an Additional Insured when required by contract and as allowed by law.

**CERTIFICATE HOLDER****CANCELLATION** 10 Days for non-payment of premium

City of Syracuse Industrial Development Agency 233 E. Washington Street Syracuse NY 13202	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE <i>W. Michael Trapani</i>
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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/4/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Conner Strong & Buckelew Companies, Inc. 2005 Market Street Suite 310 Philadelphia PA 19103	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 877-396-3800      FAX (A/C, No): 856-642-7708 E-MAIL ADDRESS:														
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<b>INSURED</b> James Street Apartments, LLC 183 E. Main Street, Suite 600 Rochester, NY 14604															

COVERAGES      CERTIFICATE NUMBER: 635284096      REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC			GL4572068	11/1/2011	11/1/2012	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$20,000,000 PRODUCTS - COM/OP AGG \$2,000,000 \$
B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			CA1469469	11/1/2011	11/1/2012	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			PH11UMR7018801V	11/1/2011	11/1/2012	EACH OCCURRENCE \$25,000,000 AGGREGATE \$25,000,000 \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N <input type="checkbox"/> N/A				<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Theft Inside/Transit Emp. Theft/3rd Party ERISA			105539836	11/1/2011	11/1/2012	\$250,000 Limit    \$1,000 Ret. \$1,000,000 Limit    \$10,000 Ret. \$1,000,000 Limit    \$0 Ret.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Conifer Realty, LLC, Conifer Management, LLC, and Conifer LLC, are listed as Additional Named Insureds. RE: 768B - Kasson Apts, 622 James Street and Leavenworth Apts, 615 James Street, Syracuse, NY 13203. City of Syracuse is included as an Additional Insured on the General Liability policy in regards to the work performed by the named insured as required by written contract.

## CERTIFICATE HOLDER

CANCELLATION 10 Days for non-payment of premium

City of Syracuse Department of Neighborhood & Business Development 233 E. Washington Street 312 City Hall Syracuse NY 13202	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE <i>W. Michael Ferguson</i>
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**DESCRIPTIONS Continued.**

LOCATION/DESCRIPTION

Syracuse IV Star Redevelopment, LLC

Location #768B- James Street Apartments, LLC (aka The Leavenworth/The Kasson) -615 & 622 James Street, Syracuse, NY 13203

768B - 615 & 622 James Street, Syracuse, NY 13203

## ADDITIONAL INTERESTS ENDORSEMENT

Named Insured <b>James Street Apartments, LLC</b>			Endorsement Number
Policy Symbol <b>IMC</b>	Policy Number <b>I08634245 001</b>	Policy Period <b>11/15/2011 to 11/15/2012</b>	Effective Date of Endorsement <b>11/15/2011</b>
Issued By (Name of Insurance Company) <b>Illinois Union Insurance Company</b>			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

### BUILDERS RISK XTRA COVERAGE FORM

The following individuals and entities are added as an Additional Insured, Loss Payee or Mortgagee as shown below:

Name of person or organization	Address	Interest
City of Syracuse Industrial Development Agency	233 E. Washington Street Syracuse, NY 13202	<i>Additional Insured</i>
First Niagara Bank, N.A. ISAOA	6950 S. Transit Road, PO box 990 Lockport, NY 14095-0990	Mortgagee
City of Syracuse, Department of Neighborhood & Business Development	312 City Hall, 233 E. Washington Street Syracuse, NY 13202	Mortgagee
Red Stone Equity Mnager, LLC, ISAOA	200 Public Ave., Suite 1550 Cleveland, OH 44041	Additional Insured and Loss Payee
Conifer 2011 Tax Credit Fund, L.P.	200 Public Ave., suite 1550 Cleveland, OH 44041	<i>Additional Insured and Loss Payee</i>
New York State Housing Finance Agency, ISAOA, ATIMA	38-40 State Street Albany, NY 12201	Additional Insured and Loss Payee

All other terms and conditions remain unchanged.





**DESCRIPTIONS Continued.**

LOCATION/DESCRIPTION

Syracuse IV Star Redevelopment, LLC

Location #768B- James Street Apartments, LLC (aka The Leavenworth/The Kasson) -615 & 622 James Street, Syracuse, NY 13203

768B - 615 & 622 James Street, Syracuse, NY 13203



## COMMON POLICY CONDITIONS

These are the Conditions which apply to the entire policy, including any endorsements. However, endorsements can also change these Conditions, so be sure to read carefully any endorsements attached to or made part of this policy.

### A. Cancellation

1. You may cancel this insurance by sending to us or our authorized representative advance written notice of the date cancellation is to take effect.
2. We may cancel this insurance by sending you notice. The notice will state the effective date of cancellation which ends the policy period. We will mail or deliver the notice of cancellation. If mailed, proof of mailing will be sufficient proof of notice. In either case, we will send the notice to your last mailing address known by us.
3. If we cancel for nonpayment of premium, we will send you at least 15 days notice. If we cancel for any other reason, we will send you at least 45 days notice.
4. If this policy is canceled, you may be entitled to a premium refund. If so, we will send you the refund. If we cancel, the refund will be pro rata. If you cancel, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

### B. Changes

Notice to any of our agents or knowledge possessed by any such agent will not:

1. Change any part of this policy;
2. Remove any provisions from the policy; or
3. Keep us from enforcing any of the rights this policy gives us.

There is only one way to change the terms of this policy: by including a written endorsement issued by us to form a part of this policy.

### C. Examination of Your Books and Records

We can also, at any reasonable time, examine and audit your books and records for anything we believe might relate to this insurance. We have the right to examine and audit your books and records for three years after your policy expires.

### D. Inspections and Surveys

1. We have the right to:
  - a. Make inspections and surveys at any time;
  - b. Give you reports on the conditions we find; and
  - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.



<b>Annual Rate:</b>	Hard Costs	\$ [REDACTED]
	Soft Costs and Loss of Rents	\$ [REDACTED]

<b>Policy Extension:</b>	<b>If construction is not complete by the expiration date listed above and an extension is requested and approved, we may change terms, conditions and rates.</b>
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<b>Premium:</b>	[REDACTED]
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<b>TRIPRA Premium :</b>	\$Rejected	(TRIPRA Premium if shown here is included in the premium shown above)
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<b>Minimum Premium:</b>	[REDACTED]
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Any applicable taxes, surcharges or fees, etc. are in addition to the above stated premium. The actual taxes, surcharges or fees, etc. will be those in effect on the date coverage is bound. The insured is responsible for paying these taxes, surcharges or fees in addition to the above stated premium.

**Please be advised that you are expected to comply with all state law requirements and your office is responsible for making Surplus Lines Filings and remitting the applicable Surplus Lines taxes.**

<b>Commission:</b>	[REDACTED]
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<b>Terms &amp; Conditions:</b>	
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<b>Mandatory Exclusions and Amendments:</b>	All policy form endorsements including but not limited to Pollution & Contamination, Asbestos, Electronic Data/Cyber Risk, Mold/Fungus, and Nuclear, Biological, Chemical, Radiological Exclusions.
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<b>Additional Named Insured's:</b>	Conifer Realty, LLC Conifer-LeChase Construction LLC Syracuse IV Star Redevelopment, LLC
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<b>Mortgagee or Loss Payee Name &amp; Address:</b>	The following are included as Mortgagees:  City of Syracuse Industrial Development Agency 233 E. Washington Street Syracuse, NY 13202  First Niagara Bank, N.A., ISAOA 6950 S. Transit Road, PO Box 990 Lockport, NY 14095-0990
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## ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT

THIS ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT (the "*Agreement*") is made as of the December 22, 2011, between JAMES STREET APARTMENTS, LLC (the "*Indemnitor*"), for the benefit of the CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY (the "*Agency*").

### RECITALS

WHEREAS, the Agency has undertaken at the request of the Indemnitor, a project (the "*Project*") consisting of: (A)(i) the acquisition of a leasehold interest in two parcels of improved real property including an approximately .51 acre parcel located at 615 James Street (Leavenworth Parcel) and an approximately .50 acre parcel located at 622 James Street (Kasson Parcel) and more fully described in the attached Exhibit "A", (collectively, the "*Land*"); (ii) the reconstruction and renovation of: (a) an approximately 51,602 square foot seven (7) story building ("*Leavenworth Apartments*") for mixed-income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 37,138 square foot, seven (7) story building ("*Kasson Apartments*" and together with the Leavenworth Apartments the "*Apartments*") for mixed-income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on the Land and jointly housing 83 units of housing, each Apartment containing laundry and storage facilities together with on-site parking for residents (collectively, the "*Facility*"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the "*Equipment*", together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from real property tax and sales and use taxation (collectively, the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, improvement and equipping of the Project Facility; and (D) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

NOW, THEREFORE, in consideration of the premises, Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Indemnitor, intending to be legally bound, hereby agrees as follows:

1. **Recitals; Definitions.**

(a) The foregoing recitals are incorporated into this Agreement by this reference.

(b) Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Schedule of Definitions attached to the Agency Lease as Exhibit "C."

2. **Representations and Warranties.**

(a) Except as disclosed in Schedule B annexed hereto, Indemnitor represents and warrants that it has no knowledge of any deposit, storage, disposal, burial, discharge, spillage, uncontrolled loss, seepage or filtration of oil, petroleum or chemical liquids or solids, liquid or gaseous products or any hazardous wastes or hazardous substances (collectively,

“*Hazardous Substances*”), as those terms are used in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or in any other federal, state or local law governing hazardous substances, as such laws may be amended from time to time (collectively, the “*Hazardous Waste Laws*”), at, upon, under or within the Project Facility or any contiguous real estate, and (ii) it has not caused or permitted to occur, and shall not permit to exist, any condition which may cause a discharge of any Hazardous Substances at, upon, under or within the Project Facility or on any contiguous real estate.

o (b) Except as disclosed in **Schedule B** annexed hereto, Indemnitor further represents and warrants that (i) it has not been nor will be involved in operations at or near the Project Facility which operations could lead to (A) the imposition of liability on Indemnitor or on any subsequent or former owner of the Project Facility or (B) the creation of a lien on the Project Facility under the Hazardous Waste Laws or under any similar laws or regulations; and (ii) it has not permitted, and will not permit, any tenant or occupant of the Project Facility to engage in any activity that could impose liability under the Hazardous Waste Laws on such tenant or occupant, on Agency, the Indemnitor or on any other owner of any of the Project Facility.

### 3. **Covenants.**

(a) Indemnitor shall comply strictly and in all respects with the requirements of the Hazardous Waste Laws and related regulations and with all similar laws and regulations and shall notify Agency immediately in the event of any discharge or discovery of any Hazardous Substance at, upon, under or within the Project Facility. Indemnitor shall promptly forward to Agency copies of all orders, notices, permits, applications or other communications and reports in connection with any discharge or the presence of any Hazardous Substance or any other matters relating to the Hazardous Waste Laws or any similar laws or regulations, as they may affect the Project Facility.

(b) Promptly upon the written request of Agency, Indemnitor shall provide Agency, at Indemnitor’s expense, with an environmental site assessment or environmental audit report prepared by an environmental engineering firm acceptable to the requesting Person, to assess with a reasonable degree of certainty the presence or absence of any Hazardous Substances and the potential costs in connection with abatement, cleanup or removal of any Hazardous Substances found on, under, at or within the Project Facility.

### 4. **Indemnity.**

(a) Indemnitor shall at all times indemnify and hold harmless Agency against and from any and all claims, suits, actions, debts, damages, costs, losses, obligations, judgments, charges, and expenses, of any nature whatsoever suffered or incurred by Agency, whether as contract vendor, owner, mortgagee, as mortgagee in possession, or as successor-in-interest to Indemnitor by foreclosure deed or deed in lieu of foreclosure, under or on account of the Hazardous Waste Laws or any similar laws or regulations, including the assertion of any lien thereunder, with respect to:

(1) any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Project Facility whether or not the same originates or emanates from the Project Facility or any

contiguous real estate including any loss of value of the Project Facility as a result of any of the foregoing;

(2) any costs of removal or remedial action incurred by the United States Government or any costs incurred by any other person or damages from injury to, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction or loss incurred pursuant to any Hazardous Waste Laws;

(3) liability for personal injury or property damage arising under any statutory or common law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity at or near the Project Facility; and/or

(4) any other environmental matter affecting the Project Facility within the jurisdiction of the Environmental Protection Agency, any other federal agency, or any state or local agency.

The obligations of Indemnitor under this Agreement shall arise whether or not the Environmental Protection Agency, any other federal agency or any state or local agency has taken or threatened any action in connection with the presence of any Hazardous Substances.

(b) In the event of any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Project Facility, whether or not the same originates or emanates from the Project Facility or any contiguous real estate, and/or if Indemnitor shall fail to comply with any of the requirements of the Hazardous Waste Laws or related regulations or any other environmental law or regulation, Agency may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Project Facility and/or take any and all other actions as Agency shall deem necessary or advisable in order to abate the discharge of any Hazardous Substance, remove the Hazardous Substance or cure the noncompliance of Indemnitor.

(c) Indemnitor acknowledges that Agency has relied upon the representations, warranties, covenants and indemnities of Indemnitor in this Agreement. All of the representations, warranties, covenants and indemnities of this Agreement shall survive the repayment of Indemnitor's obligations under the Agency Lease or other Company Documents.

5. **Attorney's Fees.** If Agency retains the services of any attorney in connection with the subject of the indemnity herein, Indemnitor shall pay Agency's costs and reasonable attorneys' fees thereby incurred. Agency may employ an attorney of its own choice.

6. **Interest.** In the event that Agency incurs any obligations, costs or expenses under this Agreement, Indemnitor shall pay such Person immediately on demand, and if such payment is not received within ten (10) days, interest on such amount shall, after the expiration of the ten-day period, accrue at the interest rate set forth in the Agency Lease until such amount, plus interest, is paid in full.

7. **No Waiver.** Notwithstanding any terms of the Company Documents to the contrary, the liability of Indemnitor under this Agreement shall in no way be limited or impaired

by: (i) any extensions of time for performance required by any of the Company Documents; (ii) any sale, assignment or foreclosure of the Agency Lease or any sale or transfer of all or part of the Project Facility; (iii) the accuracy or inaccuracy of the representations and warranties made by Indemnitor under any of the Company Documents; or (iv) the release of Indemnitor or any other person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Company Documents by operation of law, Agency's voluntary act, or otherwise; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

8. **Waiver by Indemnitor.** Indemnitor waives any right or claim of right to cause a marshalling of Indemnitor's assets or to cause Agency to proceed against any of the security for the Agency Lease before proceeding under this Agreement against Indemnitor or to proceed against Indemnitor in any particular order; Indemnitor agrees that any payments required to be made hereunder shall become due on demand; Indemnitor expressly waives and relinquishes all rights and remedies (including any rights of subrogation) accorded by applicable law to indemnitors or guarantors.

9. **Releases.** Any one or more of Indemnitor and any other party liable upon or in respect of this Agreement or the Agency Lease may be released without affecting the liability of any party not so released.

10. **Amendments.** No provision of this Agreement may be changed, waived, discharged or terminated orally, by telephone or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

11. **Joint and Several Liability.** In the event that this Agreement is executed by more than one party as Indemnitor, the liability of such parties is joint and several. A separate action or actions may be brought and prosecuted against each Indemnitor, whether or not an action is brought against any other person or whether or not any other person is joined in such action or actions.

12. **Consent to Jurisdiction.** Indemnitor consents to the exercise of personal jurisdiction over Indemnitor by any federal or state court in the State of New York and consent to the laying of venue in any jurisdiction or locality in the City of Syracuse. Service shall be effected by any means permitted by the court in which any action is filed.

13. **Notices.** All notices, certificates, and other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended recipient or by overnight courier or such other means as shall provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the Person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

(a) If to the Agency, to:

City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202  
Attention: Chairman

With a copy to:

City of Syracuse  
233 East Washington Street  
Syracuse, New York 13202  
Attn: Corporation Counsel

(b) If to the Company, to:

James Street Apartments, LLC  
183 East Main Street, Suite 600  
Rochester, New York 14604  
Attn: Andrew Bodewes

With copies to:

Conifer Realty, LLC  
183 East Main Street, Suite 600  
Rochester, New York 14604  
Attn: Susan Sturman Jennings, Esq.

and

Conifer 2011 Tax Credit Fund, LP  
c/o Red Stone Equity Partners, LLC  
200 Public Square, Suite 1550  
Cleveland, Ohio 44114  
Attn: General Counsel

The Agency and the Company, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, and other communications shall be sent.

14. **Waivers.** The parties waive trial by jury in any action brought on, under or by virtue of this Agreement. Indemnitor waives any right to require Agency at any time to pursue any remedy in such Person's power whatsoever. The failure of Agency to insist upon strict compliance with any of the terms hereof shall not be considered to be a waiver of any such terms, nor shall it prevent Agency from insisting upon strict compliance with this Agreement or any other Company Document at any time thereafter.

15. **Severability**. If any clause or provisions herein contained operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision shall be held for naught as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

16. **Inconsistencies Among the Company Documents**. Nothing contained herein is intended to modify in any way the obligations of Indemnitor under the Agency Lease or any other Company Document. Any inconsistencies among the Company Documents shall be construed, interpreted and resolved so as to benefit Agency.

17. **Successors and Assigns**. This Agreement shall be binding upon Indemnitor's successors, assigns, heirs, personal representatives and estate and shall inure to the benefit of Agency and its successors and assigns.

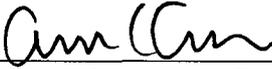
18. **Controlling Laws**. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

**IN WITNESS WHEREOF**, Indemnitor has executed this Agreement as of the date first above written.

**JAMES STREET APARTMENTS, LLC**

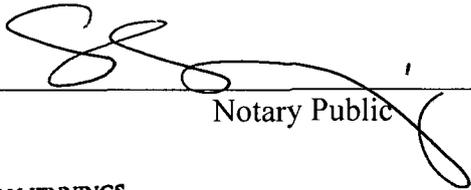
By: James Street Managing Member, LLC

By: Conifer Realty, LLC

By:   
Andrew I. Crossed, Executive Vice President

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ONONDAGA )

On the 6<sup>TH</sup> day of December in the year 2011 before me, the undersigned, a notary public in and for said state, personally appeared **Andrew I. Crossed**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

**S. STURMAN JENNINGS**  
Notary Public, State of New York  
No. 021E6096835  
Qualified in Monroe County  
Commission Expires August 11, 2015

**SCHEDULE "A"**

**LEGAL DESCRIPTION**

## LEGAL DESCRIPTION

PARCEL ONE (615 James Street, Syracuse, NY, TA#017.00-19-05)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Number 1 of Block Number 31 in said City, bounded and described as follows:

BEGINNING AT A POINT, said point being North 55 degrees 44 minutes 50 seconds East a distance of 116.20" from the intersection of the northerly line of James Street with the easterly line of McBride Street.

THENCE North 30 degrees 29 minutes 10 seconds West for a distance of 264.27 feet to a point on the southerly line of East Willow Street;

THENCE North 55 degrees 44 minutes 50 seconds East for a distance of 83.80 feet along the southerly line of East Willow Street to a point;

THENCE South 30 degrees 29 minutes 10 seconds East for a distance of 264.27 feet to a point on the northerly line of James Street;

THENCE South 55 degrees 44 minutes 50 seconds West for a distance of 83.80 feet TO THE POINT AND PLACE OF BEGINNING.

and

PARCEL TWO (622 James Street, Syracuse, NY, TA#103.00-05-04)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Block 33 in said City, bounded and described as follows, viz:

BEGINNING at a point in the southeasterly line of James Street 188 feet northeasterly along said street line from the northeasterly line of N. McBride Street;

thence along said southeasterly line of James Street N. 55° 44' 50" E., 74.53 feet to a point;

thence S. 30° 45' 40" E., 125.00 feet to a point;

thence S. 55° 44' 50: W., 19.00 feet to a point;

thence S. 30° 45' 40" E., 92.76 feet to a point;

thence N. 59° 14' 20" E., 66.00 feet to a point;

thence S. 30° 45' 40: E., 104.09 feet to a point;

thence S. 59° 14' 20" W., 90.73 feet to a point;

thence N. 34° 07' 00" W., 179.73 feet to a point;

thence S. 55° 44' 50" W., 12.00 feet to a point;

thence N. 34° 07' 00" W., 140.00 feet to the point and place of beginning.

TOGETHER WITH the benefits, in common with others, over a 15 foot right of way known as Wilkinson Avenue running westerly to N. McBride Street as recited in deeds at Liber 276, page 39, Liber 924, page 275 and Liber 2443, page 599.

## **SCHEDULE "B"**

### **EXCEPTIONS**

Copies are on file with the Agency:

- Phase 1 Environmental Site Assessment, Quad3, updated 11/2/11 (one for each building)
- Pre-Renovation Regulated Building Materials Assessment, LaBella Associates, P.C. dated 1/14/11 & 1/21/11 (Kasson and Leavenworth, respectively)
- Fannie Mae Assessments for Lead-Based Paint, Mold and Radon, dated 5/2011

## CLOSING RECEIPT

### CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY LEASE/SUBLEASE TRANSACTION JAMES STREET APARTMENTS, LLC PROJECT

**CLOSING RECEIPT** executed December 22, 2011 by the City of Syracuse Industrial Development Agency (the "**Agency**") and James Street Apartments, LLC (the "**Company**") in connection with a certain project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest in two parcels of improved real property including an approximately .51 acre parcel located at 615 James Street (Leavenworth Parcel) and an approximately .50 acre parcel located at 622 James Street (Kasson Parcel) (collectively, the "**Land**"); (ii) the reconstruction and renovation of: (a) an approximately 51,602 square foot seven (7) story building ("**Leavenworth Apartments**") for mixed-income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 37,138 square foot, seven (7) story building ("**Kasson Apartments**" and together with the Leavenworth Apartments the "**Apartments**") for mixed-income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on the Land and jointly housing 83 units of housing, each Apartment containing laundry and storage facilities together with on-site parking for residents (collectively, the "**Facility**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the "**Equipment**", together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax and sales and use taxation (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, improvement and equipping of the Project Facility; and (D) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

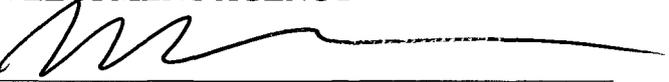
#### WITNESSETH:

(1) The Agency has executed, delivered, sealed and acknowledged, where appropriate, the documents to which it is a party, and acknowledges receipt from the Company of its administrative fee.

(2) The Company has executed, delivered, sealed and acknowledged, where appropriate, the documents to which it is a party.

(Signature page to Closing Receipt)

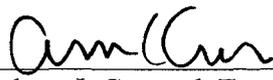
**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
\_\_\_\_\_  
William M. Ryan, Chairman

**JAMES STREET APARTMENTS, LLC**

By: James Street Managing Member, LLC

By: Conifer Realty, LLC

By:   
\_\_\_\_\_  
Andrew I. Crossed, Executive Vice President

**EXECUTION COPY**

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**JAMES STREET APARTMENTS, LLC**  
and  
**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**  
to  
**NEW YORK STATE HOUSING FINANCE AGENCY**

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**FEE AND LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES  
AND RENTS AND SECURITY AGREEMENT  
FOR THE  
JAMES STREET APARTMENTS PROJECT**

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**HFA Multi-Family Housing Project  
Affordable Housing Revenue Bonds  
Low Income Housing Tax Credits**

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Premises: James Street Apartments  
615 and 622 James Street  
City of Syracuse  
Onondaga County, New York

SBL: 017.00-19-05  
103.00-05-04

Record and return to:  
Remy Bernardo, Jr., Esq.  
New York State Housing Finance Agency  
641 Lexington Avenue  
New York, New York 10022  
212-872-0348

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MORTGAGE, ASSIGNMENT OF LEASES AND RENTS  
AND SECURITY AGREEMENT

DATED: As of December 22, 2011

BENEFICIAL  
MORTGAGOR: **JAMES STREET APARTMENTS, LLC**, a New York limited liability company having an office at c/o Conifer Realty, LLC, 183 East Main Street, 6th floor, Rochester, New York 14604

NOMINAL  
MORTGAGOR: **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, with an office at 333 West Washington Street, Suite 130, Syracuse, New York 13202

MORTGAGEE  
OR AGENCY: **NEW YORK STATE HOUSING FINANCE AGENCY**, a corporate governmental agency, constituting a public benefit corporation, having an address at 641 Lexington Avenue, New York, NY 10022.

MORTGAGE AMOUNT: \$8,775,000

PROJECT: **JAMES STREET APARTMENTS**, two, 7-story elevator serviced buildings containing a total of 83 units located at 615 and 622 James Street in the City of Syracuse, Onondaga County, New York.

**WITNESSETH**

**WHEREAS**, the Beneficial Mortgagor is the fee title owner of certain land located at 615 and 622 James Street in the City of Syracuse, Onondaga County, New York (“Premises”) as more fully described in Schedule “A” attached hereto and made a part hereof upon which are situated eighty-three (83) residential units known as James Street Apartments; and

**WHEREAS**, in connection with the award by Nominal Mortgagor of a payment-in-lieu-of-tax agreement (“PILOT Agreement”) and other financial assistance to the Project, the Beneficial Mortgagor shall transfer to Nominal Mortgagor a leasehold ownership interest of the Premises pursuant to the terms of a certain Company Lease Agreement dated as of December 22, 2011 between the Beneficial Mortgagor and the Nominal Mortgagor (“Company Lease”), and Nominal Mortgagor shall sub-lease the same to the Beneficial Mortgagor pursuant to the terms of a certain Agency Lease Agreement dated as of December 22, 2011 between the Beneficial Mortgagor and the Nominal Mortgagor (“Agency Lease”; collectively with the Company Lease, the “Lease Agreements”) excepting therefrom the Nominal Mortgagor’s Unassigned Rights (as that term is defined in the Lease Agreements); and

**WHEREAS**, twenty-two percent (22%) of the Project’s revenue-generating units, or 18 units, will be set aside for households whose incomes are at or below 50% of the Area Median Income (as defined herein), adjusted for family size; and

**WHEREAS**, pursuant to a resolution entitled “Affordable Housing Revenue Bonds Bond Resolution” adopted by the Agency on August 22, 2007, as amended (“General Resolution”) and a supplemental resolution entitled “Affordable Housing Revenue Bonds (Federal New Issue Bond Program), NIBP Series 1 Resolution” adopted by the Agency on December 3, 2009 as amended and supplemented on May 6, 2010, September 14, 2010 and April 27, 2011 (“2009 Supplemental Resolution”), the Agency has issued \$276,130,000 principal amount of its Affordable Housing Revenue Bonds (Federal New Issue Bond Program), 2009 Series 1 (“2009 Bonds”), \$ \_\_\_\_\_ of which have been remarketed and converted to fixed rate bonds on the date hereof (“Converted Bonds”); and

**WHEREAS**, pursuant to a supplemental resolution entitled “Affordable Housing Revenue Bonds (Additional Series 1 Parity Bonds), NIBP 2011 Series 4 Resolution” adopted by the Agency on November 9, 2011 (“2011 Supplemental Resolution”), the Agency has also issued \$ \_\_\_\_\_ principal amount of its Affordable Housing Revenue Bonds (Additional Series 1 Parity Bonds), NIBP 2011 Series 4 (“2011 Bonds”) (the 2011 Supplemental Resolution, the 2009 Supplemental Resolution and the General Resolution are collectively known as the “Resolution”); and

**WHEREAS**, a portion of the Converted Bonds and a portion of the 2011 Bonds (collectively, the “Bonds”) have been used to fund a mortgage loan (the “Mortgage Loan”) in an amount not exceeding Eight Million Seven Hundred Seventy-Five Thousand Dollars (\$8,775,000) to pay for a portion of the costs of acquiring and rehabilitating the Premises and the Project; and

**WHEREAS**, the Mortgage Loan is evidenced by a Note (as may be modified or supplemented, the “Note”) executed by the Beneficial Mortgagor and secured by this Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement (as amended from time to time, the “Mortgage”) granted by the Beneficial Mortgagor and the Nominal Mortgagor which Mortgage shall be recorded in the land records of the Onondaga County Office of the County Clerk (“County Clerk’s Office”) and

**WHEREAS**, the Mortgage Loan proceeds shall be advanced pursuant to a certain Building and Project Loan Agreement (as may be modified or supplemented, the “Loan Agreement”) dated as of the date hereof among the Agency, the Beneficial Mortgagor and the Nominal Mortgagor which Loan Agreement shall be duly filed in the County Clerk’s Office; and

**WHEREAS**, (i) \$8,438,704 of the Mortgage Loan shall be advanced as a building loan to the Beneficial Mortgagor pursuant to the terms of the Loan Agreement for the purpose of making advances to the Beneficial Mortgagor for the “cost of improvement” to the Premises, as contemplated pursuant to Section 22 of the New York State Lien Law, which portion of the Mortgage Loan is described in detail in that certain Section 22 Lien Law Affidavit which is annexed as Exhibit C to the Loan Agreement, and (ii) \$336,296 of the Mortgage Loan shall be advanced as a project loan to the Beneficial Mortgagor pursuant to the terms of the Loan Agreement for the purpose of making advances to the Beneficial Mortgagor for other project costs which not included in the Section 22 Lien Law Affidavit which is annexed as Exhibit C to the Loan Agreement.

**WHEREAS**, in connection with the Mortgage Loan, the Mortgagee, Beneficial Mortgagor and the Nominal Mortgagor have entered into Regulatory Agreement (as may be modified or supplemented, the “Regulatory Agreement”) dated as of the date hereof which Regulatory Agreement shall be recorded in the land records of the County Clerk’s Office; and

**WHEREAS**, the Note, the Mortgage, the Loan Agreement and the Regulatory Agreement may be referred to herein collectively as the “Loan Documents”; and

**WHEREAS**, during the period of construction of the Project, the Mortgage Loan shall be secured, inter alia, by a letter of credit (the “Letter of Credit”) issued by the First Niagara Bank, N.A. (the “LOC Bank”) pursuant to the terms of a Letter of Credit Reimbursement Agreement (the “Reimbursement Agreement”) dated as of the date hereof between the LOC Bank and the Beneficial

Mortgagor; and

**WHEREAS**, the Agency has entered into a Servicing and Release Agreement dated as of the hereof (as amended from time to time, the "Servicing and Release Agreement") with the LOC Bank and the Beneficial Mortgagor in order to provide for the servicing of the Mortgage Loan during the period of construction of the Project; and

**WHEREAS**, the State of New York Mortgage Agency ("SONYMA") has issued its Commitment to Insure and Certificate of Insurance ("SONYMA Commitment") to provide a mortgage insurance policy for the Mortgage Loan ("SONYMA Mortgage Insurance Policy"), which mortgage insurance policy will become effective simultaneously with the release of the Letter of Credit after completion of the construction of the Project; and

**WHEREAS**, pursuant to the SONYMA Commitment, upon completion of the construction of the Project, the principal amount of the Mortgage Loan will be reduced to an estimated \$4,750,000 and secured by a SONYMA Mortgage Insurance Policy; and

**WHEREAS**, simultaneously herewith, the Mortgagee intends to fund its subordinate loan in the aggregate principal amount (exclusive of accrued interest) of \$850,000 (the "HFA Subsidy Loan"), evidenced by a certain mortgage note dated as the same date hereof (the "HFA Subsidy Note") and secured by a certain mortgage dated as the same date hereof (the "HFA Subsidy Mortgage"; together with the HFA Subsidy Note and all other documents in connection with the HFA Subsidy Loan, the "HFA Subsidy Loan Documents"), the proceeds of which will be disbursed pursuant to the Loan Agreement and which will be recorded in the land records of the County Clerk's Office; and

**WHEREAS**, simultaneously herewith, the Mortgagor will also borrow from the City of Syracuse ("City") a subordinate loan in the principal amount of \$2,000,000 (the "Syracuse HOME Subsidy Loan") which shall be evidenced by a promissory note (the "Syracuse HOME Subsidy Note") and secured by a mortgage from the Mortgagor to the City (the "Syracuse HOME Subsidy Mortgage") each of which shall be dated on the date hereof, and shall be subordinate in priority to the Mortgage Loan and HFA Subsidy Loan; and

**WHEREAS**, the Agency, the Beneficial Mortgagor, the Nominal Mortgagor, the City and the LOC Bank have entered into a Subordination Agreement (as may be modified or supplemented, the "Subordination Agreement") intended to be duly recorded in the County Clerk's Office; and

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to secure the payment of the principal indebtedness evidenced by the Note and the payment of all interest, fees, expenses, indemnities, reimbursement obligations and other sums that may at any time become due and payable pursuant to the Note, the Mortgage, the

Loan Agreement and the Reimbursement Agreement (collectively, the “Indebtedness”), and to secure the performance and observance of each term of the Loan Documents, the Beneficial Mortgagor and the Nominal Mortgagor do hereby mortgage, give, grant, assign, bargain, transfer, sell, warrant, alienate, demise, release, convey, hypothecate, deposit, pledge, grant a security interest in and set over and confirm to the Mortgagee all of their respective estates, right, title and interest and whether now owned or hereafter acquired, in, to or under the following property excepting therefrom the Nominal Mortgagor’s Unassigned Rights (as that term is defined in the Lease Agreements) (all such estate, right, title and interest collectively being referred to herein as the “Mortgaged Property”):

- I. The fee title of the Beneficial Mortgagor in and to the Premises and the leasehold and sub-leasehold interests of the Nominal Mortgagor and Beneficial Mortgagor under the Lease Agreements in and to the Premises and all easements, rights, privileges, hereditaments and appurtenances related thereto;
- II. All of the Beneficial Mortgagor’s and the Nominal Mortgagor’s right, title and interest in and to (i) all buildings, structures, improvements and additions now erected or hereafter constructed or placed upon the Premises or any part thereof (collectively, the “Buildings”); (ii) all building materials, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by the Beneficial Mortgagor for the purpose of being used or useful in connection with the construction, renovation and equipping of the Improvements (as defined hereinbelow), whether such materials, equipments, fixtures and fittings are actually located on or adjacent to the Premises or not, and whether in storage or otherwise, wheresoever the same may be located (collectively, the “Building Materials”); and (iii) all machinery, devices, fixtures, apparatus, interior improvements, appurtenances, and equipment of every kind and nature whatsoever now or hereafter attached to, placed in or upon the Premises or the Improvements, or any part thereof, or used or procured for the use in connection with the operation or maintenance of the Premises or any business conducted thereon (hereinafter collectively called “Building Service Equipment”; together with the Buildings and Building Materials, the “Improvements”);
- III. All right, title and interest of the Beneficial Mortgagor and the Nominal Mortgagor in and to all equipment, appliances, furniture, furnishings, decorations, chattels and other personal property now or hereafter in or at the Premises or acquired in whole or in part or the cost of which is reimbursed to the Beneficial Mortgagor in whole or in part (all of the foregoing hereinafter collectively called “Furnishings”);

- IV. All royalties, mineral, oil and gas rights and profits, riparian rights, water, water rights and water stock located on or used in connection with the Premises or the Improvements, whether existing now or hereafter acquired;
- V. All right, title and interest of the Beneficial Mortgagor and the Nominal Mortgagor in and to all policies of property insurance insuring the Premises and Improvements including unearned premiums with respect thereto or other proceeds for damage done to the Mortgaged Property and all awards heretofore made or hereafter to be made to or for the account of the Beneficial Mortgagor for the permanent or temporary taking by eminent domain of the whole or any part of the Mortgaged Property, or any lesser estate in, or easement appurtenant to the Mortgaged Property, all of which proceeds and awards are hereby assigned to the Mortgagee, subject to the further provisions of this Mortgage;
- VI. All of the rents, issues, benefits and profits of the Mortgaged Property (collectively the "Rents"), including, all leases, subleases, occupancy agreements, licenses, franchises and appurtenances now or hereafter entered into covering any part of the Mortgaged Property, including all interest of the Beneficial Mortgagor and the Nominal Mortgagor in and to any of the same and all security deposits held by the Beneficial Mortgagor and the Nominal Mortgagor all of which are hereby assigned to the Mortgagee;
- VII. All right, title and interest of every nature of the Beneficial Mortgagor and the Nominal Mortgagor in all moneys deposited or to be deposited in any funds or accounts maintained or deposited with Mortgagee or its assigns, including, without limitation, the Escrow Fund and the Replacement Reserve Account (as said terms are defined in this Mortgage);
- VIII. The right in the name and on behalf of the Beneficial Mortgagor and the Nominal Mortgagor to appear in and defend any action or proceeding brought with respect to the Mortgaged Property, subject to the further provisions of this Mortgage, and to commence any action or proceeding to protect the interest of the Mortgagee with respect thereto;
- IX. All extensions, additions, renewals and replacements, substitutions and accessions with respect to any of the foregoing;
- X. All right, title and interest of the Beneficial Mortgagor and the Nominal Mortgagor, if any, in (i) all agreements between the Beneficial Mortgagor and the Nominal Mortgagor, their respective agents and contractors, and subcontractors, suppliers, materialmen, architects and engineers, whether now or hereafter in effect, providing

for the construction or installation of the Improvements (including, without limitation, on any damages arising out of or for breach or default in respect of any such agreement, all other amounts from time to time paid or payable under or in connection with any such agreement and the right of the Beneficial Mortgagor to amend, modify, supplement or terminate any such agreement or to perform and to exercise all remedies thereunder), (ii) all consents, licenses and building permits required for renovation, construction, completion, occupancy and operation of the Improvements and Premises in accordance with all applicable requirements of law, and (iii) all plans and specifications for the construction of the Improvements;

- XI. All proceeds, both cash and non-cash, of the foregoing or conversion of the foregoing;
- XII. All property tax abatements and credits relating to any of the foregoing and all rights to refunds of real estate taxes and assessments with respect to the Premises; and
- XIII. All proceeds of federal low income housing tax credits under Section 42 of the Internal Revenue Code, to the extent assignable; and
- XIV. All rights and interests of the Nominal Mortgagor, if any, and the Beneficial Mortgagor pursuant to the Lease Agreements and any right, title or interest to damages arising out of or for breach or default in respect of any such agreements;
- XIV. All tangible personal property now or hereafter located at or intended to be used in connection with the construction and rehabilitation, use, operation or maintenance of the Improvements, including without limitation building materials, equipment, trade fixtures, furniture, furnishings and decorations (the "Tangible Personal Property");
- XV. Commercial tort claims related to the Premises, the Improvements or the Tangible Personal Property; promissory notes, letters of credit, electronic chattel paper, proceeds from accounts, payment intangibles, and general intangibles related to the Premises, as the terms "accounts", "general intangibles", and "payment intangibles" are defined in the applicable Uniform Commercial Code Article 9, as the same may be modified from time to time;
- XVI. All other assets of the Beneficial Mortgagor and the Nominal Mortgagor related in any way to the Premises, subject to certain limitations that may be set forth herein;

TO HAVE AND TO HOLD the Mortgaged Property, together with all rights, hereditaments and appurtenances in anywise appertaining or belonging thereto, unto the Mortgagee, its successors and assigns, forever for the uses set forth herein.

## ARTICLE I - DEFINITIONS

Section 1.01. Definitions. In addition to other definitions contained herein, the following terms shall have the meanings set forth below, unless the context of this Mortgage otherwise requires.

“**Agency**” shall mean the New York State Housing Finance Agency irrespective of whether or not it continues to be the Mortgagee, its successors and/or assigns.

“**Area Median Income**” or “**AMI**” shall mean the area median gross income for Syracuse Metropolitan Statistical Area, as determined from time to time by the Secretary of the United States Department of Housing and Urban Development (“HUD”) as applicable pursuant to the Code; references to 60% of AMI shall mean amounts established by HUD constituting 120% of the Very Low Income Limit for HUD’s Section 8 programs, adjusted for family size; and references to 50% of AMI shall mean amounts established by HUD constituting the Very Low Income Limit for HUD’s Section 8 programs, adjusted for family size.

“**Beneficial Mortgagor**” shall mean set forth in the title page, and its respective heirs, executors, administrators, successors and assigns.

“**Default Rate**” shall be the rate which would otherwise be due under the Note irrespective of whether the Bonds have been redeemed plus an additional two percent (2%) interest.

“**Environmental Reports**” shall mean, collectively, that certain Phase 1 Environmental Site Assessment dated September 27, 2010 with respect to the New Kasson building located at 622 James Street in Syracuse, NY, prepared by Quad3 Architectural, Engineering, Environmental Services; that certain Phase 1 Environmental Site Assessment Update dated November 2, 2011 with respect to the New Kasson building located at 622 James Street in Syracuse, NY, prepared by Quad3 Architectural, Engineering, Environmental Services; that certain Phase 1 Environmental Site Assessment dated September 27, 2010 with respect to the Leavenworth building located at 615 James Street in Syracuse, NY, prepared by Quad3 Architectural, Engineering, Environmental Services; that certain Phase 1 Environmental Site Assessment Update dated November 2, 2011 with respect to the Leavenworth building located at 615 James Street in Syracuse, NY, prepared by Quad3 Architectural, Engineering, Environmental Services; that certain Pre-Renovation Regulated Building Materials Assessment dated January 21, 2011 with respect to 615 James Street, Syracuse, New York, prepared by LaBella Associates, P.C.; that certain Pre-Renovation Regulated Building Materials Assessment dated January 14, 2011 with respect to 622 James Street, Syracuse, New York, prepared by LaBella Associates, P.C.; that certain Fannie Mae Assessments for Lead-Based Paint, Mold and Radon dated May, 2011 with respect to 615 & 622 James Street, Syracuse, New York, prepared by LaBella Associates, P.C..

**“Environmental Laws”** shall mean all applicable federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to protection of the environment and/or governing the use, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

**“Hazardous Substance”** shall mean without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances, volatile or organic compounds or related materials as defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801 *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901 *et seq.*), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601 *et seq.*), Articles 15 and 27 of the New York State Environmental Conservation Law or any other applicable Environmental Laws and the regulations promulgated thereunder.

**“HFA Servicing Fee”** shall have the meaning assigned to such term in the Note.

**“HFA Subsidy Loan”, “HFA Subsidy Mortgage”, “HFA Subsidy Loan Documents” and “HFA Subsidy Note”** shall have the meaning set forth in the recitals to this Mortgage.

**“Impositions”** shall mean all taxes or payments in lieu of taxes, including without limitation, all real and personal property taxes or payments in lieu of taxes, water charges and sewer rents, any special assessments, utility charges, duties, assessments for public utilities, excises, levies, license and permit fees, insurance premiums required under this Mortgage, and other charges, ordinary or extraordinary, whether foreseen or unforeseen, of any kind and nature whatsoever, which prior to or during the term of this Mortgage will have been or may be laid, levied, assessed or imposed upon or become due and payable out of or in respect of, or become a lien on the Mortgaged Property or any other property or rights included in the Mortgaged Property, or any part thereof or appurtenances thereto, by virtue of any present or future law, order or ordinance of the United States of America or of any state, county or local government or of any department, office or bureau thereof or of any other governmental authority.

**“Investor Member”** shall mean Conifer 2011 Tax Credit Fund, L.P., a Delaware limited partnership, its successors and assigns.

**“Legal Requirements”** shall mean all present and future laws, ordinances, rules, regulations and requirements of all governmental authorities and all orders, rules and regulations of any national or local board of fire underwriters or other body exercising similar functions, foreseen or unforeseen, ordinary or extraordinary, which may be applicable to the Mortgaged Property or any part thereof, or

to the sidewalks, alleyways, passageways, curbs and vaults adjoining the same, or to the use or manner of use of such or any of the foregoing, or to the owners, tenants, or occupants of the Mortgaged Property, whether or not any such law, ordinance, rule, regulation and requirement shall interfere with the use or enjoyment of any of the foregoing, and shall also mean and include all requirements of the policies of public liability, fire and all other insurance and all rules and regulations of the New York State Board of Fire Underwriters at any time in force with respect to any of the foregoing.

**“Letter of Credit”** shall have the meaning set forth in the recitals to this Mortgage.

**“Loan Agreement”** shall have the meaning set forth in the recitals to this Mortgage.

**“Loan Documents”** shall have the meaning set forth in the recitals to this Mortgage.

**“LOC Bank”** shall have the meaning set forth in the recitals to this Mortgage.

**“Mortgage”** shall have the meaning set forth in the recitals to this Mortgage.

**“Mortgage Loan”** shall have the meaning set forth in the recitals to this Mortgage.

**“Mortgaged Property”** shall mean those items described in granting clause I through XVI of this Mortgage.

**“Mortgagee”** shall mean the New York State Housing Finance Agency having an address at 641 Lexington Avenue, New York, New York 10022 or at any given time the holder or holders of this Mortgage and the Note, including, without limitation, any such holder or holders as collateral security or as collateral assignee(s).

**“Nominal Mortgagor”** shall mean set forth in the title page, and its respective heirs, executors, administrators, successors and assigns.

**“Note”** shall have the meaning set forth in the recitals.

**“Permitted Exceptions”** shall mean any exceptions set forth on Schedule “B” attached hereto.

**“Person”** means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, incorporated association, joint venture, unincorporated organization or governmental authority.

**“Personalty”** shall mean that portion of the Mortgaged Property which constitutes personal property subject to Article 9 of the Uniform Commercial Code of the State of New York.

**“Premises”** shall mean the premises described in Schedule A attached hereto and made a part hereof, including all and singular, the easements, rights of way, privileges, tenants, hereditaments

and appurtenances and the reversion and the remainder thereof thereunto belonging or in anywise appertaining; and all of the estate, right, title, interest, claim or demand of the Beneficial Mortgagor therein and in and to any land lying in the bed of any street, road, avenue, alleys, passages or sidewalks, open or proposed, public or private, in front of, adjoining or adjacent to the Premises, to the center line thereof, either at law or in equity, in possession or expectancy, now or hereafter acquired with respect thereto.

**“Project”** shall mean the acquisition and substantial rehabilitation of two, 7-story elevator serviced buildings containing 12 studios, 20 one-bedroom and 51 two-bedroom apartment units for a total of 83 units located at 615 and 622 James Street in the City of Syracuse, Onondaga County. Twenty-two percent (22%) of the Project’s revenue-generating units, or 18 units, will be set aside for households whose incomes are at or below 50% of the area median income for the Syracuse Metropolitan Statistical Area (“AMI”) adjusted for family size.

**“Regulatory Agreement”** shall have the meaning set forth in the recitals to this Mortgage.

**“Reimbursement Agreement”** shall have the meaning set forth in the recitals to this Mortgage.

**“Resolution”** shall have the meaning set forth in the recitals to this Mortgage.

**“SONYMA”** shall have the meaning assigned to it in the recitals to this Mortgage.

**“State”** shall mean the State of New York

**“Trustee”** shall refer to The Bank of New York Mellon, N.A., and its successor or successors and any other commercial bank, trust company or national banking association at any time substituted in its place pursuant to the Resolution.

**“Utility Charges”** shall mean including all and singular charges to the Mortgaged Property for gas, electricity, water or sewer services furnished and all other assessments or charges of a similar nature, whether public or private, affecting the Mortgaged Property or any portion thereof.

## **ARTICLE II - REPRESENTATIONS, COVENANTS AND WARRANTIES**

**Section 2.01. Representations, Covenants and Warranties.** The Beneficial Mortgagor represent covenant and warrant as follows:

(A) The Beneficial Mortgagor shall (i) duly and punctually pay as provided in the Note, as and when due and payable, all sums due and payable under the Note and shall duly and punctually pay all other sums secured hereby; (ii) satisfy all of its other obligations under the Loan Documents

in accordance with the terms thereof; and (iii) pay all sums and perform all of its other obligations and covenants under the Reimbursement Agreement.

(B) The Beneficial Mortgagor warrants that (i) it is the lawful owner of the fee and sub-leasehold interest in the Premises; (ii) it has good, marketable interest in the Premises and to the rest of the Mortgaged Property; (iii) the Mortgaged Property is free and clear of all mortgages, liens, charges and encumbrances whatsoever without qualification other than the Permitted Exceptions and that this Mortgage shall constitute a first lien position against the Mortgaged Property; (iv) it has not assigned the rents, issues and profits mentioned under the granting clause other than the Permitted Exceptions; (v) subject to the provisions of Section 5.01 herein below, it will maintain and preserve the first lien of this Mortgage until the indebtedness secured hereby has been paid in full; (vi) it has good right and lawful authority to mortgage and assign its interest in the Mortgaged Property as provided in and by this Mortgage; and (vii) it will warrant and diligently defend the same against any and all claims and demands whatsoever.

(C) Beneficial Mortgagor is a limited liability company duly formed and validly existing under the laws of the State of New York and authorized to do business in the State of New York.

(D) Beneficial Mortgagor has adequate authority, rights and franchises to own its properties (including the Mortgaged Property), to carry on its business as now conducted and to perform its obligations hereunder and under the Loan Documents, and Beneficial Mortgagor has made all filings in each jurisdiction in which the character of its business or nature of its properties makes such filings necessary and where not filing could have a material adverse impact on its business.

(E) Beneficial Mortgagor has the authority and legal right to execute, deliver and perform its obligations under the Reimbursement Agreement and the Loan Documents to which it is a party, to borrow under the Note and to grant the liens and security interest contemplated hereby and by the other Loan Documents to which it is a party, and has taken all necessary action to authorize the borrowings on the terms and conditions of the Note and the execution, delivery and performance of the Reimbursement Agreement and the Loan Documents to which it is a party. No consent, license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with any governmental authority which has not been obtained is required as of the date hereof for the execution, delivery and performance of its obligations by Beneficial Mortgagor under the Reimbursement Agreement or the Loan Documents to which it is a party. Each of the Reimbursement Agreement and the other Loan Documents to which it is a party has been duly executed and delivered on behalf of Beneficial Mortgagor and constitutes the legal, valid and binding obligation of Beneficial Mortgagor, enforceable against Beneficial Mortgagor in accordance with its terms except to the extent that enforcement may be limited by applicable bankruptcy, insolvency,

reorganization or other similar laws affecting creditors' rights generally and by equitable principles (regardless of whether enforcement is sought in equity or at law).

(F) Neither the execution, delivery or performance by the Beneficial Mortgagor of the Regulatory Agreement, the Note, this Mortgage, the Reimbursement Agreement or any other Loan Document, nor compliance by the Beneficial Mortgagor with the terms and provisions hereof or thereof, nor the consummation by the Beneficial Mortgagor of the transactions contemplated herein or therein (i) will contravene any applicable provision of any law, statute, rule, regulation, order, writ, injunction or decree of any court or governmental instrumentality, or (ii) will conflict with, or result in any breach of the terms, conditions or provisions of, or constitute a default under, or result in any violation of, or result in the creation of any lien (except liens in favor of the Mortgagee created pursuant to the terms of this Mortgage and the other Loan Documents and Permitted Exceptions) upon any of the properties or assets of Beneficial Mortgagor pursuant to the terms of any indenture, mortgage, agreement or other instrument to which Beneficial Mortgagor is a party or by which Beneficial Mortgagor or any of its assets are bound or to which Beneficial Mortgagor may be subject, or (iii) will violate any provision of the constituent documents of Beneficial Mortgagor, the effect of any of which could be reasonably likely to have a material adverse effect on the ability of Beneficial Mortgagor to perform its obligations under the Reimbursement Agreement and the Loan Documents to which it is a party in accordance with the terms thereof.

(G) No litigation, investigation or administrative proceeding of or before any court, arbitrator or governmental authority is either pending, anticipated or, to the best of Beneficial Mortgagor's knowledge, threatened against Beneficial Mortgagor or any of its assets, that is likely to have a material adverse effect on the ability of Beneficial Mortgagor to perform its obligations under the Note, this Mortgage, the Reimbursement Agreement and the other Loan Documents to which it is a party in accordance with the terms hereof and thereof.

(H) The Mortgaged Property is not located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards pursuant to the terms of the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as same may have been amended to date and is insured pursuant to a policy of insurance described in Section 3.01 hereof.

(I) The financial statements, if any, of the Beneficial Mortgagor and its general partners or managing members, as applicable, delivered to the Agency are true and correct in all material respects and fairly present the financial condition of the Beneficial Mortgagor and its general partners or managing members, as applicable as of the respective dates thereof. No material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof.

(J) All public and private roads necessary for the full utilization of the Mortgaged Property for its intended purposes will be completed and all necessary rights of way therefore have

been acquired by the appropriate governmental authority and have been dedicated to public use and accepted by said governmental authority, and all necessary approvals have been obtained, to the extent necessary for the utilization of the Mortgaged Property for its intended purpose.

Section 2.02. Nominal Mortgagor's Representations, Covenants and Warranties. The Nominal Mortgagor represents, covenants and warrants as follows:

(A) The Nominal Mortgagor warrants that (i) it is the lawful holder of a leasehold interest in the Premises; and (ii) it has good right and lawful authority to mortgage and assign its interest in the Mortgaged Property as provided in and by this Mortgage.

(B) Nominal Mortgagor is a body corporate and politic and a public instrumentality of the State of New York, duly organized and validly existing under the laws of the State of New York and authorized to do business in the State of New York.

(C) Nominal Mortgagor has adequate authority and rights to own its properties (including the Mortgaged Property).

(D) Nominal Mortgagor has the authority and legal right to execute and deliver this Mortgage and has taken all necessary action to authorize the execution and delivery of this Mortgage and the Regulatory Agreement. This Mortgage and the Regulatory Agreement have been duly executed and delivered on behalf of Nominal Mortgagor, and constitutes the legal, valid and binding obligation of Nominal Mortgagor enforceable against Nominal Mortgagor in accordance with its terms except to the extent that enforcement may be limited by applicable non-recourse, bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by equitable principles (regardless of whether enforcement is sought in equity or at law).

(E) Neither the execution and delivery of this Mortgage or the Regulatory Agreement, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the provisions of this Mortgage by the Nominal Mortgagor will conflict with or result in a breach by the Nominal Mortgagor of any of the terms, conditions, or provisions of Title I of Article 18-A of the General Municipal Law of the State of New York, as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time, the By-Laws of the Nominal Mortgagor, or any order, judgment, restriction, agreement, or instrument to which the Nominal Mortgagor is a party or by which it is bound or will constitute a default by the Nominal Mortgagor under any of the foregoing.

Section 2.03. Hazardous Substances. Beneficial Mortgagor represents, warrants and covenants that Beneficial Mortgagor has not used Hazardous Substances on, from or affecting the Premises in any manner which violates any applicable Environmental Laws, and that, except as set forth in the Environmental Reports, to the best of Beneficial Mortgagor's knowledge, no prior owner of the Premises or any tenant, subtenant, prior tenant or prior subtenant have used, stored, treated, transported, manufactured, refined, produced or disposed of Hazardous Substances on, from, or

affecting the Premises in any manner which violates any Environmental Laws. Beneficial Mortgagor shall keep or cause the Premises to be kept free of Hazardous Substances and maintained in accordance with Environmental Laws. Without limiting the foregoing, Beneficial Mortgagor shall not cause or permit the Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all Environmental Laws, nor shall Beneficial Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Beneficial Mortgagor or any tenant or subtenant, a release of Hazardous Substances onto the Premises or onto any other property in violation of Environmental Laws. Beneficial Mortgagor shall comply with and ensure compliance by all occupants, tenants and subtenants of the Premises with all Legal Requirements whenever and by whomever triggered, and shall obtain and comply with, and ensure that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. Beneficial Mortgagor shall, upon the occurrence of a violation of an Environmental Law with respect to the Premises, (a) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Substances, on, from, or affecting the Premises: (i) in accordance with all applicable Environmental Laws, (ii) to the satisfaction of Mortgagee, and (iii) in accordance with the orders and directives of all federal, state and local governmental authorities and, (b) defend, indemnify, and hold harmless Mortgagee, its employees, agents, officers, and partners, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (i) the presence, disposal, release or threatened release of any Hazardous Substances which are on, from, or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise with respect to the Premises; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances located on or affecting the Premises; (iii) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances, and/or (iv) any violations of laws, orders, regulations, requirements, or demands of government authorities, or any policies or requirements of Mortgagee, which are based upon or in any way related to such Hazardous Substances, including, without limitation, attorneys and consultants fees, investigation and laboratory fees, court costs, and litigation expenses solely to the extent that such claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses are not a result of acts or omissions of Mortgagee. In the event this Mortgage is foreclosed, or Beneficial Mortgagor tenders a deed in lieu of foreclosure, Beneficial Mortgagor shall deliver the Premises to Mortgagee free of any and all Hazardous Substances so that the condition of the Premises shall conform to all Environmental Laws affecting the Premises. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities Beneficial Mortgagor may have to Mortgagee at common law, and shall survive the transactions contemplated herein.

Section 2.04. Mortgagee Authorized to Take or Complete Certain Remedial Actions on Behalf of Beneficial Mortgagor. If Beneficial Mortgagor fails to cause any release of Hazardous Substance on, at or from the Premises to be contained, removed, cleaned up and otherwise remediated within ninety (90) days after receiving notice thereof or if it is not possible to complete the above in ninety (90) days, and if the Beneficial Mortgagor has not commenced a cure within ninety (90) days after receiving notice or fails to remediate with due diligence, Mortgagee shall have the right (but not the obligation), upon ten (10) days written notice to the Beneficial Mortgagor (or without notice in the case of emergency), to take or complete such action on behalf of Beneficial Mortgagor. The contractors and/or subcontractors selected by Mortgagee shall have the right to enter the Premises with such persons, machinery and equipment and to undertake such investigation, containment, removal, clean-up and other remedial actions as they shall deem necessary and appropriate without thereby incurring any liability to Beneficial Mortgagor on account thereof. Beneficial Mortgagor agrees to cooperate with all contractors and/or subcontractors engaged in such investigation, containment, removal, clean-up or other remedial actions. Beneficial Mortgagor shall be liable to Mortgagee for all costs and expenses, including, without limitation, reasonable attorneys' and experts' fees, expenses and disbursements, paid or incurred on account of such actions undertaken on Beneficial Mortgagor 's behalf and shall promptly reimburse Mortgagee therefore on demand. Until paid by Beneficial Mortgagor all such costs and expenses, together with the interest thereon at the Default Rate, but in no event in excess of the maximum interest rate permitted by law, shall be secured by this Mortgage and may be added to the judgment in any foreclosure action.

### **ARTICLE III - INSURANCE**

Section 3.01. Insurance. For so long as the LOC Bank is providing a Letter of Credit to provide for the payment of the principal of, and the interest accrued on, the Note, the Beneficial Mortgagor shall obtain and maintain insurance coverage as determined by the LOC Bank, provided that the Mortgagee is named as additional insured on all such policies. In the event that the LOC Bank ceases to provide such Letter of Credit the Beneficial Mortgagor, at its own expense, shall, at all times, procure and maintain, in addition to any insurance coverages required to be maintained under the Loan Agreement, the insurance coverages hereinafter set forth in full force and effect throughout the life of the Mortgage, except as indicated herein, for the benefit of the Beneficial Mortgagor, the Nominal Mortgagor, the Mortgagee and the LOC Bank, as their interests may appear. Insurance policies required pursuant to this Article III shall be in such form and shall be issued by such insurance companies licensed to do business in the State of New York and having a rating of "A-" or better and a financial class of "IX" or better as rated by A.M. Best's Insurance Guide (or any successor publication of comparable standing). Insurance policies required pursuant to this Article III shall also name SONYMA and the LOC Bank as additional insureds and provide for a minimum

of thirty (30) days prior written notice of the cancellation, non-renewal or modification thereof except for ten (10) days notice of cancellation for non-payment to Mortgagee. Certified copies, originals or binders of such policies shall be delivered to the Mortgagee.

(A) Commencing upon the date of this Mortgage until the end of the term of the Letter of Credit ("Letter of Credit Period"), the Beneficial Mortgagor shall, at its own expense, procure and maintain certain insurance coverages required by the LOC Bank and described in the Loan Agreement and the Reimbursement Agreement. During the Letter of Credit Period, such insurance coverages shall also include the following:

(1) Comprehensive general liability coverage, including Owners and Contractors Protective Liability coverage with per occurrence and aggregate limits of at least \$5,000,000. Each liability policy must name the Mortgagee as an additional named insured as follows: "New York State Housing Finance Agency, ISAOA, ATIMA, Attn: Insurance Department, 641 Lexington Avenue, New York, New York 10022".

(2) "Builder's Risk - Completed Value Form" insurance policy which shall contain a New York Standard Mortgagee Clause (non-contributing) showing loss, if any, payable to the "New York State Housing Finance Agency, ISAOA, ATIMA as Mortgagee and Loss Payee, Attn: Insurance Department, 641 Lexington Avenue, New York, New York 10022."

(B) Commencing at the end of the term of the Letter of Credit until the expiration, termination or satisfaction of this Mortgage, the Beneficial Mortgagor shall, at its own expense, procure and maintain the following insurance coverages for the benefit of the Beneficial Mortgagor, and the Mortgagee, as their interests may appear:

(1) Comprehensive general liability insurance (including garage liability, if applicable) against claims for bodily injury, death and property damage occurring on, in or about the Premises and the adjoining streets, sidewalks and passageways, affording minimum protection of \$5,000,000 per occurrence and a minimum of \$5,000,000 in aggregate. Such insurance shall include a personal injury endorsement with no employee exclusion. If the coverage is provided under a blanket policy, then a "per location aggregate" endorsement is required.

(2) "All risk", "special causes of loss" coverage on Mortgaged Property on a replacement cost basis with either an agreed amount clause or waiver of coinsurance. The policy limits should be one hundred percent (100%) of the replacement cost of the insurable value improvements.

(3) Loss of rents coverage on an "Actual Loss Sustained" basis, or equal to one hundred percent (100%) of the annual gross receipts of the Mortgaged Property.

(4) Earthquake insurance for one hundred percent (100%) of the replacement cost of the Mortgaged Property, if specifically required in writing by the Agency.

(5) Flood insurance, if the Mortgaged Property is located in Flood Zones A or V. Flood insurance shall be at least the amount available through the National Flood Insurance Program ("NFLIP") or such amounts as the Mortgagee deems appropriate.

(6) Boiler and Machinery insurance in an amount equal to 100% of the replacement cost of the improvements.

(7) A fidelity bond in an amount equal to at least two months gross rental income covering the Beneficial Mortgagor and any managing agent or operator for the Mortgaged Property and their employees. The Mortgagee must be named as the joint loss payee.

(8) Worker's Compensation Insurance, disability benefits insurance, employer's liability insurance and every other form of insurance which the Beneficial Mortgagor is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Beneficial Mortgagor who are located at or assigned to the Mortgaged Property and in the case of employer's liability insurance, minimum protection of not less than \$100,000 per occurrence.

(9) If the Beneficial Mortgagor owns an automobile, automobile liability insurance with limits of one million dollars (\$1,000,000) combined single limit for bodily injury or death and five hundred thousand dollars (\$500,000) for property damage. Such insurance shall include comprehensive and/or collision coverage as determined by the Agency.

(10) Non-owned or hired automobile liability insurance in the amount of one million dollars (\$1,000,000) combined single limit for bodily injury or death and one hundred thousand dollars (\$100,000) for property damage.

(11) Commercial umbrella liability coverage of at least \$5,000,000 per occurrence and in the aggregate in excess of basic coverage stated above for comprehensive general liability, automobile liability, hired not owned automobile liability, worker's compensation, and employer's liability.

(12) The policies described in paragraphs (2) through (6) of subsection (C) of Section 3.01 herein shall contain a New York Standard Mortgagee Clause (non-contributing) showing loss, if any, payable to the “New York State Housing Finance Agency, ISAOA, ATIMA as Mortgagee and Loss Payee, Attn: Insurance Department, 641 Lexington Avenue, New York, New York 10022”.

(13) The policies described in paragraphs (1) and (9) through (11) of subsection (C) of Section 3.01 herein shall name the Mortgagee as an additional insured.

(14) Such other insurance, as reasonably may be required by Mortgagee against the same or other hazards.

(C) Except as stated otherwise in this Article III, all insurance policies described in this Section 3.01 shall, at all times, be for the full value of the Mortgaged Property as determined by a recognized appraiser or insurer selected by the Beneficial Mortgagor and acceptable to the Mortgagee, SONYMA and the LOC Bank. Where liability coverage amounts are applicable, those amounts must be acceptable to the Mortgagee, SONYMA and the LOC Bank. Beneficial Mortgagor shall deliver a policy(ies) covering the Mortgaged Property or duplicate original(s) thereof, marked “premium paid,” or accompanied by such other evidence of payment satisfactory to Mortgagee, SONYMA and the LOC Bank with standard non-contributory mortgagee clauses acceptable to Mortgagee, SONYMA and the LOC Bank placed with an insurance company(ies) which is acceptable to the Mortgagee, and at least thirty (30) days prior to expiration or amendment of any policy(ies) or at such reasonable time prior to expiration as the Mortgagee may approve. If for good reason the insurance company, the insurance or the insurance amounts become unsatisfactory to the Mortgagee, Beneficial Mortgagor shall be required to obtain new or additional insurance in a timely manner satisfactory to Mortgagee provided that such new or additional insurance is available.

(D) Beneficial Mortgagor shall not take out any separate or additional insurance which is contributing in the event of loss unless it is properly endorsed to name the Mortgagee as the named insured thereunder with loss payable to the Mortgagee without contribution and otherwise satisfactory to Mortgagee in all respects.

(E) If Beneficial Mortgagor defaults in its obligations to insure or deliver any such prepaid policy or policies, then Mortgagee, without notice, may affect such insurance and Beneficial Mortgagor shall pay to Mortgagee such premium or premiums so paid by Mortgagee with interest from the time of payment at the Default Rate. Any such payment by Mortgagee shall be secured by this Mortgage and shall be collectible in like manner as the other indebtedness secured by this Mortgage.

(F) Unless the Mortgagee establishes a lower amount pursuant to an appraisal, Beneficial Mortgagor shall increase the amount of insurance required pursuant to the provisions of

this Section not later than twelve months from the date of this Mortgage and after each successive twelve month period to occur thereafter using the F.W. Dodge Building Index or comparable industry standard acceptable to the Mortgagee to determine the amount of increase in the replacement value of the Mortgaged Property since the most recent adjustment and shall adjust the amount of insurance required accordingly.

(G) Beneficial Mortgagor promptly shall comply with and conform to (1) all provisions of each such insurance policy, and (2) all requirements of the insurers applicable to Beneficial Mortgagor, any of the Mortgaged Property or to the use, manner of use, occupancy, possession, operation, maintenance, alteration or repair of any of the Mortgaged Property, even if such compliance necessitates structural changes or improvements or results in interference with the use or enjoyment of any of the Mortgaged Property. If Beneficial Mortgagor shall use any of the Mortgaged Property in any manner which would permit the insurer to cancel any insurance policy, Beneficial Mortgagor immediately shall obtain a substitute policy satisfactory to Mortgagee to be effective at or prior to the time of any such cancellation.

(H) Any transfer of the Mortgaged Property in accordance with provisions of this Mortgage, including a transfer by foreclosure or deed-in-lieu of foreclosure, shall transfer all of the Beneficial Mortgagor's interest, including any unearned premiums, in all insurance policies then in force covering the Mortgaged Property.

(I) The provisions of Section 254(4) of the Real Property Law shall not in any manner apply to or construe the provisions of this Section 3.01.

#### **ARTICLE IV - PAYMENT OF IMPOSITIONS, HFA FEE**

Section 4.01. Payment of Impositions. For so long as the LOC Bank acts as the Mortgagee's mortgage loan servicer pursuant to the Servicing Agreement, the Beneficial Mortgagor shall pay Impositions at such time and in such amounts as determined and directed by the LOC Bank. If at any time the LOC Bank is no longer acting as the Mortgagee's mortgage loan servicer, the payment of Impositions by the Beneficial Mortgagor and matters related thereto shall be governed by subsections (B) through (D) of this Section 4.01.

(A) The Beneficial Mortgagor will pay or cause to be paid, as and when due and payable, all Impositions levied upon the Mortgaged Property or any part thereof and, upon the request of the Mortgagee, will deliver to the Mortgagee receipts evidencing the payment of all such Impositions. Notwithstanding the foregoing if, by law, any Imposition may at the option of the taxpayer be paid in installments, the Beneficial Mortgagor may do so. So that the Mortgagee at all times holds an escrow sufficient to secure payment for all Impositions at least one (1) month before the due date thereof, the Beneficial Mortgagor shall pay to the Mortgagee an initial payment upon the

effective date of the SONYMA Mortgage Insurance Policy and then monthly thereafter, an amount equal to one-twelfth of the annual Impositions reasonably estimated by the Mortgagee, and shall cause all bills, statements or other documents relating to Impositions to be sent or mailed directly to the Mortgagee. The Mortgagee shall hold such deposits in an account for the benefit of Beneficial Mortgagor ("Escrow Fund") and shall apply such deposits to the payment of Impositions as they become due and payable which are required to be paid by the Beneficial Mortgagor pursuant to the provisions of this Mortgage. If at any time the funds deposited with the Mortgagee are or will be insufficient to maintain the Escrow Fund in the proper amount to pay such amounts, the Beneficial Mortgagor, upon notification, immediately shall deposit an amount equal to such deficiency with the Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause the Mortgagee to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with the Mortgagee pursuant to this subsection. The Mortgagee may commingle said funds with its own funds and the Beneficial Mortgagor shall not be entitled to interest thereon. The Mortgagee may impound or reserve for future payment of Impositions such portion of such payments as the Mortgagee in its absolute discretion may deem proper. Should the Beneficial Mortgagor fail to deposit with the Mortgagee sums sufficient to pay in full such Impositions at least thirty (30) days before delinquency thereof, the Mortgagee, at the Mortgagee's election, but without any obligation so to do, may advance any amounts required to make up the deficiency. Should an Event of Default occur and remain uncured hereunder, the Mortgagee, at any time at the Mortgagee's option, may apply any sums or amounts received pursuant hereto, upon the Note of the Beneficial Mortgagor secured hereby in such manner and order as the Mortgagee may elect.

(B) If requested by the Mortgagee, the Beneficial Mortgagor shall at its own expense retain a tax reporting service covering the Mortgaged Property, with a company satisfactory to the Mortgagee.

(C) The Beneficial Mortgagor shall have the right to contest the amount or validity, in whole or in part, of any Imposition, or to seek a reduction in the valuation of the Mortgaged Property, as assessed for real estate or personal property tax purposes by appropriate proceedings diligently conducted in good faith, but only after payment of such Imposition to the extent required by applicable law or if in the opinion of the Mortgagee, neither the Mortgaged Property nor any part thereof nor any interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost and the Beneficial Mortgagor shall have set aside adequate cash reserves for the payment of the contested Impositions, together with all interest and penalties thereon.

Section 4.02. SONYMA Mortgage Insurance Premium. So that the Mortgagee at all times holds an escrow sufficient to pay the SONYMA Mortgage Insurance Premium at least one month before the due date thereof, the Beneficial Mortgagor shall pay to the Mortgagee, prior to the effective date of the SONYMA Mortgage Insurance Policy, an initial payment of Twenty-Three

Thousand Seven Hundred Fifty Dollars (\$23,750) or one-half of one percent (.50%) of the original principal amount of the Loan insured by SONYMA whichever is less, and thereafter, the Beneficial Mortgagor shall pay on a monthly basis to the Mortgagee an amount equal to one-twelfth (1/12) of the annual SONYMA Mortgage Insurance Premium as estimated by the Mortgagee. The Mortgagee's estimation shall exclude any amount held by it to pay any initial premiums with respect to prospective Loan increases. If at any time the funds deposited with Mortgagee are or will be insufficient to maintain the escrow in the proper amount, the Beneficial Mortgagor, upon notification, shall immediately deposit an amount equal to such deficiency with the Mortgagee. The Beneficial Mortgagor shall have no interest in any funds deposited with the Mortgagee. The calculation of amounts owed pursuant to this Section will reflect SONYMA's requirement that SONYMA fees are to be paid one year in advance.

## **ARTICLE V - DAMAGE, DESTRUCTION AND CONDEMNATION**

Section 5.01. Damage or Destruction. (A) If the Mortgaged Property shall be damaged or destroyed (in whole or in part) at any time during the term of the Mortgage:

(1) there shall be no abatement or reduction in the amounts payable by the Beneficial Mortgagor hereunder or under the Note or the other Loan Documents or of the Beneficial Mortgagor's obligations under the Regulatory Agreement.(whether or not the Mortgaged Property is replaced, repaired, rebuilt or restored);

(2) the Beneficial Mortgagor shall promptly give written notification thereof to the Mortgagee, SONYMA and prior to the effective date of the SONYMA Mortgage Insurance Policy, the LOC Bank;

(3) the Beneficial Mortgagor shall within ninety (90) days from the occurrence of an event of damage or destruction, furnish to Mortgagee, SONYMA and the LOC Bank a study demonstrating the feasibility or lack thereof of the replacement, repair, rebuilding or restoration of the Improvements. Such study shall include (i) the cost of the replacement, repair, rebuilding or restoration including any sums, in addition to remaining undisbursed Loan proceeds and insurance proceeds, required to complete the necessary work; (ii) an evaluation of whether such replacement, repair, rebuilding or restoration of the Improvements can be completed by such date as may be approved by Mortgagee, SONYMA and the LOC Bank, which approval shall not unreasonably be withheld; and (iii) the feasibility of the Improvements after completion. The Mortgagee shall then issue a determination that (a) the Beneficial Mortgagor shall replace, repair, rebuild or restore the Improvements ("Positive Determination"); or (b) the Beneficial Mortgagor shall not replace, repair, rebuild or restore the Improvements ("Negative Determination"). In the event of a

Positive Determination, the Beneficial Mortgagor shall commence replacement, repair, rebuilding or restoration of the Improvements within sixty (60) days of the Positive Determination, weather permitting. Also, in the event of a Positive Determination, Mortgagee may require Beneficial Mortgagor to deposit with Mortgagee any additional sums which Mortgagee reasonably determines are necessary to replace, repair, rebuild or restore the Improvements in the event insurance proceeds are reasonably deemed insufficient. In the event of a Negative Determination, the Note shall be repaid in accordance with subsection (B) of Section 5.01 herein; and

(4) The Beneficial Mortgagor shall be empowered to settle any and all claims for damage or destruction of the Mortgaged Property, subject to approval by the Mortgagee, which approval shall not be unreasonably withheld. All insurance proceeds paid on account of such damage or destruction, less the reasonable fees, and expenses, if any, incurred in connection with adjustment of the loss, shall be held in trust by Trustee and applied to the cost of such restoration, repair, replacement, rebuilding or alterations. In the event that such net proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Beneficial Mortgagor shall nonetheless complete such replacement, repair, rebuilding or restoration and shall pay from its own moneys that portion of the costs thereof in excess of such net proceeds. Any sums remaining after completion of the work of restoration shall be held in trust for the Beneficial Mortgagor by the Mortgagee until the Mortgage obligation has been satisfied.

Notwithstanding anything contained herein to the contrary, any notice to, or approval required to be made by, SONYMA or Mortgagee under subsection (A) of Section 5.01. herein shall be construed to also include notice to or approval made by the LOC Bank, if made prior to the effective date of the SONYMA Mortgage Insurance Policy.

(B) In the event of a Negative Determination as described in subsection (A) of Section 5.01 hereinabove, the net proceeds available under any and all policies of insurance covering the damage or destruction of the Mortgaged Property shall be used to repay the Note in full, with all interest accrued thereon and all other sums evidenced or secured by the Loan Documents. If the net proceeds available are not sufficient, the Beneficial Mortgagor shall pay the difference between such amounts and such net proceeds of the insurance so that the Note shall be prepaid and any and all other amounts payable under the Loan Documents to the Mortgagee, SONYMA and the LOC Bank, and under the Reimbursement Agreement to the LOC Bank, shall be paid in full. If all amounts due under the Loan Documents and the Reimbursement Agreement have been fully paid, all such net proceeds or the balance thereof shall be paid to the Beneficial Mortgagor for its purposes.

Section 5.02. Condemnation. (A) If at any time during the term of this Mortgage the whole or part of title to, or the use of, the Mortgaged Property shall be taken by condemnation:

(1) there shall be no abatement or reduction in the amounts payable by the Beneficial Mortgagor hereunder or under the Note or other Loan Documents or of the Beneficial Mortgagor's obligations under the Regulatory Agreement or the Reimbursement Agreement (whether or not the Mortgaged Property is restored);

(2) the Beneficial Mortgagor shall promptly give notice thereof to the Mortgagee, SONYMA and the LOC Bank;

(3) except as otherwise provided in Subsection (B) of Section 5.02 hereinbelow, the Beneficial Mortgagor shall determine whether to restore the Mortgaged Property (excluding any part of the Mortgaged Property taken by condemnation) to substantially the same condition and value as an operating entity as existed prior to such condemnation. Beneficial Mortgagor shall make such determination within ninety (90) days from the occurrence of an event of condemnation and, if Beneficial Mortgagor determines to replace, repair, rebuild or restore, it will commence such activity within an additional sixty (60) day time period, weather permitting and subject to available condemnation proceedings. The Beneficial Mortgagor shall furnish to the Mortgagee a study demonstrating the feasibility of said replacement, repair, rebuilding or restoration and, further, satisfactory evidence that (notwithstanding such condemnation) the Improvements can be completed by such date as may be approved by the Mortgagee, SONYMA and the LOC Bank, which approval shall not be unreasonably withheld; and

(4) the Beneficial Mortgagor shall be exclusively empowered to settle any award of the Mortgaged Property subject to approval by the Mortgagee, which approval shall not be unreasonably withheld. All condemnation proceeds less the reasonable fees and expenses, if any, incurred in connection with adjustment of the award shall be held in trust by the Mortgagee and applied to the cost of such restoration, repair, replacement, rebuilding or alterations. In the event such net proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Beneficial Mortgagor shall nonetheless complete such replacement, repair, rebuilding or restoration and shall pay from its own moneys that portion of the costs thereof in excess of such net proceeds. Any sums remaining after completion of the work of restoration shall be held in trust for the Beneficial Mortgagor until the Mortgage obligation has been satisfied.

Notwithstanding anything contained herein to the contrary, any notice to, or approval required to be made by, SONYMA or Mortgagee under subsection (A) of Section 5.02 herein shall be construed to also include notice to or approval made by the LOC Bank, if required or made prior to the effective date of the SONYMA Mortgage Insurance Policy.

(B) The Beneficial Mortgagor shall not be obligated to restore the Mortgaged Property, and the net proceeds of the condemnation award shall not be applied as provided in subsection (A) of this Section 5.02, if (1) the Beneficial Mortgagor determines that is not practical to restore the Mortgaged Property, and (2) the Mortgagee, SONYMA, and prior to the effective date of the SONYMA Mortgage Insurance Policy, the LOC Bank approve such determination which approval shall not be unreasonably withheld. In such event, the lesser of (a) the net proceeds of the condemnation award or (b) the amount necessary to prepay the Note in full, with all interest accrued thereon, and all other sums evidenced or secured by the Loan Documents, shall be paid to Mortgagee. If the net proceeds of the condemnation award are less than the amount necessary to prepay the Note and pay any and all other amounts payable under the Loan Documents to the Mortgagee and SONYMA, and under the Reimbursement Agreement to the LOC Bank, the Beneficial Mortgagor shall pay the difference between such amounts and such net proceeds of the condemnation award so that the Note shall be prepaid and any and all other amounts payable under the Loan Documents to the Mortgagee and SONYMA, and under the Reimbursement Agreement to the LOC Bank, shall be paid in full. If all amounts due under the Note, the other Loan Documents, and the Reimbursement Agreement have been fully paid, all such net proceeds shall be paid to the Beneficial Mortgagor for its purposes.

Section 5.03. Replacement and Repairs. All replacements, repairs, rebuilding or restoration made pursuant to Sections 5.01 or 5.02 hereinabove, whether or not requiring the expenditure of the Beneficial Mortgagor's own moneys, shall automatically become part of the Mortgaged Property and be subject to the lien of this Mortgage as if the same were specifically described herein. Except for equipment financed in the ordinary course of business, all such replacements, repairs, rebuilding or restoration shall be free from any title retention, security agreement or other encumbrance in favor of any party other than the Mortgagee.

## **ARTICLE VI - EVENTS OF DEFAULT, REMEDIES AND FORECLOSURE**

Section 6.01. Events of Default. (A) Default Defined. The whole of the outstanding principal amount and accrued interest evidenced by the Note and all other sums and charges secured by or otherwise due under this Mortgage or the other Loan Documents and under the Reimbursement Agreement, shall become due, at the option of the Mortgagee, upon the happening and continuance beyond the grace period, if any, hereinafter indicated, of any of the following events or any other event elsewhere herein described as an Event of Default (hereinabove and hereinafter referred to as "Events of Default" and in the singular as an "Event of Default"):

- (1) Failure of the Beneficial Mortgagor (a) to pay any installment of interest or interest and principal or HFA Servicing Fee when due under the Note or any other payment required hereunder except that the Beneficial Mortgagor shall be entitled to a ten (10) day

period to cure such default (“Cure Period”), or (b) to pay the final principal balance of the Note when due, whether upon the maturity date set forth therein, upon acceleration of amounts due under the Note or otherwise, together with accrued and unpaid interest thereon; or

(2) If any of the Beneficial Mortgagor’s or Nominal Mortgagor’s representations or warranties contained herein or in the Loan Documents, Reimbursement Agreement or in any of the certificates or financial statements furnished in connection therewith shall be untrue or incorrect in any material respect at the time made, or if any such warranty or representation intended to be a continuing one shall become untrue or incorrect in any way materially adversely affecting the security for the Note or of this Mortgage and the Beneficial Mortgagor or the Nominal Mortgagor shall fail to remedy such situation within thirty (30) days after written notice from the Mortgagee (or immediately upon notice in case of emergency); or

(3) If (i) the Beneficial Mortgagor or the Nominal Mortgagor or any managing member or general partner of the Beneficial Mortgagor shall (a) apply for or consent in writing to the appointment of a receiver, trustee or liquidator of the Beneficial Mortgagor or of the Mortgaged Property or any part thereof; (b) file a voluntary petition in bankruptcy or be unable, or admit in writing to the inability generally, to pay debts as they become due; (c) make a general assignment for the benefit of creditors; (d) file a petition or any answer seeking a reorganization or an arrangement or a readjustment of debt with creditors, or take advantage of any insolvency, bankruptcy, liquidation or dissolution law of the United States or of any state; or (e) file an answer admitting the material allegations of a petition filed against it in any such bankruptcy, reorganization or insolvency proceedings; or (ii) any payment of principal or interest due and paid under the Mortgage within the period of 123 days (for a corporation) or 366 days (for a partnership) preceding the filing by or against the Beneficial Mortgagor of a petition for relief as a debtor under any Bankruptcy Law shall be voided as a preferential transfer under any Bankruptcy Law, irrespective of the entity from which recapture of such preferential transfer is sought; or

(4) If (a) an involuntary bankruptcy case is commenced against the Beneficial Mortgagor or any general partner or managing member, as applicable, of the Beneficial Mortgagor and the petition is not controverted within ten (10) days of such party’s notice of the involuntary petition, or is not dismissed within sixty (60) days after commencement of the case; or (b) any execution, warrant, attachment, garnishment or other similar processes shall be levied or filed against the Mortgaged Property or any part thereof which involve claims aggregating more than \$50,000.00 and such processes shall not be stayed, bonded, vacated or discharged within sixty (60) days after the same shall have been levied or filed; or (c) an order, judgment or decree shall be entered by any court of competent jurisdiction on the application of a creditor adjudicating the Beneficial Mortgagor or any general partner or managing member, as

applicable, of the Beneficial Mortgagor bankrupt or insolvent, or granting a petition seeking reorganization of any such party or appointing a receiver, trustee or liquidator of any such party, or of all or substantially all of any other assets of the Beneficial Mortgagor or the Nominal Mortgagor or any general partner or managing member, as applicable, of the Beneficial Mortgagor, or an order for relief shall be entered, and such order, judgment or decree shall continue unstayed and in effect for a period of sixty (60) days or shall not be discharged within fifteen (15) days after the expiration of any stay thereof; or

(5) If noncompliance with any of the provisions of the Regulatory Agreement beyond the applicable cure period, if any, shall occur; or

(6) If the Beneficial Mortgagor shall fail to timely pay the amount to be held in escrow for payment of the SONYMA Mortgage Insurance Premium as provided in Section 4.02 hereof and does not cure said failure within ten (10) days after written notice thereof; or

(7) If the Beneficial Mortgagor shall fail to timely pay the HFA Servicing Fee as provided in the Note and does not cure said failure within ten (10) days of the date due; or

(8) If the Beneficial Mortgagor or the Nominal Mortgagor shall fail timely to comply with, perform or observe, or cause to be performed or observed, any other term, obligation, covenant, condition or agreement contained in this Mortgage or the Loan Documents, if any, the Reimbursement Agreement or in any assignment of leases and rents or in any other instrument executed concurrently herewith or supplemental hereto pertaining to the Indebtedness or the security therefore, or under any supplement, modification or extension of any of the foregoing, on its part to be performed, if any, and such failure shall have continued for a period of thirty (30) days after notice thereof from the Mortgagee; provided, however, that an Event of Default shall not be deemed to exist hereunder if (i) such default is reasonably capable of being cured within a period of time which the Mortgagee deems to be reasonable under the circumstances and so advises the Beneficial Mortgagor, (ii) the Beneficial Mortgagor promptly after receipt of such notices from the Mortgagee, commences and at all times diligently proceeds to cure such default, and (iii) the delay in curing such default would not adversely affect the lien or priority of this Mortgage or the Beneficial Mortgagor's ability to otherwise comply with the terms of this Mortgage or the other Loan Documents or Reimbursement Agreement, and (iv) within the time period so prescribed by the Mortgagee, the Beneficial Mortgagor does, in fact, cure such default. Notwithstanding the foregoing, no cure period shall apply to nonperformance of the covenants contained in Section 7.04 hereof; or

(9) If the Beneficial Mortgagor or the Nominal Mortgagor shall fail timely to comply with, perform or observe, or cause to be performed or observed, beyond the expiration of any applicable notice and cure period, any other term, obligation, covenant, condition or

agreement contained in the HFA Subsidy Note or the HFA Subsidy Mortgage, if any and only as applicable; or

(10) If the Beneficial Mortgagor or any person or entity with any direct or indirect ownership interest in the Beneficial Mortgagor sells, transfers, assigns or conveys (voluntarily, by operation of law or otherwise) all, substantially all, or any part of its membership, stock or partnership interests, as the case may be (other than the transfer of certain partnership interests in the Beneficial Mortgagor if permitted under the Regulatory Agreement and Section 7.16 herein below, without the prior and express written consent of the Mortgagee or SONYMA (or if prior to the effective date of the SONYMA Mortgage Insurance Policy, the LOC Bank under the Reimbursement Agreement); or

(11) If the Beneficial Mortgagor obtains any secondary or subordinate financing (other than Permitted Exceptions) or permits any secured transactions under the Uniform Commercial Code which shall affect the Premises or any equipment used in the operation and maintenance of the Premises prior to the payment of the Mortgage Loan, unless expressly permitted herein or in writing by the Mortgagee; or

(12) If the Beneficial Mortgagor fail to obtain an extension of the Letter of Credit fifteen (15) days before the expiration date of the Letter of Credit if such expiration date is prior to the effective date of the SONYMA Mortgage Insurance Policy; or

(13) If a Default or Event of Default exists under the Reimbursement Agreement beyond the expiration of any applicable notice and cure period contained therein, but only prior to the effective date of the SONYMA Mortgage Insurance Policy; or

(14) If an Event of Default exists under the HFA Subsidy Loan Documents or the Lease Agreements beyond the expiration of any applicable notice and cure period contained therein; or

(15) The Beneficial Mortgagor agrees and covenants that obligations of the PILOT Agreement are hereby incorporated by reference into this Mortgage so that any that noncompliance with any of said covenants, obligations or agreements beyond all applicable grace and cure periods, shall constitute noncompliance with the terms of this Mortgage and an Event of Default of the Beneficial Mortgagor; or

(16) If any of the events described in (3) or (4) of this Section 6.01 happens to the Nominal Mortgagor; or

(17) If the Nominal Mortgagor or Beneficial Mortgagor shall fail timely to comply with, perform or observe, or cause to be performed or observed, any other material term, obligation, covenant, condition or agreement contained in the Lease Agreements.

(B) Late Charge. In the event of a default in any payment due under this Mortgage or under the Note or other obligation secured hereby, the Beneficial Mortgagor shall immediately, after the expiration of any applicable cure period, become liable to the Mortgagee for a late charge in the amount of two percent (2%) of any such payment on which there has been a default, to cover the Mortgagee's cost of collecting such payment.

Section 6.02. Remedies. During the continuance of any Event of Default if not cured within the time allotted, the Mortgagee, at its option, may:

(A) By written notice to the Beneficial Mortgagor declare the entire principal amount of the Note then outstanding and all accrued and unpaid interest thereon and all other sums and charges secured by or otherwise due under this Mortgage or any other Loan Document and all other Indebtedness to be immediately due and payable, and upon such declaration the outstanding principal amount of the Note and said accrued and unpaid interest and such other sums and charges shall become and be immediately due and payable, anything in the Note or in this Mortgage or any other Loan Document to the contrary notwithstanding.

(B) Cure the Event of Default at the cost and expense of the Beneficial Mortgagor, including, but not limited to, applying any funds held in accounts established pursuant to the Loan Documents to the payment of debt service due and owing on the Note.

(C) After such proceedings as may be required by any applicable law or ordinance, either in person, or by its agents or attorneys, or by a court appointed receiver, enter into and upon all or any part of the Mortgaged Property and each and every part thereof and exclude the Beneficial Mortgagor, its agents and servants wholly therefrom; and having and holding the same, use, operate, manage and control the Mortgaged Property and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or the receiver; and upon every such entry, the Mortgagee, at the expense of the Beneficial Mortgagor, from time to time, either by purchase, repairs or construction, may maintain and restore the Mortgaged Property and, likewise may make all necessary or proper repairs, renewals and replacements and such alterations, betterments, additions and improvements thereto and thereon as it may deem advisable including, without limitation, the installation and construction of facilities on the Mortgaged Property; and in every such case the Mortgagee shall have the right to manage and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of the Beneficial Mortgagor as the Beneficial Mortgagor's attorney-in-fact, or otherwise as it shall deem best; and the Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Mortgaged Property and shall apply such moneys to pay amounts owed hereunder.

(D) With or without entry, personally or by its agents or attorneys insofar as applicable:

(1) foreclose this Mortgage in accordance with the laws of the State and provisions hereof, for the entire Indebtedness secured hereby or for any portion of such Indebtedness or any other sums secured hereby which are then due and payable, subject to the continuing lien of this Mortgage for the balance of the Indebtedness not then due; or

(2) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in this Mortgage or any other Loan Document, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Mortgagee shall elect; or

(3) exercise all of the rights and remedies with respect to repossession, retention and sale of the Personalty and the disposition of the proceeds thereof as are accorded to a secured party by the applicable sections of Part 6 of Article 9 of the Uniform Commercial Code. Mortgagee's reasonable attorneys' fees and the legal and other expenses for pursuing, searching for, receiving, taking, keeping, storing, advertising and selling the Personalty shall be chargeable to Beneficial Mortgagor. Mortgagee may, at its discretion and in addition to its other rights and remedies hereunder, enter upon the Premises peaceably by Mortgagee's own means or with legal process and take possession of the Personalty, or render it unusable, or dispose of the Personalty on the Premises, and Beneficial Mortgagor agrees not to resist or interfere. Mortgagee may require Beneficial Mortgagor to assemble the Personalty and make it available to Mortgagee at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Beneficial Mortgagor reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. Beneficial Mortgagor agrees that the requirements of reasonable notice will be met if such notice is sent by registered mail, postage prepaid, to the address of Beneficial Mortgagor shown above at least five (5) days before the time of such sale or other disposition. To the extent permitted under the Uniform Commercial Code, the Beneficial Mortgagor waives all rights of redemption and all other rights and remedies of a debtor thereunder and all formalities prescribed by law relative to the sale or disposition of the Building Materials, Building Service Equipment or the Furnishings after an Event of Default. Nothing contained in this subparagraph shall preclude Mortgagee from proceeding as to both the real property and the personal property covered by this Mortgage in accordance with its rights and remedies in respect of the real property, as provided in Section 9-604 (a) of the Uniform Commercial Code. Notwithstanding the foregoing, if (1) an Event of Default as defined in Section 6.01 hereof shall occur and (2) the Mortgagee (if this Mortgage has been assigned) does not commence foreclosure as set forth in Section 4(A) hereof within thirty (30) days after written notice by the Agency to the

Mortgagee, then the Agency may commence and prosecute such foreclosure in accordance with this Mortgage; or

(4) sell the Mortgaged Property or any part thereof pursuant to any procedures provided by applicable law, including, without limitations, the procedures set forth in article 14 of the New York Real Property Actions and Proceedings Law (and any amendments or substitute statutes in regard thereto), and all estate, right title, interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entity on in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by applicable law.

Section 6.03. Foreclosure; No Marshaling of Assets; Appointment of Receiver.

(A) In the case of a foreclosure sale, all of the Mortgaged Property may be sold in one parcel notwithstanding that the proceeds of such sale exceed or may exceed the Indebtedness secured hereby. Moreover, the Mortgagee shall not be required to proceed hereunder before proceeding against any other security, shall not be required to proceed against other security before proceeding hereunder, and shall not be precluded from proceeding against any or all of any security in any order or at the same time.

(B) The Mortgagee, in any action to foreclose this Mortgage, shall be entitled (and, to the extent permitted under the laws of the State, without notice, without regard to the adequacy of any security for the debt and without regard to the solvency of any Person liable for the payment thereof) to the appointment of a receiver of the rents, issues, benefits, and profits of the Mortgaged Property.

(C) The Beneficial Mortgagor agrees, to the full extent that it may lawfully do so, that in any foreclosure or other action brought by the Mortgagee hereunder, it will not, at any time, insist upon or plead or in any way take advantage of any appraisalment, valuation, stay, marshaling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent, hinder or delay the enforcement of the provisions of this Mortgage or any right or remedies the Mortgagee may have hereunder or by law.

(D) Upon the happening of any acceleration event under the Note or Event of Default hereunder, and in addition to all other rights of the Mortgagee provided herein or by law, the Beneficial Mortgagor shall, on demand, surrender possession of the Mortgaged Property to the Mortgagee; and the Beneficial Mortgagor hereby consents that under such circumstances the Mortgagee shall be the attorney in fact, coupled with an interest, of the Beneficial Mortgagor for such purposes, and the Mortgagee may appoint a receiver of the rents and profits of the Mortgaged Property. In the event that the Beneficial Mortgagor is an occupant of the Mortgaged Property, it agrees to immediately surrender to the Mortgagee the possession of that part of the Mortgaged Property which it occupies, upon any acceleration event or Event of Default hereunder; and if the

Beneficial Mortgagor remains in possession, such possession shall be as tenant of the Mortgagee, and the Beneficial Mortgagor agrees to pay monthly in advance to the Mortgagee such rent, not to exceed the market rent, for the premises so occupied as the Mortgagee may demand, and in default of so doing, the Beneficial Mortgagor may also be dispossessed by summary proceedings or otherwise. In case of the appointment of a receiver of the rents and profits of the Mortgaged Property, the Beneficial Mortgagor irrevocably consents to such appointment and waive notice of any application therefor. In addition, the covenants of this subsection 6.03(D) may be enforced by such receiver.

(E) The proceeds of any foreclosure or sale of, and the rents and other amounts generated by the holding, leasing, operation or other use of, the Mortgaged Property shall be applied by the Mortgagee (or the receiver, if one is appointed) to the extent that funds are so available therefrom in the following orders:

(1) first, to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (i) trustees' fees and receivers' fees, (ii) court costs, (iii) reasonable attorneys' and accountants' fees, (iv) costs of advertisement, (v) construction and rehabilitation costs for necessary repairs and improvements and (vi) the payment of any and all Impositions, liens, security interests or other rights, titles or interests equal or superior to the lien and security interest of this Mortgage (except those which the Mortgaged Property has been sold subject to, and without in any way implying Mortgagee's prior consent to the creation thereof);

(2) second, to the payment of all amounts, which may be due to Mortgagee under the Note and this Mortgage in such order of priority as the Mortgagee may determine;

(3) third, to the payment of all other principal and accrued but unpaid interest due on the Note, in such order of priority as to principal and interest as Mortgagee may determine;

(4) fourth, to the payment of all sums due and owing to the LOC Bank under the Reimbursement Agreement prior to the effective date of the SONYMA Mortgage Insurance Policy; and

(5) fifth, to the payment of any other amounts due with respect to the HFA Subsidy Loan; and

(6) sixth, to the Beneficial Mortgagor subject to the rights of any other Person lawfully entitled thereto.

#### Section 6.04. Legal Expenses of Mortgagee.

(A) The Beneficial Mortgagor will pay to the Mortgagee and, in the event this Mortgage has been assigned, the Agency and its assigns, as applicable, on demand, all reasonable costs, charges and expenses (including without limitation, attorneys' fees) incurred or paid at any time by the Mortgagee, the Agency or its assigns, as applicable, because of the failure of the Beneficial Mortgagor to perform, comply with or abide by any of the stipulations, agreements, conditions or covenants contained herein, in the other Loan Documents, or in the Note secured hereby, together with interest on each such payment made by the Beneficial Mortgagor at the Default Rate from the date each such payment is made.

(B) If any action or proceeding is commenced in which the Mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of this Mortgage, all sums paid by the Mortgagee for the expense of any litigation to prosecute or defend the title, rights and lien created by this Mortgage (including, without limitation, reasonable attorneys' fees) shall be paid by the Beneficial Mortgagor, together with interest thereon at the Default Rate from the date each such payment is made, and all such sums and the interest thereon shall be a lien on the Mortgaged Property, prior to any right, title or interest in or claim upon the Mortgaged Property attaching or occurring subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage. In any action or proceeding to foreclose this Mortgage, or to recover or collect the debt secured hereby, the provisions of law respecting the recovery of costs, disbursements and allowances, if inconsistent with the foregoing, shall prevail unaffected by this covenant.

Section 6.05. Remedies Cumulative; Rights and Remedies Not Limited To Section 254 of the Real Property Law.

(A) No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of the Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or any acquiescence therein; and every power and remedy given by this Mortgage to the Mortgagee may be exercised from time to time as often as may be deemed expedient by the Mortgagee. Nothing in this Mortgage, in the Note or in any other Loan Document shall affect the obligation of the Beneficial Mortgagor to pay the principal of and interest on the Note in the manner and at the time and place therein respectively expressed.

(B) The rights and remedies of Mortgagee hereunder shall be in addition to its rights and remedies under the laws of the State of New York, including, but not limited to, its rights and remedies under Section 254 of the Real Property Law. In the event of any conflict between the terms and conditions of this Mortgage and the provisions of Section 254 of the Real Property Law, the terms and conditions of this Mortgage shall control.

Section 6.06. Waiver.

(A) A waiver in one or more instances of any of the terms, covenants, conditions or provisions hereof, of Loan Documents or the Reimbursement Agreement shall apply to the particular instance or instances and at the particular time or times only, and no such waiver shall be deemed a continuing waiver, but all of the terms, covenants, conditions and other provisions of this Mortgage, the other Loan Documents or the Reimbursement Agreement shall survive and continue to remain in full force and effect; and no waiver shall be effective unless in writing, dated and signed by the Mortgagee.

(B) To the fullest extent permitted by law, the Beneficial Mortgagor and the Nominal Mortgagor waive (i) the benefit of all laws now existing or that may be enacted hereafter providing for any appraisalment before the sale of any portion of the Mortgaged Property and (ii) the benefit of all laws now existing or that may be enacted hereafter in any way extending the time for the enforcement of the collection of the Note or creating or extending a period of redemption from any sale made in collecting the Note. To the full extent that the Beneficial Mortgagor and the Nominal Mortgagor may do so, the Beneficial Mortgagor and the Nominal Mortgagor agree that such party will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisalment, valuation, stay, extension or redemption, and the Beneficial Mortgagor and the Nominal Mortgagor, for themselves and their respective successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the fullest extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the whole of the Note and marshaling in the event of foreclosure of the liens hereby created.

Section 6.07. Time of Essence. The Beneficial Mortgagor agrees that where, by the terms of this Mortgage, the Note secured hereby or of the other Loan Documents, a day is named or a time fixed for the payment of any sum of money or the performance of any agreement, the day and time stated enters into the consideration and is of the essence of the whole agreement between the Beneficial Mortgagor, the Nominal Mortgagor and the Mortgagee.

Section 6.08. No Merger. It is the intention of the parties hereto that if the Mortgagee shall at any time hereafter acquire title to all or any portion of the Mortgaged Property, then, and until the indebtedness secured hereby has been paid in full, the interest of the Mortgagee hereunder and the lien of this Mortgage shall not merge or become merged in or with the estate and interest of the Mortgagee as the holder and owner of title to all or any portion of the Mortgaged Property and that, until such payment, the estate of the Mortgagee in the Mortgaged Property and the lien of this Mortgage and the interest of the Mortgagee hereunder shall continue in full force and effect to the same extent as if the Mortgagee has not acquired title to all or any portion of the Mortgaged Property.

Section 6.09. Environmental Inspection and Clean-Up Prior to Foreclosure. If Mortgagee elects to foreclose this Mortgage or to take a deed in lieu of foreclosure, Beneficial Mortgagor shall deliver the Premises to Mortgagee in such manner that the condition of the Premises shall conform with all Environmental Laws then applicable to the Premises and comply with the terms and conditions of all environmental permits then required in connection with the ownership, use, operation, sale transfer or conveyance of the Premises. Mortgagee may require, based on reasonable cause that a full or supplemental environmental inspection and audit report with respect to the Premises of a scope and level of detail satisfactory to Mortgagee be prepared by an environmental engineer or other qualified person acceptable to Mortgagee, at Beneficial Mortgagor's sole cost and expense. Said audit may include physical inspection of the Premises, a visual inspection of any property adjacent to or within the immediate vicinity of the Premises, personnel interviews and a review of all environmental permits. The Mortgagee may require that, based on reasonable cause, such inspection shall also include a records search and/or subsurface testing for the presence of Hazardous Substances in the soil, subsoil, bedrock, surface water and/or groundwater. If said audit report indicates the presence of any Hazardous Substance or a release or the threat of a release of any Hazardous Substance on, at or from the Premises, Beneficial Mortgagor shall promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigation, containment, removal, clean-up and other remedial actions, using methods recommended by the environmental engineer or other qualified person who prepared said audit report and acceptable to the appropriate federal, state and local regulatory authorities. If Beneficial Mortgagor shall fail to promptly undertake or diligently pursue to completion all such actions, Mortgagee shall have the right, but not the obligation, upon ten (10) days written notice to Beneficial Mortgagor (or without notice in the case of emergency), to take or complete such actions on behalf of the Beneficial Mortgagor. The contractors and/or subcontractors selected by Mortgagee for this purpose shall have the right to enter the Premises with such persons, machinery and equipment and to undertake such investigation, containment, removal, clean-up and other remedial actions as they shall deem necessary and appropriate without thereby incurring any liability to Beneficial Mortgagor on account thereof. Beneficial Mortgagor shall be liable to Mortgagee for all reasonable costs and expenses, including, without limitation, reasonable attorneys' and experts' fees, expenses and disbursements, paid or incurred on account of such actions and shall promptly reimburse Mortgagee therefore on demand. Until paid by the Beneficial Mortgagor, all such costs and expenses and the cost of the environmental inspection and audit report, together with interest thereon at the Default Rate, but in no event in excess of the maximum interest rate permitted by law, shall be secured by this Mortgage and may be added to the judgment in any foreclosure action.

## ARTICLE VII - OTHER COVENANTS

Section 7.01. Right of Access to Mortgaged Property. The Beneficial Mortgagor and the Nominal Mortgagor agree that the Mortgagee and its duly authorized agents shall have the right at all reasonable times and upon reasonable notice to the Beneficial Mortgagor to enter upon and to examine and inspect the Mortgaged Property.

Section 7.02. Inspection of Beneficial Mortgagor's Books. The Beneficial Mortgagor shall keep accurate and complete records and books of account in accordance with generally accepted accounting principles consistently applied. Beneficial Mortgagor hereby covenants that all books, records and documents relating to the Mortgaged Property and the revenues derived from the Mortgaged Property shall, upon three (3) business days prior written notice from Mortgagee, be open to inspection by such accountants or other agents as the Mortgagee may from time to time designate and that Beneficial Mortgagor shall be available to discuss its affairs, finances and accounts with the officers, accountants and agents of the Beneficial Mortgagor. Notwithstanding any provision in this Mortgage and the Loan Documents, the Mortgagee may, at its reasonable discretion, inspect such books, documents and records without advance notice to the Beneficial Mortgagor.

Section 7.03. Performance of Managing Agent. Beneficial Mortgagor agrees that the Mortgagee shall have the right to review the performance of Beneficial Mortgagor, managing agent or any other person or entity functioning as managing agent in accordance with Section 5.4 of the Regulatory Agreement.

Section 7.04. Beneficial Mortgagor and Nominal Mortgagor Not To Dispose of Mortgaged Property. Beneficial Mortgagor agrees that, at all times throughout the term of the Mortgage, it will maintain its existence and will not sell, transfer or convey (voluntarily or by operation of law or otherwise) all or any portion of the Mortgaged Property, and further will not encumber or permit any secondary or subordinate financings (except for the Permitted Exceptions) with respect to the Mortgaged Property without the prior express written consent of (i) the Mortgagee, (ii) SONYMA, while its insurance is in effect, and (iii) prior to the effective date of the SONYMA Mortgage Insurance Policy, the LOC Bank. Specifically, and not by way of limitation, this Section is intended to (i) prohibit any transaction under the Uniform Commercial Code which shall affect the Mortgaged Property, and (ii) prohibit any transfer, as the case may be, of stock or partnership interests in the Beneficial Mortgagor or the Nominal Mortgagor, except as permitted under Section 7.16 hereinbelow, the Reimbursement Agreement and the Regulatory Agreement.

Section 7.05. Agreement to Provide Information. Beneficial Mortgagor agrees, whenever requested by Mortgagee or the LOC Bank, to provide and certify such information concerning Beneficial Mortgagor, its finances and other topics as Mortgagee or the LOC Bank from time to time considers necessary or appropriate, including, but not limited to, such information as to enable

Mortgagee or the LOC Bank to make any reports required by law or governmental regulation. The Beneficial Mortgagor shall deliver to the Agency, within ninety (90) days after the end of each fiscal year of the Beneficial Mortgagor, audited financial statements showing the results of operations for that fiscal year, set forth on an accrual basis. If requested by the Agency in writing, the Beneficial Mortgagor shall deliver to the Agency, within sixty (60) days after the end of each such year (i) a detailed statement of all cash receipts and disbursements of the Project for the preceding year, (ii) a list of all accounts payable and receivable as of the last day of said year and (iii) a projection of the net cash flow or deficit anticipated by the Beneficial Mortgagor for the year following the end of said year.

Section 7.06. Financial Statements; Rent Roll. Within ninety (90) days after the end of its fiscal year, Beneficial Mortgagor shall furnish to Mortgagee (i) financial statements relating to Beneficial Mortgagor's operation and management of the Mortgaged Property for the immediately preceding fiscal year and (ii) the rent roll of the Mortgaged Property certified by a certified public accountant in a form and detail satisfactory to the Mortgagee.

Section 7.07. Compliance with Orders, Ordinances. Beneficial Mortgagor and Nominal Mortgagor shall, at all times throughout the term of the Mortgage, promptly comply with all Legal Requirements and all other statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governmental authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to Beneficial Mortgagor or the Nominal Mortgagor or the Mortgaged Property or any part thereof, or to any use, manner of use or condition of the Mortgaged Property or any part thereof.

Section 7.08. Approval of Leases and Other Documents Affecting the Mortgaged Property. With respect to any commercial space in the Project, the Beneficial Mortgagor shall submit to the Agency for its approval the identity of any prospective retail or other commercial tenant and/or subtenant, and the proposed usage of the space, which approval shall not be unreasonably withheld or delayed, and shall provide the Agency with executed copies of any related leases. Any residential lease forms or riders, and any changes thereto, are subject to the Mortgagee's reasonable approval. Failure to utilize an approved lease and/or lease rider shall subject the Beneficial Mortgagor to a penalty in the amount of one month's rent for each affected Low Income Unit, as such term is defined in the Regulatory Agreement. The Beneficial Mortgagor agrees to provide to the Mortgagee with respect to the Project (i) a copy of all non-residential leases, if any, and (ii) a lease abstract summarizing the salient terms thereof including, but not limited to, the identity of the non-residential tenant and the proposed usage of space.

Section 7.09. HFA Signs. Beneficial Mortgagor agrees to affix to and maintain on the exterior wall of the Improvements, in a location and manner satisfactory to HFA, and in accordance

with local law, signs which indicate that the financing of the construction and renovation of the Project was made possible through the efforts of HFA. Such signs will be provided at the expense of Beneficial Mortgagor by HFA, available to Beneficial Mortgagor at the office of the New York State Office of General Services nearest to the Mortgaged Property. Beneficial Mortgagor shall be responsible, at its own cost, for transporting the signs from such Office of General Services to the Premises, for affixing the signs, for maintaining the signs in good condition and for providing for insurance coverage with respect to the signs.

Section 7.10. Tax Covenant. Beneficial Mortgagor and Nominal Mortgagor each agree that at all times it will refrain from taking any action which might result in a determination that interest payable on the 2011 Series 2 Parity Bonds or the Converted Bonds is not excludable from gross income for federal income tax purposes and will take any and all actions, of which it is legally capable, to preserve such exclusion of interest on the Bonds from gross income.

Section 7.11. Replacement Reserve Account. The Beneficial Mortgagor shall establish, fund and maintain with the Agency an account to be known as the Replacement Reserve Account in accordance with Section 5.3 of the Regulatory Agreement.

Section 7.12. Mortgage to Remain in Force. This Mortgage shall remain in full force and effect from the date of this Mortgage until the date on which all financial obligations and money due under the Loan Documents and the Reimbursement Agreement have been paid in full.

Section 7.13. Single Purpose Entity. Beneficial Mortgagor covenants that it will not enter into or engage in any business or activity other than the operation of the Project, including the operation of any other housing project, or incur any liability or obligation not in connection with the Project without the prior written consent of the Mortgagee.

Section 7.14. Judgment Interest Rate Not Applicable. Wherever in this Mortgage, in the Note or in the Reimbursement Agreement it is provided that the Beneficial Mortgagor is obligated to pay interest at the Default Rate "until paid" or words of similar import, the Default Rate shall so apply from the date provided in the applicable provision until the applicable amount plus interest thereon is actually paid in full by the Beneficial Mortgagor, it being the intention of the parties that notwithstanding anything to the contrary contained in any provision of the New York Civil Practice Law and Rules (the "CPLR"), including, without limitation, Section 5004 of the CPLR, the Default Rate shall apply prior to a judgment being rendered in respect to an action on the Note, the Reimbursement Agreement or this Mortgage, as the case may be, and thereafter commencing on the date such judgment is entered in respect of the Note, the Reimbursement Agreement or this Mortgage through and including the date which such judgment is fully satisfied. Accordingly, the Beneficial Mortgagor hereby, knowingly, intentionally and after consultation with counsel, waives any benefit or provision of the CPLR providing for an interest rate other than the Default Rate, including, without limitation, any such benefit that may be contained in Section 5004 of the CPLR.

Section 7.15. Compliance with the Resolution. Beneficial Mortgagor shall take any and all actions required to be taken by it pursuant to the Resolution.

Section 7.16. SONYMA Restriction on Transfer. In addition to any other condition, requirement or restriction contained herein or in the Regulatory Agreement, the Beneficial Mortgagor and the Nominal Mortgagor shall not convey, or further encumber, all or any part of the Project or the Beneficial Mortgagor's interest in the Project or obtain additional secondary financing or transfer, assign or convey any of its membership, stock or partnership interests, as the case may be, without the prior written consent of SONYMA except as may be permitted pursuant to Section 5.5 of the Regulatory Agreement.

## ARTICLE VIII - MISCELLANEOUS

Section 8.01. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from the Mortgage or the other Loan Documents is intended or shall be construed to give to any person, other than the parties hereto or thereto, and their successors and assigns, any right, remedy or claim under or with respect to the Mortgage or any covenants, conditions and provisions herein contained. The Mortgage and all of the covenants, conditions and provisions hereof are intended to be for the sole and exclusive benefit of the parties hereto and their successors and assigns as herein provided.

Section 8.02. Further Assurance.

(A) Beneficial Mortgagor will execute and procure for Mortgagee and cause to be done any further conveyances, instruments or acts of further assurance as Mortgagee shall reasonably require to perfect the security of Mortgagee in the Mortgaged Property intended now or hereafter to be covered by the Mortgage or otherwise for carrying out the intention of facilitating the performance of the terms of the Mortgage.

(B) Beneficial Mortgagor shall execute, procure and deliver to Mortgagee, upon request, such UCC-1 financing statements, UCC-3 amendments, UCC-3 continuation statements and other instruments as Mortgagee may require in order to impose confirm, renew or perfect the security interest created by this Mortgage upon any of the collateral mortgaged or pledged hereunder. Beneficial Mortgagor hereby appoints Mortgagee its agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution, to execute, deliver and file on its behalf any UCC-1 financing statements, UCC-3 amendments, UCC-3 continuation statements and other instruments which such party has failed or refused to execute and deliver to Mortgagee within ten (10) days after notice and request therefore by Mortgagee.

Section 8.03. Covenants Run with Land; Beneficiary of Covenants.

(A) All of the grants, covenants, terms, provisions and conditions herein shall run with the land and shall bind the Beneficial Mortgagor and the Nominal Mortgagor, its respective successors and assigns (and each of them) and all subsequent owners, encumbrancers and tenants of the Mortgaged Property, and shall apply to and inure to the benefit of the Mortgagee and its successors and assigns.

(B) All covenants of the Beneficial Mortgagor and the Nominal Mortgagor contained in this Mortgage are imposed solely and exclusively for the benefit of the Mortgagee and its successors and assigns, and no other person shall have standing to require compliance with such covenants or be deemed, under any circumstances, to be a beneficiary of such covenants, any or all of which may be freely waived in whole or in part by the Mortgagee at any time if in its sole discretion it deems it advisable to do so.

Section 8.04. Severability. In the event any one or more of the provisions contained in the Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability, at the option of the Agency, shall not affect any other provision of the Mortgage, but the Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

Section 8.05. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (A) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (B) delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery. Subject to change by notices given in accordance with this Section 8.5, the addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

If to the Beneficial Mortgagor:

James Street Apartments LLC  
c/o Conifer Realty, LLC  
183 East Main Street, 6th Floor  
Rochester, New York Rochester, NY 14609  
Attention: Andrew I. Crossed  
Attention: Susan Jennings, Esq.

with a copy to:

Red Stone Equity Partners, LLC  
200 Public Square, Suite 1550  
Cleveland, OH 44114  
Attn: General Counsel

If to the Nominal Mortgagor:

City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202  
Attention: Chairman

with a copy to:

City of Syracuse  
233 East Washington Street  
Syracuse, New York 13202  
Attention: Corporation Counsel

If to HFA:

New York State Housing Finance Agency  
641 Lexington Avenue  
New York, New York 10022  
Attention: Executive Vice President and  
Attention: Senior Vice President and Counsel

If to SONYMA:

State of New York Mortgage Agency  
641 Lexington Avenue  
New York, New York 10022  
Attention: Senior Vice President, Mortgage Insurance Division

If to the LOC Bank:

First Niagara Bank, N.A.  
777 Canal View Boulevard, Suite 100  
Rochester, New York 14623  
Attention: John M. Berry  
Vice President

with a copy to:

Phillips Lytle LLP  
1400 First Federal Plaza  
Rochester, New York 14614  
Attention: Robert C. Johnson, Esq.

Section 8.06. Applicable Law. The Mortgage shall be construed and enforced according to the laws of the State.

Section 8.07. Section 13 Lien Law Covenant. In compliance with Section 13 of the New York State Lien Law, Beneficial Mortgagor agrees that it will receive the advances secured by this Mortgage and will hold the right to receive such advances as a trust fund to be applied first for the

purposes of paying the cost of improvements, and Beneficial Mortgagor will apply the same first to the payment of such costs before using any part of the same for any other purpose.

Section 8.08. Usury. Notwithstanding anything to the contrary contained herein, in no event shall the total of all charges payable hereunder or under any of the other Loan Documents which are or could be held to be in the nature of interest exceed the maximum rate permitted to be charged under applicable law. Should the Mortgagee receive any payment which is or would be in excess of that permitted to be charged under any applicable law, such payment shall have been, and shall be deemed to have been, made in error and shall automatically be applied to reduce the Indebtedness.

Section 8.09. Maintenance. Beneficial Mortgagor shall maintain or cause to be maintained in good condition and repair the Premises, Improvements, Furnishings and Building Service Equipment and shall not commit or permit waste, or permit any nuisance to exist thereon. In addition, Beneficial Mortgagor shall comply with all laws affecting the Mortgaged Property or the operation thereof.

Section 8.10. Non-Recourse. Notwithstanding anything to the contrary contained in this Mortgage or any of the Loan Documents, following the Conversion Date (as such term is defined in the Note), the Mortgagee shall look solely to the Mortgaged Property, and to the collateral and other security held by the Mortgagee pursuant to the Loan Documents and not to any property or assets of any officer, director, agent, member, manager, partner or employee of the Beneficial Mortgagor or any of the affiliates thereof (the "Borrower Parties"), and no such other property or assets shall be subject to levy, execution or other enforcement procedures nor shall any deficiency judgment or other monetary judgment (except as set forth below) be sought, obtained or enforced for the satisfaction of any rights or remedies contained in the Loan Documents, for the payment or performance of any obligations, agreements or covenants, or for the breach of representations or warranties contained therein or herein; provided, however, that the foregoing provisions of Section 8.10 herein shall not (A) constitute a waiver of any obligation evidenced by this Mortgage, the Note or the other Loan Document secured hereby; (B) limit the right of the Mortgagee to name the Beneficial Mortgagor or the Borrower Parties as a party defendant in any action or suit for judicial foreclosure and sale under this Mortgage so long as no judgment in the nature of a deficiency judgment or other monetary judgment (except as set forth below) shall be enforced against the Beneficial Mortgagor or the Borrower Parties except to the extent of the Mortgaged Property or such other collateral, if any; (C) affect in any way the validity or enforceability of any guaranty (whether of payment and/or performance) or indemnity agreement given to the Mortgagee in connection, (i) with the Loan, (ii) any transaction contemplated by the Loan Documents or the Reimbursement Agreement, or (iii) any obligations of the Beneficial Mortgagor and the Nominal Mortgagor under the Regulatory Agreement; (D) constitute a waiver by the Mortgagee of any rights in connection with any representation, warranty, covenant or indemnification in this Mortgage with respect to

Environmental Laws, Hazardous Substances or asbestos and in that certain Hazardous Substance Indemnity Agreement of even date herewith given by any general partner or managing member, as applicable of the Beneficial Mortgagor to the Mortgagee; (E) constitute a waiver by the Mortgagee of any rights to reimbursement from the Beneficial Mortgagor for, but only to the extent of, any actual, out-of-pocket, losses, costs or expenses; or (F) constitute a waiver of any remedy at law or in equity, against the Beneficial Mortgagor and/or any of the Borrower Parties in connection with (1) gross negligence, willful misconduct or fraudulent acts or omissions by the Beneficial Mortgagor or any Borrower Parties, (2) material and intentional misrepresentation by the Beneficial Mortgagor or any of the Borrower Parties with respect to any of the Loan Documents or other documents and agreements in connection with the construction of the Improvements, (3) physical waste of any material portion of the Mortgaged Property by the Beneficial Mortgagor or any of the Borrower Parties, (4) willful or wrongful misapplication by the Beneficial Mortgagor or any of the Borrower Parties of any Loan proceeds, insurance proceeds, condemnation awards, tenant security deposits, or of any rental or other income which is required by this Mortgage or any other Loan Document to be paid or applied in a specified manner arising, in any such case, with respect to the Mortgaged Property, (5) failure by the Beneficial Mortgagor or any of the Borrower Parties to deliver, promptly upon demand during the existence of an Event of Default any tenant and other project files and original executed leases and other agreements relating to occupancy, construction or operation of the Improvements, (6) any distributions to the Beneficial Mortgagor or any Borrower Party made during the continuance of an Event of Default, (7) any voluntary or collusive involuntary direct or indirect transfer of the Mortgaged Property or any interest in the Beneficial Mortgagor in contravention of the Loan Documents, (8) the voluntary or collusive involuntary incurrence of any secured or unsecured indebtedness in contravention of the Loan Documents, (9) any voluntary or collusive involuntary filing of any bankruptcy, insolvency or similar proceeding by the Beneficial Mortgagor or its partners, (10) any hindrance or interference with the exercise by the Mortgagee of its remedies during the continuance of an Event of Default, (11) the voluntary or collusive involuntary creation of any pledge, lien or other encumbrance on the Mortgaged Property in contravention of the Loan Documents, or (12) failure by the Beneficial Mortgagor to maintain insurance or to pay any taxes, assessments, mechanic's liens, materialmen's liens, or other obligations which would create liens on any portion of the Mortgaged Property which would be superior to the lien or security interest of the Mortgage or the other Loan Documents.

Section 8.11. Costs of Suit. If any action, suit or proceeding is commenced by or against Mortgagee, including a foreclosure action, affecting the Premises or any part thereof or the lien of this Mortgage, Mortgagee may appear, defend, prosecute, retain counsel and take such other action as Mortgagee shall deem necessary or advisable, and the costs thereof (including reasonable legal fees and all applicable statutory costs, allowances and disbursements), together with interest thereon at the Default Rate, but in no event in excess of the maximum interest rate permitted by law, shall be

paid by Beneficial Mortgagor to Mortgagee on demand. Until paid by Beneficial Mortgagor, all such amounts, costs and expenses, together with interest thereon, shall be secured by this Mortgage and may be added to the judgment in any foreclosure action.

Section 8.12. Headings. Any headings proceeding the texts of the several sections hereof, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not be a part of this Mortgage, nor shall they affect its meaning, construction or effect.

Section 8.13. Waiver of Trial By Jury. TO THE EXTENT PERMITTED BY LAW, BENEFICIAL MORTGAGOR AND THE NOMINAL MORTGAGOR WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION PERTAINING TO THIS MORTGAGE INCLUDING A FORECLOSURE ACTION.

Section 8.14. Real Property Law '291-f. The Beneficial Mortgagor shall not accept prepayments of installments of rent to become due for a period of more than one month in advance (except for security deposits). The agreement contained in this Section has been made with reference to Section 291-f of the New York Real Property Law.

Section 8.15. SONYMA Consent. No amendment or modification of this Mortgage shall be effective unless SONYMA and, prior to the effective date of the SONYMA Mortgage Insurance Policy, the LOC Bank, in addition to the Mortgagee, shall have given its prior written consent thereto and to the extent that this Mortgage requires the consent of the Mortgagee for any purpose hereunder, then, in each such event, the consent of SONYMA, and the LOC Bank as appropriate, shall also be required (except with respect to the approval and certification of prospective tenants) which consent shall be deemed given if not denied within ten (10) business days after receipt by SONYMA, and the LOC Bank as appropriate, of a written request.

Section 8.16. Assignment of Rents. This Mortgage is intended to constitute a present, absolute and irrevocable assignment of all of the rents now or hereafter accruing, and the Beneficial Mortgagor and the Nominal Mortgagor, without limiting the generality of the Granting Clause hereof, specifically hereby presently, absolutely and irrevocably assigns to the Mortgagee all of the rents now or hereafter accruing. The aforesaid assignment shall be effective immediately upon the execution of this Mortgage and is not conditioned upon the occurrence of any Event of Default hereunder or any other contingency or event; provided, however, that the Mortgagee hereby grants to the Beneficial Mortgagor the right and license to collect and receive the Rents as they become due, so long as no Event of Default exists hereunder. Immediately upon the occurrence and during the continuance of any Event of Default, the foregoing right and license shall be automatically terminated and of no further force or effect. Nothing contained in this Section or elsewhere in this Mortgage shall be construed to make the Mortgagee a mortgagor in possession unless and until the Mortgagee actually takes possession of the Mortgaged Property, nor to obligate the Mortgagee to

take any action or incur any expenses or discharge any duty or liability under or in respect of any leases or other agreements relating to the Mortgaged Property or any part thereof.

Section 8.17. Modifications. No provision of this Mortgage may be changed, modified, discharged or terminated orally or by any other means except an instrument in writing signed by the party against whom enforcement of the change, modification, discharge or termination is sought. Any agreement hereafter made by the Beneficial Mortgagor, the Nominal Mortgagor and the Mortgagee relating to this Mortgage shall be superior to the rights of the holder of any intervening or subordinate lien or encumbrance.

Section 8.18. Counterparts. This Mortgage may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same mortgage.

Section 8.19. Severance of Lien. The Beneficial Mortgagor, the Nominal Mortgagor and Mortgagee shall, upon their mutual agreement to do so, execute such documents as may be necessary in order to substitute mortgages, so as to create two or more liens on the Mortgaged Property in such amounts as may be mutually agreed upon but in no event to exceed, in the aggregate, the amount secured hereby. In such event, the Beneficial Mortgagor and the Nominal Mortgagor shall pay the reasonable fees and expenses of the Mortgagee and its counsel in connection with any such modification.

Section 8.20. Nature of Improvements. The Beneficial Mortgagor and the Nominal Mortgagor hereby warrants that this Mortgage does not cover real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each having its own separate cooking facilities.

Section 8.21. Agency Covenants. So long as no Event of Default shall have occurred and be continuing hereunder and the Mortgagee has not yet commenced the enforcement of any of their respective rights or remedies hereunder, the Agency hereby covenants and agrees that it shall not change any terms of the Resolution in such a manner as to deprive the Beneficial Mortgagor of any material rights (including by way of example and not limitation, the right to change interest rate mode or adjustable interest rate terms) it may have thereunder without the prior written consent of the Beneficial Mortgagor. In addition, if the identity of the Trustee changes, the Agency will endeavor to notify the Beneficial Mortgagor of such change. However, in no event shall the Agency's failure to comply with the terms contained in this Section provide the Beneficial Mortgagor with an affirmative defense to any foreclosure action or any other legal action which the Agency or the Mortgagee is permitted to bring pursuant to this Mortgage, unless such failure (i) has materially adversely affected the ability of the Beneficial Mortgagor to perform its obligations hereunder and (ii) has directly and proximately caused an Event of Default on account of which the Mortgagee is bringing foreclosure or other actions.

Section 8.22. Notices to SONYMA. The Beneficial Mortgagor and the Nominal Mortgagor agree that any notices required to be submitted hereunder to the Mortgagee shall additionally be submitted to SONYMA at the address given in Section 8.05 herein.

Section 8.23. Limitation on Liability. The Beneficial Mortgagor and the Nominal Mortgagor waive any right to assert or make any claim against Mortgagee (or sue Mortgagee on any claim for) any special, indirect, incidental, punitive or consequential damages in respect of any breach or wrongful conduct (whether the claim is based on contract, tort, or duty imposed by law) in connection with, arising out of or in any way related to this Mortgage, the other Loan Documents or the transactions contemplated hereby and/or thereby, or any act, omission or event in connection therewith.

Section 8.24. Cure by Investor Member. The Mortgagee agrees to provide copies of all notices related to this Mortgage to the Investor Member and the Special Member (as defined in the Regulatory Agreement). The Investor Member and the Special Member shall each have the same right to cure any default under this Mortgage as the Beneficial Mortgagor or the Nominal Mortgagor and any cure so made by the Investor Member or the Special Member pursuant to this paragraph will be recognized by the Agency on the same basis as if made or tendered by the Beneficial Mortgagor or the Nominal Mortgagor.

Section 8.25. Mortgage Satisfaction. At the request of the Beneficial Mortgagor and the Nominal Mortgagor, the Mortgagee shall provide the Beneficial Mortgagor and the Nominal Mortgagor with a Satisfaction of Mortgage or like instrument executed in recordable form at such time as the term of this debt evidenced by the Note and the obligations of the Beneficial Mortgagor and the Nominal Mortgagor have been satisfied, releasing the Beneficial Mortgagor and the Nominal Mortgagor, the Project and the Premises from this Mortgage.

## **ARTICLE IX - CERTAIN PROVISIONS RELATING TO THE LEASE AGREEMENTS REQUIRED BY THE NOMINAL MORTGAGOR**

Section 9.01. Representations and Warranties regarding Lease Agreements and PILOT Agreement. Beneficial Mortgagor warrants and represents to Mortgagee and Nominal Mortgagor that, as of the date of this Mortgage: (i) the Company Lease, the Agency Lease and the PILOT Agreement, and any amendments thereto, are in full force and effect in accordance with their terms; (ii) Beneficial Mortgagor has not waived, canceled or surrendered any of its rights under the Company Lease, the Agency Lease or the PILOT Agreement; (iii) Beneficial Mortgagor is the sole owner of, and has good and marketable title to, the Mortgaged Property; (iv) the Mortgaged Property is free and clear of all liens, encumbrances and other matters affecting title, other than the lien of this Mortgage and the easements and restrictions listed in a schedule of exceptions to coverage in the title

insurance policy issued to Mortgagee contemporaneously with the execution and recordation of this Mortgage and insuring Mortgagee's interest in the Mortgaged Property and other than Permitted Exceptions; (v) there is no existing default by the Beneficial Mortgagor under the lease agreements referenced herein or the PILOT Agreement, and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default under the lease agreements or PILOT Agreement.

Section 9.02. Beneficial Mortgagor's Obligations to Comply with Company Lease, the Agency Lease and the PILOT Agreement. Beneficial Mortgagor shall (i) pay the all other sums of money due and payable at any time and from time to time under the Company Lease, the Agency Lease and the PILOT Agreement as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Company Lease, the Agency Lease and/or PILOT Agreement for the payment of any such sum, and (ii) at all times fully perform, observe and comply with all other terms, covenants and conditions of the Company Lease, Agency Lease and the PILOT Agreement to be performed, observed or complied with by Beneficial Mortgagor as lessor under the Company Lease and lessee under the Agency Lease, as applicable, and as a party to the PILOT Agreement. If the Company Lease, the Agency Lease and/or PILOT Agreement do not provide for a grace period for the payment of a sum of money, Beneficial Mortgagor shall make the payment on or before the date on which the payment becomes due and payable. Beneficial Mortgagor shall deliver evidence of the payment to Mortgagee within ten (10) days after receipt of a written request from Mortgagee for evidence of the payment.

Section 9.03. Nominal Mortgagor Executing at the Direction of Beneficial Mortgagor. The Beneficial Mortgagor directs the Nominal Mortgagor to execute and deliver this Mortgage to the Mortgagee, and further agrees to indemnify the Nominal Mortgagor (and its members, officers, directors, agents, servants and employees) for all fees and costs incurred in connection with the execution, delivery, recording, performing and enforcing of this Mortgage, including but not limited to reasonable attorney's fees.

Section 9.04. Subordination Provisions. Notwithstanding anything herein to the contrary, Mortgagee by accepting this Instrument acknowledges and agrees that the rights of Mortgagee hereunder shall be subordinate to the rights of the Nominal Mortgagor to receive payments in lieu of taxes pursuant to the PILOT Agreement and that such payments in lieu of taxes to be made by Beneficial Mortgagor to the Nominal Mortgagor shall have the same force, priority and effect as a real property tax lien under State law against the Mortgaged Property.

Section 9.05. Hold Harmless Provisions. The Beneficial Mortgagor hereby acknowledges that the terms of the Agency Lease, as amended and restated from time to time, is in full force and effect, including but not limited to the "Hold Harmless Provisions" contained in Section 7.2 thereof.

Section 9.06. No Recourse; Special Obligation. (A) The obligations and agreements of the Nominal Mortgagor contained herein and in any other instrument or document executed in connection herewith, and any instrument or document supplemental hereto, shall be deemed the obligations and agreements of the Nominal Mortgagor and not of any member, officer, agent or employee of the Nominal Mortgagor in his individual capacity; and the members, officers, agents and employees of the Nominal Mortgagor shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Nominal Mortgagor contained herein or therein shall not constitute or give rise to an obligation of the State New York or of the City of Syracuse, and neither the State of New York nor the City of Syracuse shall be liable hereon or thereon. Further, such obligations and agreements shall not constitute or give rise to a general obligation of the Nominal Mortgagor, but rather shall constitute limited obligations of the Nominal Mortgagor, payable solely from the revenues of the Nominal Mortgagor derived, and to be derived from, the lease, sale, or other disposition of the Project Facility, other than revenues derived from or constituting Unassigned Rights (as that term is defined in the Agency Lease).

(B) No order or decree of specific performance with respect to any of the obligations of the Nominal Mortgagor hereunder or thereunder shall be sought or enforced against the Nominal Mortgagor unless:

(1) The party seeking such order or decree shall first have requested the Nominal Mortgagor in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Nominal Mortgagor shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(2) If the Nominal Mortgagor refuses to comply with such request and the Nominal Mortgagor's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the Beneficial Mortgagor shall have placed in an account with the Nominal Mortgagor an amount or undertaking sufficient to cover such reasonable fees and expenses; and

(3) If the Nominal Mortgagor refuses to comply with such request and the Nominal Mortgagor's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the Beneficial Mortgagor shall (1) agree to indemnify and hold harmless the Nominal Mortgagor and its members, officers, agents and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Nominal Mortgagor, furnish to the Nominal Mortgagor

satisfactory security to protect the Nominal Mortgagor and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

Any failure to provide notice, indemnity, or security to the Nominal Mortgagor pursuant to this Section 9.06 shall not alter the full force and effect of any Event of Default under the Agency Lease or the Mortgage.

(4) For purposes of this Section 9.06, the Beneficial Mortgagor shall not be deemed to constitute an employee, agent or servant of the Nominal Mortgagor or a person under the Nominal Mortgagor's control or supervision.

(C) Nothing contained in subparagraph B of this Section shall limit or be construed to limit or impair any action at law or in equity by the Mortgagee, SONYMA or their designee against the Premises or the Mortgaged Property with respect to the performance of any obligation by the Beneficial Mortgagor under the Mortgage or the Loan Documents.

Section 9.07. Termination. Upon the termination of the Lease Agreements on October 1, 2027 or such earlier date as set forth in the Agency Lease, the provisions of Sections 9.01 through 9.06 hereinabove and any rights and obligations of the Nominal Mortgagor described in the Mortgage and the Regulatory Agreement shall terminate and no longer be in force or effect, and any ownership interests of the Nominal Mortgagor in the Premises and the Mortgaged Property shall be extinguished. Notwithstanding anything herein to the contrary, the Beneficial Mortgagor's obligations to the Nominal Mortgagor as set forth in the Lease Agreements shall survive the termination of the Lease Agreements.

(SIGNATURE PAGE FOLLOWS)

**IN WITNESS WHEREOF**, the Beneficial Mortgagor, Nominal Mortgagor and Mortgagee have caused this Mortgage to be duly executed as of the day and year first above written.

**BENEFICIAL MORTGAGOR:**

**JAMES STREET APARTMENTS, LLC**  
a New York limited liability company

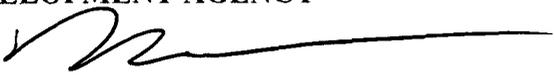
By: James Street Managing Member, LLC  
a New York limited liability company  
its managing member

By: Conifer Realty, LLC  
a New York limited liability company  
its sole member

By:   
\_\_\_\_\_  
Andrew I. Crossed  
Executive Vice President

**NOMINAL MORTGAGOR:**

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
\_\_\_\_\_  
William M. Ryan  
Chairman

**MORTGAGEE:**

Approved by Counsel  
to the Agency

**NEW YORK STATE HOUSING FINANCE  
AGENCY**

By: \_\_\_\_\_  
Remy Bernardo, Jr.  
Associate Counsel

By: \_\_\_\_\_  
Gail Bressler  
Vice President

**IN WITNESS WHEREOF**, the Beneficial Mortgagor, Nominal Mortgagor and Mortgagee have caused this Mortgage to be duly executed as of the day and year first above written.

**BENEFICIAL MORTGAGOR:**

**JAMES STREET APARTMENTS, LLC**  
a New York limited liability company

By: James Street Managing Member, LLC  
a New York limited liability company  
its managing member

By: Conifer Realty, LLC  
a New York limited liability company  
its sole member

By: \_\_\_\_\_  
Andrew I. Crossed  
Executive Vice President

**NOMINAL MORTGAGOR:**

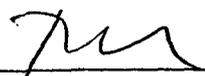
**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
William M. Ryan  
Chairman

**MORTGAGEE:**

Approved by Counsel  
to the Agency

**NEW YORK STATE HOUSING FINANCE  
AGENCY**

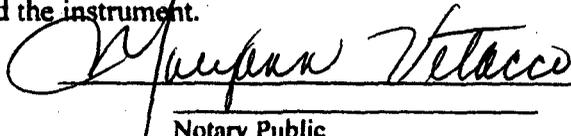
By:   
\_\_\_\_\_  
Remy Bernardo, Jr.  
Associate Counsel

By:   
\_\_\_\_\_  
Gail Bressler  
Vice President

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the 8<sup>th</sup> day of December in the year 2011, before me, the undersigned, a notary public in and for said state, personally appeared **Gail Bressler** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

MARYANN VITACCO  
Notary Public, State of New York  
No. 01VI6129481  
Qualified in Richmond County  
Commission Expires June 27, 2013

  
\_\_\_\_\_  
Notary Public  
Commission expires:

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the \_\_\_\_ day of December in the year 2011, before me, the undersigned, a notary public in and for said state, personally appeared **Andrew I. Crossed** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
Commission expires:

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the \_\_\_\_ day of December in the year 2011, before me, the undersigned, a notary public in and for said state, personally appeared **William M. Ryan** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
Commission expires

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the \_\_\_\_ day of December in the year 2011, before me, the undersigned, a notary public in and for said state, personally appeared **Gail Bressler** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
Commission expires:

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the 8<sup>th</sup> day of December in the year 2011, before me, the undersigned, a notary public in and for said state, personally appeared **Andrew I. Crossed** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
Commission expires:

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

S. STURMAN JENNINGS  
Notary Public, State of New York  
No. 02JE6096835  
Qualified in Monroe County 2015  
Commission Expires August 11, 2015

On the 5<sup>th</sup> day of December in the year 2011, before me, the undersigned, a notary public in and for said state, personally appeared **William M. Ryan** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
Commission expires

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 14

**Schedule A**  
**PROPERTY DESCRIPTION**  
**(See Attached)**

PARCEL ONE (615 James Street, Syracuse, NY, TA#017.00-19-05)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Number 1 of Block Number 31 in said City, bounded and described as follows:

BEGINNING AT A POINT, said point being North 55 degrees 44 minutes 50 seconds East a distance of 116.20" from the intersection of the northerly line of James Street with the easterly line of McBride Street.

THENCE North 30 degrees 29 minutes 10 seconds West for a distance of 264.27 feet to a point on the southerly line of East Willow Street;

THENCE North 55 degrees 44 minutes 50 seconds East for a distance of 83.80 feet along the southerly line of East Willow Street to a point;

THENCE South 30 degrees 29 minutes 10 seconds East for a distance of 264.27 feet to a point on the northerly line of James Street;

THENCE South 55 degrees 44 minutes 50 seconds West for a distance of 83.80 feet TO THE POINT AND PLACE OF BEGINNING.

and

PARCEL TWO (622 James Street, Syracuse, NY, TA#103.00-05-04)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Block 33 in said City, bounded and described as follows, viz:

BEGINNING at a point in the southeasterly line of James Street 188 feet northeasterly along said street line from the northeasterly line of N. McBride Street;

thence along said southeasterly line of James Street N. 55° 44' 50" E., 74.53 feet to a point;

thence S. 30° 45' 40" E., 125.00 feet to a point;

thence S. 55° 44' 50" W., 19.00 feet to a point;

thence S. 30° 45' 40" E., 92.76 feet to a point;

thence N. 59° 14' 20" E., 66.00 feet to a point;

thence S. 30° 45' 40" E., 104.09 feet to a point;

thence S. 59° 14' 20" W., 90.73 feet to a point;

thence N. 34° 07' 00" W., 179.73 feet to a point;

thence S. 55° 44' 50" W., 12.00 feet to a point;

thence N. 34° 07' 00" W., 140.00 feet to the point and place of beginning.

TOGETHER WITH the benefits, in common with others, over a 15 foot right of way known as Wilkinson Avenue running westerly to N. McBride Street as recited in deeds at Liber 276, page 39, Liber 924, page 275 and Liber 2443, page 599.

**Schedule B**  
**PERMITTED EXCEPTIONS**

## PLEDGE AND ASSIGNMENT (MORTGAGE 1)

All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Table of Definitions attached to the Agency Lease as Exhibit "C".

This Pledge and Assignment (the "**Assignment**"), dated as of December 22, 2011, is from the City of Syracuse Industrial Development Agency, a public benefit corporation duly organized and existing under the laws of the State of New York, having its principal office at 333 West Washington Street, Suite 130, Syracuse, New York 13202 (the "**Agency**") to New York State Housing Finance Agency, a corporate governmental agency, constituting a public benefit corporation (together with its successors and assigns, "**Mortgagee 1**"), having an address at 641 Lexington Avenue, New York, New York 10022, as the beneficiary of a Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement dated December 22, 2011 ("**Mortgage 1**") from James Street Apartments, LLC (the "**Company**") and the Agency to Mortgagee 1 to secure Mortgagee 1's loan of \$8,755,000 ("**Mortgage 1**") to the Company.

For value received, the receipt of which is hereby acknowledged, the Agency hereby pledges, assigns, transfers and sets over to Mortgagee 1 a security interest in its right to receive any and all moneys due or to become due and any and all other rights and remedies of the Agency under or arising out of the Agency Lease Agreement dated as of December 22, 2011 (the "**Agency Lease**"), by and between the Agency and the Company (except for the rights of the Agency, and moneys payable, pursuant to the Unassigned Rights, as defined in the Agency Lease) covering the improved real property, more fully described on **Exhibit "A"** attached hereto and the Equipment installed therein; provided, however, that the assignment made hereby shall not permit the amendment of the Agency Lease without the consent of the Agency, which consent shall not be unreasonably withheld.

Mortgagee 1 shall have no obligation, duty or liability under the Agency Lease, nor shall Mortgagee 1 be required or obligated in any manner to fulfill or perform any obligation, covenant, term or condition of the Agency thereunder or to take any other action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled hereunder at any time or times.

The Agency hereby irrevocably constitutes and appoints Mortgagee 1 its true and lawful attorney, with power of substitution for the Agency and in the name of the Agency or in the name of Mortgagee 1 or otherwise, for the use and benefit of Mortgagee 1 as holder of Mortgage 1 and all other loan documents, to ask, demand, require, receive, collect, compound and give discharges and releases of all claims for any and all moneys due or to become due under or arising out of the Agency Lease (except for moneys due or to become due pursuant to the Unassigned Rights) and to endorse any checks and other instruments or orders in connection therewith.

The Agency further agrees that at any time and from time to time, upon the written request of Mortgagee 1, the Agency will promptly and duly execute and deliver any and all such further instruments and documents as Mortgagee 1 may deem desirable in order to obtain the full benefits of this Assignment and all rights and powers herein granted.

The Agency hereby ratifies and confirms the Agency Lease and does hereby warrant and represent (a) that the Agency Lease is in full force and effect, (b) that the Agency is not in default under the Agency Lease, and (c) that the Agency has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as this Assignment shall remain in effect, the whole or any part of the moneys, rights or remedies hereby assigned to anyone other than Mortgagee 1, except that the parties hereto acknowledge that the Agency has executed a similar Pledge and Assignment in favor of the Mortgagee 2 and Mortgagee 3 subject to the priority of this Assignment and Mortgage 1 pursuant to a certain Subordination Agreement dated as of December 22, 2011 by and among the Company, the Agency, New York State Housing Finance Agency, First Niagara Bank, N.A., and Mortgagee 3.

All moneys due and to become due under Mortgage 1 to Mortgagee 1 under or pursuant to the Agency Lease in accordance with this Assignment shall be paid directly to Mortgagee 1 at New York State Housing Finance Agency, 641 Lexington Avenue, New York, New York 10022 or at such other address as Mortgagee 1 may designate to the Company in writing from time to time.

If the Company shall pay or cause to be paid, or there shall be paid, to Mortgagee 1 or its successors and assigns, the outstanding principal balance and all amounts secured by Mortgage 1, including any applicable prepayment premiums, and all other sums due or to become due pursuant to the Agency Lease, Mortgage 1, or this Assignment, then this Assignment and the estate and rights created hereby shall cease, terminate and be void, and thereupon Mortgagee 1 shall cancel and discharge the lien of this Assignment and execute and deliver to the Agency, and record or file, if necessary, such instruments in writing as shall be requisite to release the lien hereof, and shall reconvey, release, assign and deliver unto the Agency the estate, right, title and interest in and to any and all property conveyed, sold, transferred, assigned or pledged to Mortgagee 1, or otherwise subject to the lien of this Assignment.

This Assignment shall be binding upon the Agency and its successors and assigns and shall inure to the benefit of Mortgagee 1 and its successors and assigns.

All covenants, stipulations, promises, agreements and obligations (collectively, the "**Obligations**") of the Agency contained in this Assignment, in Mortgage 1, in the Agency Lease and in any other Agency Documents shall be deemed to be the Obligations of the Agency and not of any member, officer, servant or employee of the Agency (collectively, the "**Employee of the Agency**") in his individual capacity, and no recourse under or upon any Obligation contained therein or otherwise based upon or in respect to this Assignment or the Agency Lease, or for any claim based thereon or otherwise in respect hereof or thereof, shall be had against any past, present or future Employee of the Agency, as such, or of any successor public benefit

corporation or political subdivision or any person executing any of the Agency Documents on behalf of the Agency either directly through the Agency or successor public benefit corporation or political subdivision or any person so executing any of such Agency Documents, it being expressly understood that the Agency Documents, are solely corporate obligations, and that no such personal liability whatsoever shall attach to, or is or shall be incurred by any such Employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing the Agency Documents because of the creation of the indebtedness thereby authorized, or under or by reason of the Obligations, contained in the Agency Documents or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every Employee of the Agency because of the creation of the indebtedness thereby authorized by the Agency Documents, or under or by reason of the Obligations contained in any of the Agency Documents or implied therefrom, are to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of the Agency Documents.

The Obligations and agreements of the Agency contained therein shall not constitute or give rise to an obligation of the State of New York or the City of Syracuse, New York, and neither the State of New York nor the City of Syracuse, New York shall be liable thereon, and further such Obligations shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the sublease of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

Notwithstanding any provision of this Assignment to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (a) the Agency shall have been requested to do so in writing by the Company or Mortgagee 1 and (b) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any member, officer, agent, servant or employee of the Agency) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity satisfactory to the Agency for protection against all such liability and for the reimbursements of all such fees, expenses and other costs.

No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (A) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (B) if the Agency refused to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the Company shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (C) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its

reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless and defend the Agency and its members, officers, agents and employees against such liability incurred as a result of its compliance with such demand, and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request. Upon the termination of the agency Lease on October 2, 2027 or such earlier date as set forth in the Agency Lease, the provisions of this Assignment shall terminate and no longer be in force or effect.

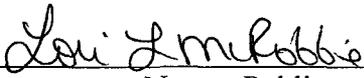
IN WITNESS WHEREOF, the Agency has duly executed this Assignment as of December 1, 2011.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

STATE OF NEW YORK            )  
  ) SS:  
COUNTY OF ONONDAGA        )

On the 5<sup>th</sup> day of December, in the year 2011, before me, the undersigned personally appeared **WILLIAM M. RYAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 14

ACCEPTANCE

NEW YORK STATE HOUSING FINANCE AGENCY ("Mortgage I"), having an office located at 641 Lexington Avenue, New York, New York 10022, hereby accepts the foregoing Pledge and Assignment.

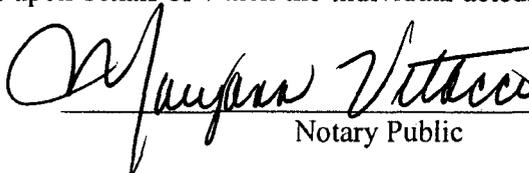
IN WITNESS WHEREOF, Mortgagee 1 has duly executed this Acceptance as of December 22, 2011.

NEW YORK STATE HOUSING FINANCE AGENCY

By:   
Gail Bressler  
Vice President

STATE OF NEW YORK )  
*New York* ) SS:  
COUNTY OF ~~ONONDAGA~~ )

On the *22* day of December, in the year 2011, before me, the undersigned, personally appeared Gail Bressler personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

MARYANN VITACCO  
Notary Public, State of New York  
No. 01VI6129481  
Qualified in Richmond County  
Commission Expires June 27, 2013

**ACKNOWLEDGEMENT BY JAMES STREET APARTMENTS, LLC  
OF THE PLEDGE AND ASSIGNMENT OF CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT AGENCY'S  
RIGHTS UNDER THE AGENCY LEASE**

James Street Apartments, LLC (the "*Company*") hereby acknowledges receipt of notice of the assignment by the City of Syracuse Industrial Development Agency (the "*Agency*") of certain of its rights and remedies under that certain Agency Lease Agreement dated as of December 22, 2011 (the "*Agency Lease*"), by and between the Agency as sublessor, and the Company, as subtenant, including the right to collect and receive all amounts payable by the Company thereunder, except certain moneys payable for the account of the Agency pursuant to the Unassigned Rights as defined in the Agency Lease. The Company, intending to be legally bound, hereby agrees with Mortgagee 1 (as defined in the Assignment) to (1) pay directly to Mortgagee 1 all sums due and to become due to Mortgagee 1 from the Company under Mortgage 1, except certain moneys payable for the account of the Agency pursuant to the Unassigned Rights, and (2) perform for the benefit of Mortgagee 1 all of the duties and undertakings of the Company under the Agency Lease, except moneys payable for the account of the Agency pursuant to the Unassigned Rights; provided that Mortgagee 1 shall not be obligated to perform, or be responsible for the performance of, any of the duties, undertakings, or obligations of the Agency under the Agency Lease.

The Company hereby consents to and approves of the provisions contained in the Agency Lease and, in particular, acknowledges the restrictions imposed on the Agency prohibiting, among other things, sale, transfer, or assignment by the Agency of any interest in the Project Facility, or any part thereof.

**IN WITNESS WHEREOF**, the Company has caused this Acknowledgement to be executed in its name by its duly authorized representative, dated as of the December 22, 2011.

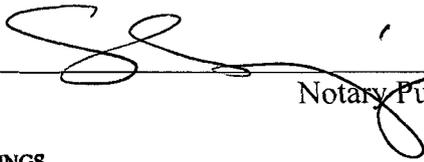
**JAMES STREET APARTMENTS, LLC**

By: James Street Managing Member, LLC  
By: Conifer Realty, LLC

By:   
\_\_\_\_\_  
Andrew I. Crossed  
Executive Vice President

STATE OF NEW YORK            )  
  ) SS:  
COUNTY OF ONONDAGA        )

On the 10<sup>th</sup> day of December, in the year 2011, before me, the undersigned, personally appeared **ANDREW I. CROSSED**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

**S. STURMAN JENNINGS**  
Notary Public, State of New York  
No. 02JE6096835  
Qualified in Monroe County 2015  
Commission Expires August 11, 2015

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

## LEGAL DESCRIPTION

PARCEL ONE (615 James Street, Syracuse, NY, TA#017.00-19-05)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Number 1 of Block Number 31 in said City, bounded and described as follows:

BEGINNING AT A POINT, said point being North 55 degrees 44 minutes 50 seconds East a distance of 116.20" from the intersection of the northerly line of James Street with the easterly line of McBride Street.

THENCE North 30 degrees 29 minutes 10 seconds West for a distance of 264.27 feet to a point on the southerly line of East Willow Street;

THENCE North 55 degrees 44 minutes 50 seconds East for a distance of 83.80 feet along the southerly line of East Willow Street to a point;

THENCE South 30 degrees 29 minutes 10 seconds East for a distance of 264.27 feet to a point on the northerly line of James Street;

THENCE South 55 degrees 44 minutes 50 seconds West for a distance of 83.80 feet TO THE POINT AND PLACE OF BEGINNING.

and

PARCEL TWO (622 James Street, Syracuse, NY, TA#103.00-05-04)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Block 33 in said City, bounded and described as follows, viz:

BEGINNING at a point in the southeasterly line of James Street 188 feet northeasterly along said street line from the northeasterly line of N. McBride Street;

thence along said southeasterly line of James Street N. 55° 44' 50" E., 74.53 feet to a point;

thence S. 30° 45' 40" E., 125.00 feet to a point;

thence S. 55° 44' 50" W., 19.00 feet to a point;

thence S. 30° 45' 40" E., 92.76 feet to a point;

thence N. 59° 14' 20" E., 66.00 feet to a point;

thence S. 30° 45' 40" E., 104.09 feet to a point;

thence S. 59° 14' 20" W., 90.73 feet to a point;

thence N. 34° 07' 00" W., 179.73 feet to a point;

thence S. 55° 44' 50" W., 12.00 feet to a point;

thence N. 34° 07' 00" W., 140.00 feet to the point and place of beginning.

TOGETHER WITH the benefits, in common with others, over a 15 foot right of way known as Wilkinson Avenue running westerly to N. McBride Street as recited in deeds at Liber 276, page 39, Liber 924, page 275 and Liber 2443, page 599.

**EXECUTION COPY**

Remy Bernardo, Jr., Esq.  
NEW YORK STATE HOUSING FINANCE AGENCY  
641 Lexington Avenue  
New York, New York 10022  
212-688-4000

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**NEW YORK STATE HOUSING FINANCE AGENCY  
FEE AND LEASEHOLD SUBSIDY MORTGAGE**

**Made By**

**JAMES STREET APARTMENTS LLC**

**And**

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**To**

**NEW YORK STATE HOUSING FINANCE AGENCY,  
Mortgagee**

---

Dated as of: December 22, 2011

Premises: James Street Apartments  
615 and 622 James Street  
City of Syracuse  
Onondaga County, New York

SBL: 017.00-19-05  
103.00-05-04

**THIS NEW YORK STATE HOUSING FINANCE AGENCY SUBSIDY MORTGAGE** (“Subsidy Mortgage”) is made as of the 22th day of December, 2011, by and among **JAMES STREET APARTMENTS LLC** (“Mortgagor”), a New York limited liability company having an office at c/o Conifer Realty, LLC, 183 East Main Street, 6th Floor, Rochester, New York 14604; and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (“SIDA”), a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, with an office at 333 West Washington Street, Suite 130, Syracuse, New York 13202 to the **NEW YORK STATE HOUSING FINANCE AGENCY** (“Mortgagee” or “Agency”), a corporate government agency created pursuant to Article III of the New York State Private Housing Finance Law (“PHFL”), having an office at 641 Lexington Avenue, New York, New York, 10022.

**WHEREAS**, the Mortgagor is the fee title owner of certain land located at 615 and 622 James Street in the City of Syracuse, Onondaga County, New York (“Property” or “Premises”) as more fully described in Schedule “A” attached hereto and made a part hereof upon which are situated eighty-three (83) residential units known as James Street Apartments (“Project”); and

**WHEREAS**, in connection with the award by SIDA of a payment-in-lieu-of-tax agreement (“PILOT Agreement”) and other financial assistance to the Project, the Mortgagor shall transfer to SIDA a leasehold ownership interest of the Premises pursuant to the terms of a certain Company Lease Agreement dated as of December 22, 2011 between the Mortgagor and SIDA (“Company Lease”), and SIDA shall sub-lease the same to the Mortgagor pursuant to the terms of a certain Agency Lease Agreement dated as of December 22, 2011 between the Mortgagor and the SIDA (“Agency Lease”; collectively with the Company Lease, the “Lease Agreements”) excepting therefrom SIDA’s Unassigned Rights (as that term is defined in the Lease Agreements); and

**WHEREAS**, twenty-two percent (22%) of the Project’s revenue-generating units, or 18 units, will be set aside for households whose incomes are at or below 50% of the area median income for the Syracuse Metropolitan Statistical Area (“AMI”) adjusted for family size; and

**WHEREAS**, the Mortgagee intends to fund the Project, in part, with the proceeds of a first mortgage loan (“First Mortgage Loan”), in an amount of Eight Million Seven Hundred Seventy-Five

Thousand Dollars (\$8,775,000), which will be evidenced and secured by a note made by the Mortgagor and mortgage made by Mortgagor and SIDA to Mortgagee (respectively, the "First Mortgage Note" and "First Mortgage"), and any capitalized term not otherwise defined in this Subsidy Mortgage shall have the meaning set forth in the First Mortgage; and

**WHEREAS**, in connection with the funding of the Project, the Mortgagee shall also loan to the Mortgagor an aggregate amount not to exceed Eight Hundred Fifty Thousand Dollars (\$850,000), excluding accrued interest (the "Subsidy Loan", and together with the First Mortgage Loan, the "HFA Loans"), the proceeds of which shall be disbursed pursuant to a Building and Project Loan Agreement between the Mortgagor and the Agency dated as of the date hereof; and

**WHEREAS**, to evidence the indebtedness and obligation of the Mortgagor to the Mortgagee under the Loan Agreement, the Mortgagor has executed and delivered to the Mortgagee its New York State Housing Finance Agency Subsidy Note ("Subsidy Note"), dated the date hereof, and the Mortgagor and the SIDA have executed and delivered this Subsidy Mortgage, securing the Mortgagor's obligations thereunder; and

**WHEREAS**, the lien of this Subsidy Mortgage is intended to be a second lien and subordinate to the lien of the First Mortgage; and

**WHEREAS**, simultaneously herewith, the Mortgagor will also borrow from the City of Syracuse ("City") a subordinate construction and permanent loan in the principal amount of \$2,000,000 (the "Syracuse HOME Subsidy Loan") which shall be evidenced by a promissory note (the "Syracuse HOME Subsidy Note") and secured by a mortgage from the Mortgagor to the City (the "Syracuse HOME Subsidy Mortgage") each of which dated on the date hereof, shall be subordinate in payment and priority to the Mortgage Loan and Subsidy Loan; and

**WHEREAS**, pursuant to a Subordination Agreement dated as of the date hereof by and among the Agency, Mortgagor, the City and First Niagara Bank, N.A., this Subsidy Mortgage and the Syracuse HOME Subsidy Mortgage shall each be subject and subordinate to the lien of the First Mortgage, and the Syracuse HOME Subsidy Mortgage shall be subject and subordinate to the lien of this Subsidy Mortgage.

**NOW, THEREFORE**, in consideration of the Subsidy Loan, the Mortgagor, the SIDA and Mortgagee agree as follows:

1. In order to secure the payment obligations set forth in the Subsidy Note of even date herewith and to secure Mortgagor's and the SIDA's covenants and obligations described in this Subsidy Mortgage, the Mortgagor and the SIDA hereby mortgage to the Mortgagee all right, title and interest of the Mortgagor and the SIDA in and to the Property and in and to all of the following excepting therefrom SIDA's Unassigned Rights (as that term is defined in the Lease Agreements) (collectively, the "Mortgaged Property"):

- I. The fee title of the Mortgagor in and to the Premises and the leasehold and sub-leasehold interests of the SIDA and Mortgagor under the Lease Agreements in and to the Premises;
- II. All of the Mortgagor's and SIDA's right, title and interest in and to (i) all buildings, structures, improvements and additions now erected or hereafter constructed or placed upon the Premises or any part thereof (collectively, the "Buildings"); (ii) all building materials, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by SIDA and Mortgagor for the purpose of being used or useful in connection with the construction, rehabilitation and equipping of the Improvements (as defined hereinbelow), whether such materials, equipments, fixtures and fittings are actually located on or adjacent to the Premises or not, and whether in storage or otherwise, wheresoever the same may be located (collectively, the "Building Materials"); and (iii) all machinery, devices, fixtures, apparatus, interior improvements, appurtenances, and equipment of every kind and nature whatsoever now or hereafter attached to, placed in or upon the Premises or the Improvements, or any part thereof, or used or procured for the use in connection with the operation or maintenance of the Premises or any business conducted thereon (hereinafter collectively called "Building Service Equipment"; together with the Buildings and Building Materials, the "Improvements");
- III. All right, title and interest of the SIDA and Mortgagor in and to all equipment, appliances, furniture, furnishings, decorations, chattels and other personal property now or hereafter in or at the Premises or acquired in whole or in part or the cost of which is reimbursed to the Mortgagor in whole or in part (all of the foregoing hereinafter collectively called "Furnishings");
- IV. All royalties, mineral, oil and gas rights and profits, riparian rights, water, water rights and water stock located on or used in connection with the Premises or the Improvements, whether existing now or hereafter acquired;
- V. All right, title and interest of the SIDA and Mortgagor in and to all policies of property insurance insuring the Premises and Improvements including unearned premiums with respect thereto or other proceeds for damage done to the Mortgaged

Property and all awards heretofore made or hereafter to be made to or for the account of the SIDA and Mortgagor for the permanent or temporary taking by eminent domain of the whole or any part of the Mortgaged Property, or any lesser estate in, or easement appurtenant to the Mortgaged Property, all of which proceeds and awards are hereby assigned to the Mortgagee, subject to the further provisions of this Mortgage;

- VI. All of the rents, issues, benefits and profits of the Mortgaged Property (collectively the "Rents"), including, all leases, subleases, occupancy agreements, licenses, franchises and appurtenances now or hereafter entered into covering any part of the Mortgaged Property, including all interest of the SIDA and Mortgagor as landlord in and to any of the same and all security deposits held by the SIDA and Mortgagor, all of which are hereby assigned to the Mortgagee;
- VII. All right, title and interest of every nature of the Mortgagor in all moneys deposited or to be deposited in any funds or accounts maintained or deposited with Mortgagee, or its assigns, in connection herewith;
- VIII. The right in the name and on behalf of Mortgagor to appear in and defend any action or proceeding brought with respect to the Mortgaged Property, subject to the further provisions of this Mortgage, and to commence any action or proceeding to protect the interest of the Mortgagee with respect thereto;
- IX. All extensions, additions, renewals and replacements, substitutions and accessions with respect to any of the foregoing;
- X. All right, title and interest of the SIDA, if any, and Mortgagor in (i) all agreements between the SIDA and/or Mortgagor and its agents and contractors, and subcontractors, suppliers, materialmen, architects and engineers, whether now or hereafter in effect, providing for the construction, rehabilitation or installation of the Improvements (including, without limitation, on any damages arising out of or for breach or default in respect of any such agreement, all other amounts from time to time paid or payable under or in connection with any such agreement and the right of the SIDA and Mortgagor to amend, modify, supplement or terminate any such agreement or to perform and to exercise all remedies thereunder), (ii) all consents, licenses and building permits required for construction, rehabilitation, completion, occupancy and operation of the Improvements and Premises in accordance with all applicable requirements of law, and (iii) all plans and specifications for the construction and rehabilitation of the Improvements;
- XI. All proceeds, both cash and non-cash, of the foregoing or conversion of the foregoing;

- XII. All property tax abatements and credits relating to any of the foregoing and all rights to refunds of real estate taxes and assessments with respect to the Premises;
- XIII. The proceeds of and the right to receive all federal low income housing tax credits under Section 42 of the Internal Revenue Code, to the extent assignable;
- XIV. All rights and interests of the SIDA, if any, and the Mortgagor pursuant to the Lease Agreements and any right, title or interest to damages arising out of or for breach or default in respect of any such agreements;
- XV. All tangible personal property now or hereafter located at or intended to be used in connection with the construction, rehabilitation, use, operation or maintenance of the Improvements, including without limitation building materials, equipment, trade fixtures, furniture, furnishings and decorations (the "Tangible Personal Property");
- XVI. Commercial tort claims related to the Premises, the Improvements or the Tangible Personal Property; Promissory notes, letters of credit, electronic chattel paper, proceeds from accounts, payment intangibles, and general intangibles related to the Premises, as the terms "accounts", "general intangibles", and "payment intangibles" are defined in the applicable Uniform Commercial Code Article 9, as the same may be modified from time to time;
- XVII. All other assets of Mortgagor related in any way to the Premises, subject to certain limitations that may be set forth herein; and
- XVIII. Any rights affecting the development of the Premises.

2. If the Mortgagor fails to make any payment which may become due on this Subsidy Mortgage, the lien created by this Subsidy Mortgage will remain a lien on the Property to secure payment of the unpaid portion of the Subsidy Loan.

3. The Mortgagor, the SIDA and Mortgagee hereby acknowledge that the Collateral and this Subsidy Mortgage will be subordinate and subject to the lien of the First Mortgage for so long as such First Mortgage Loan is unpaid and the First Mortgage Note and First Mortgage evidencing and securing the First Mortgage Loan are unsatisfied.

4. a. Mortgagor represents and warrants that it is the owner of the fee and sub-leasehold interest in the Property, and that the Mortgagor has the right to and hereby does mortgage and generally warrant title to the Property to the Mortgagee. Mortgagor agrees that, at all times throughout the term of this Subsidy Mortgage, Mortgagor will maintain its existence in accordance with the provisions of law governing its existence and will not sell, transfer, or convey (voluntarily

or by operation of law or otherwise) all or any portion of the Mortgaged Property; and, further, it will not encumber or permit any secondary or subordinate financing with respect to the Property other than this Subsidy Loan and Syracuse HOME Subsidy Loan, without the prior express written consent of the Mortgagee. Specifically, and not by way of limitation, this provision is intended to prohibit any: (x) transaction under the Uniform Commercial Code which shall affect the Property or any equipment necessary for the operation of the Project (except for equipment financed in the ordinary course of business); and (y) transfer, as the case may be, of the Mortgagor's stock or membership interests excluding transfers permitted pursuant to the terms of the Regulatory Agreement.

b. SIDA represents and warrants that it is the owner of a leasehold interest in the Property, and that together with the Mortgagor the SIDA has the right to and hereby does mortgage and generally warrants its leasehold interest to the Property to the Mortgagee. SIDA agrees that, at all times throughout the term of this Subsidy Mortgage, SIDA will maintain its existence; and, further, it will not encumber the Property or permit any secondary or subordinate financing with respect to the Project other than this Subsidy Loan and Syracuse HOME Subsidy Loan, other than as set forth herein, without the prior express written consent of the Mortgagee. Specifically, and not by way of limitation, this provision is intended to prohibit any: (x) transaction under the Uniform Commercial Code which shall affect the Property or any equipment necessary for the operation of the Project (except for equipment financed in the ordinary course of business); and (y) transfer, as the case may be, of the Mortgagor's stock or membership interests excluding transfers permitted pursuant to the terms of the Regulatory Agreement.

5. For so long as the First Mortgage Loan is outstanding the provisions of said First Mortgage regarding insurance coverage and condemnation shall control. At any point in time during which the First Mortgage Loan is no longer outstanding, but the Subsidy Loan is outstanding, the provisions of this Subsidy Mortgage with regard to insurance coverages and condemnation awards shall control. The Mortgagor, at its own expense, shall, at all such times maintain the insurance coverages set forth herein in full force and effect throughout the life of the Subsidy Mortgage, except as indicated herein, for the benefit of the Mortgagor and the Mortgagee, as their interests may appear.

(A) The policies for such insurance shall be issued by an insurer acceptable to the Mortgagee and shall include a provision that they shall not be canceled, terminated, endorsed or otherwise changed without first giving the Mortgagee, for so long as it is Mortgagee, thirty (30) days written notice by registered mail. The original copies of such policies shall be

delivered to the Mortgagee for it to hold in its possession. The insurance required is as follows:

- (1) Comprehensive general liability insurance (including garage liability, if applicable) against claims for bodily injury, death and property damage occurring on, in or about the Property and the adjoining streets, sidewalks and passageways, affording minimum protection of \$1,000,000 combined single limit for bodily injury, death and property damage or such greater amount as the Mortgagee shall reasonably determine. Such insurance shall include a personal injury endorsement with no employee exclusion. The Mortgagee shall be an additional named insured thereof as its interests may appear.
- (2) Insurance against loss or damage to the Property by fire and the extended coverage perils (including vandalism and malicious mischief) or during any construction, renovation or repair, "Builder's Risk - Completed Value Non-Reporting Form" with replacement costs and agreed upon amount endorsements in an amount equal to the full replacement value of the Property (exclusive of the cost of site work, excavations, roads, walks, foundations and footings below the lowest basement floor). At the Mortgagee's request, the Mortgagor shall carry "All Risk" insurance in lieu of the fire and extended coverage as herein provided. The Mortgagor shall also carry boiler insurance in the amount equal to 100% of the replacement cost of the improvements or an amount reasonably acceptable to the Mortgagee if the improvements include a steam boiler. Each policy shall contain a New York Standard Mortgagee Clause (non-contributing) with respect to the Mortgage showing loss, if any, payable to the Mortgagee at the offices of the Mortgagee.
- (3) Such other insurance, as may reasonably be required by Mortgagee against the same or other hazards.

The Mortgagor shall not take out any separate or additional insurance which is concurrent in form or contributing in the event of loss unless it is properly endorsed to name the Agency and the Agent as an additional named insured thereunder with loss payable to the Mortgagee under a standard New York mortgagee endorsement without contribution and otherwise reasonably satisfactory to the Mortgagee in all respects. The Mortgagor shall promptly notify the Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to the Mortgagee the policy or policies of such insurance.

(B) At all times such insurance shall be for the full replacement value of the Property as determined by a recognized appraiser or insurer selected by the Mortgagor and acceptable to the Mortgagee. Where liability coverage amounts are applicable, those amounts must be reasonably acceptable to the Mortgagee. Mortgagor shall deliver a policy(ies) covering the Property or duplicate original(s) thereof, marked "premium paid," or accompanied by such other evidence of payment satisfactory to Mortgagee with standard non-contributory mortgagee clauses acceptable to Mortgagee placed with an insurance company(ies) which is (are) reasonably acceptable to the Mortgagee, and at least thirty (30) days prior to expiration or amendment of any policy(ies) or at such reasonable time prior to expiration as the Mortgagee may approve. If for good reason the insurance company, the insurance or the insurance amounts become unsatisfactory to the Mortgagee, Mortgagor shall be required to obtain new or additional insurance in a timely manner reasonably satisfactory to Mortgagee provided that such new or additional insurance is available.

C) If Mortgagor defaults in its obligations to insure or deliver any such prepaid policy or policies, then Mortgagee upon five (5) business days prior written notice, may effect such insurance and Mortgagor shall pay to Mortgagee such premium or premiums so paid by Mortgagee with interest from the time of payment at the rate of ten percent (10%) per annum but in no event in excess of the maximum interest rate permitted by law. Any such payment by Mortgagee shall be secured by this Mortgage and shall be collectible in like manner as the other indebtedness secured by this Mortgage.

(D) Mortgagor promptly shall comply with and conform to: (a) all provisions of each such insurance policy, and (b) all requirements of the insurers applicable to Mortgagor, any of the Property or to the use, manner of use, occupancy, possession, operation, maintenance, alteration or repair of any of the Property, even if such compliance necessitates structural changes or improvements or results in interference with the use or enjoyment of any of the Property. If Mortgagor shall use any of the Property in any manner which would permit the insurer to cancel any insurance policy, Mortgagor immediately shall obtain a substitute policy satisfactory to Mortgagee to be effective at or prior to the time of any such cancellation.

(E) Any transfer of the Property in accordance with provisions of this Subsidy Mortgage, including a transfer by foreclosure or deed-in-lieu of foreclosure, shall transfer all

of the Mortgagor's interest, including any unearned premiums, in all insurance policies then in force covering the Property.

(F) The provisions of Section 254(4) of the Real Property Law shall not in any manner apply to or construe the provisions of this Paragraph 5.

6. (A) If the Property shall be damaged or destroyed (in whole or in part) at any time during the term of the Subsidy Mortgage:

(i) There shall be no abatement or reduction in the amounts payable by the Mortgagor hereunder or under the Subsidy Note (whether or not the Project is replaced, repaired, rebuilt or restored).

(ii) The Mortgagor shall promptly give notice thereof to the Mortgagee.

(iii) The Mortgagor shall within ninety (90) days from the occurrence of an event of damage or destruction (or such other number of days to which the Mortgagee may reasonably consent), inform Mortgagee as to whether it intends to replace, repair or restore the Property and what the costs are of such work. In the event the Mortgagor does not proceed with such work the Subsidy Note shall be repaid in accordance with the terms therein and as further described in Paragraph 6(B) below.

(iv) The Mortgagor shall be empowered to settle any and all claims for damage or destruction of the Mortgaged Property, subject to approval by the Mortgagee, which approval shall not be unreasonably withheld. All insurance proceeds paid on account of such damage or destruction, less the reasonable fees, and expenses, if any, incurred in connection with adjustment of the loss, shall be held in trust by the Mortgagee and applied to the cost of such restoration, repair, replacement, rebuilding or alterations. In the event that such net proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Mortgagor shall nonetheless complete such replacement, repair, rebuilding or restoration and shall pay from its own moneys that portion of the costs thereof in excess of such net proceeds. Any sums remaining after completion of the work of restoration shall be, as determined in the sole discretion of the Mortgagee, held in trust for the Mortgagor by the Mortgagee until the Subsidy Mortgage obligation has been satisfied or applied in reduction of the principal balance of the Subsidy Loan secured hereby.

(B) In the event the Mortgagor does not proceed with the work as described herein, the net proceeds available under any and all policies of insurance covering the damage or destruction of the Property shall be used to repay the Subsidy Note in full, with respect to the outstanding principal

balance thereunder and all interest accrued thereon, and all other sums evidenced or secured by the documents executed in connection with the Subsidy Loan. If the net proceeds available are not sufficient, the Mortgagor shall pay the difference between such amounts and such net proceeds of the insurance so that the Subsidy Note shall be prepaid and any and all other amounts payable under the Subsidy Mortgage to the Mortgagee shall be paid in full. If all amounts due under the Subsidy Mortgage have been fully paid, all such net proceeds or the balance thereof shall be paid to the Mortgagor for its purposes.

C) If at any time during the term of this Subsidy Mortgage the whole or part of title to or the use of, the Property shall be taken by condemnation:

(i) There shall be no abatement or reduction in the amounts payable by the Mortgagor hereunder or under the Subsidy Note (whether or not the Project is restored).

(ii) The Mortgagor shall promptly give written notice thereof to the Mortgagee.

(iii) Except as otherwise provided below, the Mortgagor shall determine whether to restore the Property (excluding any part of the Property taken by condemnation) to substantially the same condition and value as an operating entity as existed prior to such condemnation. Mortgagor shall make such determination within ninety (90) days from the occurrence of an event of condemnation or such other number of days as the Mortgagee may reasonably consent to and, if Mortgagor determines to replace, repair, rebuild or restore, it will commence such activity within an additional sixty (60) day time period, weather permitting. The Mortgagor shall furnish to the Mortgagee a study demonstrating the feasibility of said replacement, repair, rebuilding or restoration and, further, satisfactory evidence that, notwithstanding such condemnation, the improvements can be completed on or before the later of: (a) the date for completion of such work or (b) such later date as may be approved by the Mortgagee, which approval shall not be unreasonably withheld.

(iv) The Mortgagor shall be exclusively empowered to settle any award of the Property subject to approval by the Mortgagee, which approval shall not be unreasonably withheld. All condemnation proceeds less the reasonable fees and expenses, if any, incurred in connection with adjustment of the award shall be held in trust by the Mortgagee and applied to the cost of such restoration, repair, replacement, rebuilding or alterations. In the event such net proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Mortgagor shall nonetheless complete such replacement, repair, rebuilding or restoration and shall pay from its own moneys that portion of the costs thereof

in excess of such net proceeds. Any sums remaining after completion of the work of restoration shall be, as determined in the sole discretion of the Mortgagee, held in trust for the Mortgagor by the Mortgagee until the Subsidy Mortgage obligation has been satisfied or applied in reduction of the principal balance of the indebtedness secured hereby.

(D) The Mortgagor shall not be obligated to restore the Property, and the net proceeds of the condemnation award shall not be applied as provided in subparagraph (C) above, if the Mortgagor determines it is not practical to restore the Property and the Mortgagee approves such determination, which approval shall not be unreasonably withheld. In such event, the lesser of: (a) the net proceeds of the condemnation award; or (b) the amount necessary to prepay the Subsidy Note in full, with all interest thereon, and all other sums evidenced or secured by the Loan Documents (as such term is defined in the First Mortgage), shall be paid to Mortgagee. If the net proceeds of the condemnation award are less than the amount necessary to prepay the Subsidy Note and pay any and all other amounts payable under the this Subsidy Mortgage to the Mortgagee, the Mortgagor shall pay the difference between such amounts and such net proceeds of the condemnation award so that the Subsidy Note shall be prepaid and any and all other amounts payable under the Loan Documents to the Mortgagee shall be paid in full. If all amounts due under the Subsidy Note and the Subsidy Mortgage have been fully paid, all such net proceeds shall be paid to the Mortgagor for its purposes.

(E) All replacements, repairs, rebuilding or restoration made pursuant to this paragraph, whether or not requiring the expenditure of the Mortgagor's own monies, shall automatically become part of the Project and be subject to the lien of this Subsidy Mortgage as if the same were specifically described herein. All such replacements, repairs, rebuilding or restoration shall be free from any title retention, security agreement or other encumbrance in favor of any party other than the Mortgagee pursuant hereto.

7. A default under this Subsidy Mortgage ("Event of Default") shall be deemed to have occurred in the event (i) Mortgagor fails to comply with any provision or requirement under this Subsidy Mortgage or the Subsidy Note, and such failure to comply continues and remains uncured for a period of thirty (30) days after written notice thereof is sent by the Mortgagee to the Mortgagor; or (ii) there exists an "event of default or non-compliance" under the First Mortgage, the Regulatory Agreement or any of the documents relating to the First Mortgage Loan or this Subsidy Loan which default shall not have been cured within the time allotted therefor pursuant to the appropriate documentation associated therewith.

8. If the Mortgagee incurs any costs in collecting the Subsidy Loan secured by this Subsidy Mortgage, including but not limited to reasonable attorney's fees, such costs will be added to the principle amount of the Subsidy Loan and will also be secured by this Subsidy Mortgage.

9. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given upon the earlier of: (A) three business days after such notice is sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (B) delivery is actually made or delivery is refused by the addressee, as evidenced by the affidavit of the person who attempted to effect such delivery. Notices, certificates and other communications hereunder shall be delivered to the parties hereto at the addresses first set forth herein, or to such other place as the Mortgagee or the Mortgagor from time to time designate in writing. Copies of notices sent to the Mortgagor shall also be sent to the following parties and addresses:

If to Mortgagor:

James Street Apartments LLC  
c/o Conifer Realty, LLC  
183 East Main Street, 6th Floor  
Rochester, New York Rochester, NY 14609  
Attention: Andrew I. Crossed  
Attention: Susan Jennings, Esq.

with a copy to:

Red Stone Equity Partners, LLC  
200 Public Square, Suite 1550  
Cleveland, OH 44114  
Attn: General Counsel

And to the SIDA:

City of Syracuse Industrial Development Agency

333 West Washington Street  
Syracuse, New York 13202  
Attention: Chairman

with a copy to:

City of Syracuse  
233 East Washington Street  
Syracuse, New York 13202  
Attention: Corporation Counsel

If to the Agency or Mortgagee:

New York State Housing Finance Agency  
641 Lexington Avenue  
New York, New York 10022  
Attention: Executive Vice President and  
Attention: Senior Vice President and Counsel

10. The terms, covenants and conditions of this Subsidy Mortgage will in all respects be governed, construed, applied and enforced in accordance with the laws of the State of New York.

11. All of the terms, covenants and conditions of this Subsidy Mortgage will run with the land and will apply to, bind and inure to the benefit of the Mortgagor and Mortgagee and their respective heirs, personal representatives, successors and permitted assigns and all subsequent holders of this Subsidy Mortgage and all subsequent owners of the Property or any part thereof or interest therein, except to the extent expressly provided to the contrary herein.

12. This Subsidy Mortgage may not be modified, amended, changed, discharged or terminated orally, but only by an agreement in writing, in a form suitable for recording, signed by the party against whom the enforcement of the modification, amendment, change, discharge or termination is sought.

13. The Mortgagor and SIDA warrant and represent for itself that each (and its undersigned representatives, if any), respectively, has full power, authority and legal right to execute and deliver this Subsidy Mortgage and to provide a subordinate mortgage on all right, title and interest of the Mortgagor and SIDA, as applicable, in and to the Property pursuant to the terms hereof and to keep and observe all of the terms, covenants and conditions of this Subsidy Mortgage on the Mortgagor's part to be performed.

14. The Subsidy Loan secured hereby requires the payment of installments of interest and is a standing obligation with interest, which is due and payable in accordance with the Subsidy Note.

Should an Event of Default occur pursuant to Paragraph 7 hereof, the entire Subsidy Loan will become due and payable immediately.

15. This Subsidy Mortgage shall be deemed fully satisfied upon the Maturity Date, as defined in the Subsidy Note, and Mortgagee agrees to provide a release reflecting such satisfaction in a form acceptable for recording.

16. The Mortgagor, the SIDA, their respective successors and assigns and any existing or future members or partners of the Mortgagor and SIDA shall have no personal liability for sums due under the Subsidy Note and/or this Subsidy Mortgage, and the Mortgagee shall look solely to the Mortgaged Property, and such other collateral, if any, and other security held by the Mortgagee pursuant to the Loan Documents and not to any property or assets of any member or partner of the Mortgagor or SIDA or any officer, director, agent, member, manager, partner or employee thereof or any of the affiliates of the foregoing (the "Borrower Parties"), and no such other property or assets shall be subject to levy, execution or other enforcement procedures nor shall any deficiency judgment or other monetary judgment (except as set forth below) be sought, obtained or enforced for the satisfaction of any rights or remedies contained in the Loan Documents, for the payment or performance of any obligations, agreements or covenants, or for the breach of representations or warranties contained therein or herein; provided, however, that the foregoing provisions shall not (A) constitute a waiver of any obligation evidenced by this Subsidy Mortgage; (B) limit the right of the Mortgagee to name the Mortgagor and/or the Borrower Parties as a party defendant in any action or suit for judicial foreclosure and sale under this Subsidy Mortgage so long as no judgment in the nature of a deficiency judgment or other monetary judgment (except as set forth below) shall be enforced against the Mortgagor or such Borrower Parties except to the extent of the Mortgaged Property; (C) affect in any way the validity or enforceability of any guaranty (whether of payment and/or performance) or indemnity agreement given to the Mortgagee in connection, (i) with the HFA Loans, (ii) any transaction contemplated by the Loan Documents, as such term is defined in the First Mortgage, or (iii) any obligations of the Mortgagor under the Regulatory Agreement; (D) constitute a waiver by the Mortgagee of any rights in connection with any representation, warranty, covenant or indemnification in this Mortgage with respect to environmental laws, hazardous substances or asbestos and in that certain Joint and Several Hazardous Material Indemnification Agreement of even date herewith given by the Guarantor to the Mortgagee; (E) constitute a waiver by the Mortgagee of any rights to reimbursement from the Mortgagor for, but only to the extent of, any actual, out-of-pocket, losses, costs or expenses; or (F) constitute a waiver of any remedy at law or in

equity, against the Mortgagor and/or any of the Borrower Parties in connection with (1) gross negligence, willful misconduct or fraudulent acts or omissions by the Mortgagor or any Borrower Parties, (2) material misrepresentation by the Mortgagor or any of the Borrower Parties with respect to any of the Loan Documents or other documents and agreements in connection with the construction of the Improvements, (3) physical waste of any material portion of the Mortgaged Property by the Mortgagor or any of the Borrower Parties, (4) willful or wrongful misapplication by the Mortgagor or any of the Borrower Parties of any tenant security deposits, or of any rental or other income which was required by this Mortgage or any other Loan Document to be paid or applied in a specified manner arising, in any such case, with respect to the Mortgaged Property, (5) failure by the Mortgagor or any of the Borrower Parties to deliver, promptly upon demand during the existence of an Event of Default, tenant and other project files and original executed leases and other agreements relating to occupancy, construction or operation of the Improvements, (6) any distributions to the Mortgagor or any Borrower Party made during the continuance of an Event of Default in violation of the Loan Documents, (7) any voluntary or collusive involuntary direct or indirect transfer of the Mortgaged Property or any interest in the Mortgagor in contravention of the Loan Documents, (8) the voluntary or collusive involuntary incurrence of any secured or unsecured indebtedness in contravention of the Loan Documents, (9) any voluntary or collusive involuntary filing of any bankruptcy, insolvency or similar proceeding by the Mortgagor or its members, (10) any wrongful hindrance or interference with the exercise by the Mortgagee of its remedies during the continuance of an Event of Default, (11) the voluntary or collusive involuntary creation of any pledge, lien or other encumbrance on the Mortgaged Property in contravention of the Loan Documents, or (12) failure by the Mortgagor to maintain insurance or to pay any taxes, assessments, mechanics' liens, materialmen's liens, or other obligations which would create liens on any portion of the Mortgaged Property which would be superior to the lien or security interest of this Subsidy Mortgage or the other Loan Documents.

17. The Mortgagor further agrees that in the event, the Mortgagor, or any individual or entity affiliated in any way with the Mortgagor, shall receive any grants, loans or other funds in connection with this Project, in addition to such loans referenced herein (but excluding any additional tax credit equity in excess of \$6,348,269) (collectively, "Additional Financing"), then the Subsidy Loan shall automatically be reduced in a amount equal to 50% of the sum of the Additional Financing. In the event that funds from the Additional Financing are awarded or received after the expenditure of the Subsidy Loan, such funds shall be applied immediately to prepay the sum due

under the Subsidy Loan in an amount equal to 50% of the sum of the Additional Financing. Prior to execution by the Mortgagor, or any affiliated entity or individual, of any documents with respect to the Additional Financing and the closing of any loans, grants or awards in connection therewith, the Mortgagor shall provide the Agency with all such documents for the Agency's prior review and approval.

18. The Mortgagor states that it has: (a) read this Subsidy Mortgage; (b) duly signed this Subsidy Mortgage as of the date at the top of the first page; and (c) received a complete, duly executed, and acknowledged counterpart or copy hereof.

19. The Mortgagor, in compliance with Section 13 of the Lien Law, covenants that the Mortgagor will receive the advances secured hereby and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the Costs of Improvements before using any part of the total of the same for any other purposes. The Mortgagor also covenants to apply the Costs of Improvements received in accordance with Schedule B annexed hereto and hereby made a part hereof.

20. The Mortgagee acknowledges and agrees that it shall not enforce remedies provided in this Subsidy Mortgage without the prior consent of State of New York Mortgage Agency ("SONYMA") so long as SONYMA shall provide credit enhancement for the First Mortgage.

21. This Subsidy Mortgage may be executed in any number of counterparts, and each such counterpart shall be deemed to be a duplicate original. All such counterparts shall constitute but one and the same instrument.

22. The Mortgagor's Investor (as such term is defined in the First Mortgage) shall have the right, but not the obligation, to cure any default hereunder, and the same shall be recognized by the Mortgagee on the same basis as if made or rendered by the Mortgagor.

23. The following provisions relating to the Lease Agreements are required by SIDA:

(A) Representations and Warranties regarding Lease Agreements and PILOT Agreement.

Mortgagor warrants and represents to Mortgagee and SIDA that, as of the date of this Subsidy Mortgage: (i) the Company Lease, the Agency Lease and the PILOT Agreement, and any amendments thereto, are in full force and effect in accordance with their terms; (ii) Mortgagor has not waived, canceled or surrendered any of its rights under the Company Lease, the Agency Lease or the PILOT Agreement; (iii) Mortgagor is the sole owner of, and has good and marketable title to, the Mortgaged Property; (iv) the Mortgaged Property is free and clear of all liens, encumbrances and other matters affecting title, other than the lien of this Subsidy Mortgage and the easements and restrictions listed in a schedule of exceptions to coverage in the title insurance policy issued to

Mortgagee contemporaneously with the execution and recordation of this Subsidy Mortgage and insuring Mortgagee's interest in the Mortgaged Property and other than the Permitted Exceptions, as such term is defined in the First Mortgage; (v) there is no existing default by the Mortgagor under the lease agreements referenced herein or the PILOT Agreement, and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default under the lease agreements or PILOT Agreement.

(B) Mortgagor's Obligations to Comply with Company Lease, the Agency Lease and the PILOT Agreement.

Mortgagor shall (i) pay the all other sums of money due and payable at any time and from time to time under the Company Lease, the Agency Lease and the PILOT Agreement as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Company Lease, the Agency Lease and/or PILOT Agreement for the payment of any such sum, and (ii) at all times fully perform, observe and comply with all other terms, covenants and conditions of the Company Lease, Agency Lease and the PILOT Agreement to be performed, observed or complied with by Mortgagor as lessor under the Company Lease and lessee under the Agency Lease, as applicable, and as a party to the PILOT Agreement. If the Company Lease, the Agency Lease and/or PILOT Agreement do not provide for a grace period for the payment of a sum of money, Mortgagor shall make the payment on or before the date on which the payment becomes due and payable. Mortgagor shall deliver evidence of the payment to Mortgagee within ten (10) days after receipt of a written request from Mortgagee for evidence of the payment.

(C) SIDA Executing at the Direction of Mortgagor.

The Mortgagor directs the SIDA to execute and deliver this Subsidy Mortgage to the Mortgagee, and further agrees to indemnify SIDA (and its members, officers, directors, agents, servants and employees) for all fees and costs incurred in connection with the execution, delivery, recording, performing and enforcing of this Subsidy Mortgage, including but not limited to reasonable attorney's fees.

(D) Subordination Provisions.

Notwithstanding anything herein to the contrary, Mortgagee by accepting this Instrument acknowledges and agrees that the rights of Mortgagee hereunder shall be subordinate to the rights of SIDA to receive payments in lieu of taxes pursuant to the PILOT Agreement and that such payments in lieu of taxes to be made by Mortgagor to SIDA shall have the same force, priority and effect as a real property tax lien under State law against the Mortgaged Property.

(E) Hold Harmless Provisions.

The Mortgagor hereby acknowledges that the terms of the Agency Lease, as amended and restated from time to time, is in full force and effect, including but not limited to the "Hold Harmless Provisions" contained in Section 7.2 thereof.

(F) No Recourse; Special Obligation.

(1) The obligations and agreements of SIDA contained herein and in any other instrument or document executed in connection herewith, and any instrument or document supplemental hereto, shall be deemed the obligations and agreements of SIDA and not of any member, officer, agent or employee of SIDA in his individual capacity; and the members, officers, agents and employees of SIDA shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of SIDA contained herein or therein shall not constitute or give rise to an obligation of the State New York or of the City of Syracuse, and neither the State of New York nor the City of Syracuse shall be liable hereon or thereon. Further, such obligations and agreements shall not constitute or give rise to a general obligation of SIDA, but rather shall constitute limited obligations of SIDA, payable solely from the revenues of SIDA derived, and to be derived from, the lease, sale, or other disposition of the Project Facility, other than revenues derived from or constituting Unassigned Rights (as that term is defined in the Agency Lease).

(2) No order or decree of specific performance with respect to any of the obligations of SIDA hereunder or thereunder shall be sought or enforced against SIDA unless:

(a) The party seeking such order or decree shall first have requested SIDA in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and SIDA shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(b) If SIDA refuses to comply with such request and SIDA's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the Mortgagor shall have placed in an account with SIDA an amount or undertaking sufficient to cover such reasonable fees and expenses; and

(c) If SIDA refuses to comply with such request and SIDA's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the Mortgagor shall (1) agree to indemnify and hold harmless SIDA and its members, officers, agents and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by SIDA, furnish to SIDA satisfactory security to protect SIDA and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

Any failure to provide notice, indemnity, or security to SIDA pursuant to this subparagraph 23(F) shall not alter the full force and effect of any Event of Default under the Agency Lease or the Subsidy Mortgage.

(d) For purposes of this subparagraph 23(F), the Mortgagor shall not be deemed to constitute an employee, agent or servant of SIDA or a person under SIDA's control or supervision.

(3) Nothing contained in subparagraph (2) of subparagraph 23(F) shall limit or be construed to limit or impair any action at law or in equity by the Mortgagee, SONYMA or their designee against the Premises or the Mortgaged Property with respect to the performance of any obligation by the Mortgagor under the Subsidy Mortgage or the Loan Documents.

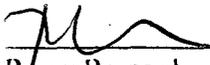
(G) Termination.

Upon the termination of the Lease Agreements on October 1, 2027 or such earlier date as set forth in the Agency Lease, the provisions of subparagraphs 23(A) through 23(F) hereinabove and any rights and obligations of SIDA described in the Subsidy Mortgage shall terminate and no longer be in force or effect, and any ownership interests of SIDA in the Premises and the Mortgaged Property shall be extinguished. Notwithstanding anything herein to the contrary, the Mortgagor's obligations to SIDA as set forth in the Lease Agreements shall survive the termination of the Lease Agreements.

***BALANCE OF PAGE LEFT INTENTIONALLY BLANK.  
SIGNATURE PAGE TO FOLLOW.***

IN WITNESS WHEREOF, the Mortgagor and the Mortgagee have caused this Subsidy Mortgage to be executed as of the day and year first above written.

Approved by Counsel  
to the Agency:

By:   
Remy Bernardo, Jr.  
Associate Counsel

**MORTGAGEE:**

**NEW YORK STATE HOUSING FINANCE  
AGENCY:**

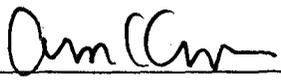
By:   
Gail Bressler  
Vice President

**MORTGAGOR:**

**JAMES STREET APARTMENTS, LLC**  
a New York limited liability company

By: James Street Managing Member, LLC  
a New York limited liability company  
its managing member

By: Conifer Realty, LLC  
a New York limited liability company  
its sole member

By:   
Andrew I. Crossed  
Executive Vice President

**SIDA:**

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
William M. Ryan  
Chairman

IN WITNESS WHEREOF, the Mortgagor and the Mortgagee have caused this Subsidy Mortgage to be executed as of the day and year first above written.

Approved by Counsel  
to the Agency:

By: \_\_\_\_\_  
Remy Bernardo, Jr.  
Associate Counsel

**MORTGAGEE:**

**NEW YORK STATE HOUSING FINANCE  
AGENCY:**

By: \_\_\_\_\_  
Gail Bressler  
Vice President

**MORTGAGOR:**

**JAMES STREET APARTMENTS, LLC**  
a New York limited liability company

By: James Street Managing Member, LLC  
a New York limited liability company  
its managing member

By: Conifer Realty, LLC  
a New York limited liability company  
its sole member

By: \_\_\_\_\_  
Andrew I. Crossed  
Executive Vice President

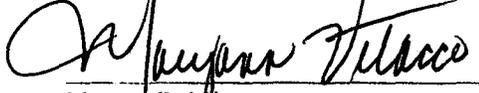
**SIDA:**

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
\_\_\_\_\_  
William M. Ryan  
Chairman

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

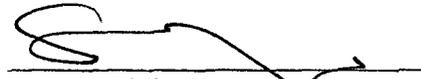
On the 8<sup>th</sup> day of December in the year 2011, before me, the undersigned, a notary public in and for said state, personally appeared **Gail Bressler** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
Commission expires:

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

**MARYANN VITACCO**  
Notary Public, State of New York  
No. 01V16129481  
Qualified in Richmond County  
Commission Expires June 27, 2013

On the 8<sup>th</sup> day of December in the year 2011, before me, the undersigned, a notary public in and for said state, personally appeared **Andrew I. Crossed** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
Commission expires:

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

**J. STURMAN JENNINGS**  
Notary Public, State of New York  
No. 02JE6096835  
Qualified in Monroe County  
Commission Expires August 11, 2015

On the \_\_\_ day of December in the year 2011, before me, the undersigned, a notary public in and for said state, personally appeared **William M. Ryan** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
Commission expires:

**ACKNOWLEDGMENT PAGE OF HFA SUBSIDY MORTGAGE**

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the \_\_\_\_ day of December in the year 2011, before me, the undersigned, a notary public in and for said state, personally appeared **Gail Bressler** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
Commission expires:

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the \_\_\_\_ day of December in the year 2011, before me, the undersigned, a notary public in and for said state, personally appeared **Andrew I. Crossed** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
Commission expires:

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the 5<sup>th</sup> day of December in the year 2011, before me, the undersigned, a notary public in and for said state, personally appeared **William M. Ryan** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
Commission expires:

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 14

**ACKNOWLEDGMENT PAGE OF HFA SUBSIDY MORTGAGE**

**SCHEDULE A**

**LEGAL DESCRIPTION**

(see attached)

PARCEL ONE (615 James Street, Syracuse, NY, TA#017.00-19-05)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Number 1 of Block Number 31 in said City, bounded and described as follows:

BEGINNING AT A POINT, said point being North 55 degrees 44 minutes 50 seconds East a distance of 116.20" from the intersection of the northerly line of James Street with the easterly line of McBride Street.

THENCE North 30 degrees 29 minutes 10 seconds West for a distance of 264.27 feet to a point on the southerly line of East Willow Street;

THENCE North 55 degrees 44 minutes 50 seconds East for a distance of 83.80 feet along the southerly line of East Willow Street to a point;

THENCE South 30 degrees 29 minutes 10 seconds East for a distance of 264.27 feet to a point on the northerly line of James Street;

THENCE South 55 degrees 44 minutes 50 seconds West for a distance of 83.80 feet TO THE POINT AND PLACE OF BEGINNING.

and

PARCEL TWO (622 James Street, Syracuse, NY, TA#103.00-05-04)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Block 33 in said City, bounded and described as follows, viz:

BEGINNING at a point in the southeasterly line of James Street 188 feet northeasterly along said street line from the northeasterly line of N. McBride Street;

thence along said southeasterly line of James Street N. 55° 44' 50" E., 74.53 feet to a point;

thence S. 30° 45' 40" E., 125.00 feet to a point;

thence S. 55° 44' 50" W., 19.00 feet to a point;

thence S. 30° 45' 40" E., 92.76 feet to a point;

thence N. 59° 14' 20" E., 66.00 feet to a point;

thence S. 30° 45' 40" E., 104.09 feet to a point;

thence S. 59° 14' 20" W., 90.73 feet to a point;

thence N. 34° 07' 00" W., 179.73 feet to a point;

thence S. 55° 44' 50" W., 12.00 feet to a point;

thence N. 34° 07' 00" W., 140.00 feet to the point and place of beginning.

TOGETHER WITH the benefits, in common with others, over a 15 foot right of way known as Wilkinson Avenue running westerly to N. McBride Street as recited in deeds at Liber 276, page 39, Liber 924, page 275 and Liber 2443, page 599.

## **SCHEDULE B**

### **COSTS OF IMPROVEMENTS**

Costs of Improvements for the Project shall be defined and proceeds of advances of proceeds of the Subsidy Loan shall be applied in accordance with the provisions of the Building and Project Loan Agreement ("Loan Agreement") between Mortgagor and Agency of even date herewith which is to be filed in the Onondaga County Clerk's Office. Costs of Improvements shall include Direct Construction Costs and Other Costs of Improvements as such terms are defined and the respective amounts thereof specified in the Loan Agreement.

## PLEDGE AND ASSIGNMENT (MORTGAGE 2)

All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Table of Definitions attached to the Agency Lease as Exhibit "C".

This Pledge and Assignment (the "**Assignment**"), dated as of December 22, 2011, is from the City of Syracuse Industrial Development Agency, a public benefit corporation duly organized and existing under the laws of the State of New York, having its principal office at 333 West Washington Street, Suite 130, Syracuse, New York 13202 (the "**Agency**") to New York State Housing Finance Agency, a corporate governmental agency, constituting a public benefit corporation (together with its successors and assigns, "**Mortgagee 2**"), having an address at 641 Lexington Avenue, New York, New York 10022, as the beneficiary of a Fee and Leasehold Subsidy Mortgage dated December 22, 2011 ("**Mortgage 2**") from James Street Apartments, LLC (the "**Company**") and the Agency to Mortgagee 2 to secure Mortgagee 2's loan of \$850,000 ("**Mortgage 2**") to the Company.

For value received, the receipt of which is hereby acknowledged, the Agency hereby pledges, assigns, transfers and sets over to Mortgagee 2 a security interest in its right to receive any and all moneys due or to become due and any and all other rights and remedies of the Agency under or arising out of the Agency Lease Agreement dated as of December 22, 2011 (the "**Agency Lease**"), by and between the Agency and the Company (except for the rights of the Agency, and moneys payable, pursuant to the Unassigned Rights, as defined in the Agency Lease) covering the improved real property, more fully described on **Exhibit "A"** attached hereto and the Equipment installed therein; provided, however, that the assignment made hereby shall not permit the amendment of the Agency Lease without the consent of the Agency, which consent shall not be unreasonably withheld.

Mortgagee 2 shall have no obligation, duty or liability under the Agency Lease, nor shall Mortgagee 2 be required or obligated in any manner to fulfill or perform any obligation, covenant, term or condition of the Agency thereunder or to take any other action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled hereunder at any time or times.

The Agency hereby irrevocably constitutes and appoints Mortgagee 2 its true and lawful attorney, with power of substitution for the Agency and in the name of the Agency or in the name of Mortgagee 2 or otherwise, for the use and benefit of Mortgagee 2 as holder of Mortgage 2 and all other loan documents, to ask, demand, require, receive, collect, compound and give discharges and releases of all claims for any and all moneys due or to become due under or arising out of the Agency Lease (except for moneys due or to become due pursuant to the Unassigned Rights) and to endorse any checks and other instruments or orders in connection therewith.

The Agency further agrees that at any time and from time to time, upon the written request of Mortgagee 2, the Agency will promptly and duly execute and deliver any and all such further instruments and documents as Mortgagee 2 may deem desirable in order to obtain the full benefits of this Assignment and all rights and powers herein granted.

The Agency hereby ratifies and confirms the Agency Lease and does hereby warrant and represent (a) that the Agency Lease is in full force and effect, (b) that the Agency is not in default under the Agency Lease, and (c) that the Agency has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as this Assignment shall remain in effect, the whole or any part of the moneys, rights or remedies hereby assigned to anyone other than Mortgagee 2, except that the parties hereto acknowledge that the Agency has executed a similar Pledge and Assignment in favor of Mortgagee 1 and Mortgagee 3 subject to the priority of this Assignment and Mortgage 1 pursuant to a certain Subordination Agreement dated as of December 22, 2011 by and among the company, the Agency, New York State Housing Finance Agency, First Niagara Bank, N.A. and Mortgagee 3.

All moneys due and to become due under Mortgage 2 to Mortgagee 2 under or pursuant to the Agency Lease in accordance with this Assignment shall be paid directly to Mortgagee 2 at New York State Housing Finance Agency, 641 Lexington Avenue, New York, New York 10022 or at such other address as Mortgagee 2 may designate to the Company in writing from time to time.

If the Company shall pay or cause to be paid, or there shall be paid, to Mortgagee 2 or its successors and assigns, the outstanding principal balance and all amounts secured by Mortgage 2, including any applicable prepayment premiums, and all other sums due or to become due pursuant to the Agency Lease, Mortgage 2, or this Assignment, then this Assignment and the estate and rights created hereby shall cease, terminate and be void, and thereupon Mortgagee 2 shall cancel and discharge the lien of this Assignment and execute and deliver to the Agency, and record or file, if necessary, such instruments in writing as shall be requisite to release the lien hereof, and shall reconvey, release, assign and deliver unto the Agency the estate, right, title and interest in and to any and all property conveyed, sold, transferred, assigned or pledged to Mortgagee 1, or otherwise subject to the lien of this Assignment.

This Assignment shall be binding upon the Agency and its successors and assigns and shall inure to the benefit of Mortgagee 2 and its successors and assigns.

All covenants, stipulations, promises, agreements and obligations (collectively, the "**Obligations**") of the Agency contained in this Assignment, in Mortgage 2, in the Agency Lease and in any other Agency Documents shall be deemed to be the Obligations of the Agency and not of any member, officer, servant or employee of the Agency (collectively, the "**Employee of the Agency**") in his individual capacity, and no recourse under or upon any Obligation contained therein or otherwise based upon or in respect to this Assignment or the Agency Lease, or for any claim based thereon or otherwise in respect hereof or thereof, shall be had against any past,

present or future Employee of the Agency, as such, or of any successor public benefit corporation or political subdivision or any person executing any of the Agency Documents on behalf of the Agency either directly through the Agency or successor public benefit corporation or political subdivision or any person so executing any of such Agency Documents, it being expressly understood that the Agency Documents, are solely corporate obligations, and that no such personal liability whatsoever shall attach to, or is or shall be incurred by any such Employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing the Agency Documents because of the creation of the indebtedness thereby authorized, or under or by reason of the Obligations, contained in the Agency Documents or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every Employee of the Agency because of the creation of the indebtedness thereby authorized by the Agency Documents, or under or by reason of the Obligations contained in any of the Agency Documents or implied therefrom, are to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of the Agency Documents.

The Obligations and agreements of the Agency contained therein shall not constitute or give rise to an obligation of the State of New York or the City of Syracuse, New York, and neither the State of New York nor the City of Syracuse, New York shall be liable thereon, and further such Obligations shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the sublease of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

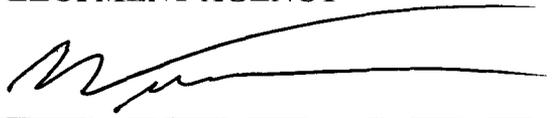
Notwithstanding any provision of this Assignment to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (a) the Agency shall have been requested to do so in writing by the Company or Mortgagee 2 and (b) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any member, officer, agent, servant or employee of the Agency) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity satisfactory to the Agency for protection against all such liability and for the reimbursements of all such fees, expenses and other costs.

No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (A) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (B) if the Agency refused to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the Company shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (C) if the

Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless and defend the Agency and its members, officers, agents and employees against such liability incurred as a result of its compliance with such demand, and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request. Upon the termination of the Agency Lease on October 2, 2027 or such earlier date as set forth in the Agency Lease, the provisions of this Assignment shall terminate and no longer be in force or effect.

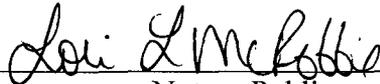
IN WITNESS WHEREOF, the Agency has duly executed this Assignment as of December 1, 2011.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

STATE OF NEW YORK            )  
  ) SS:  
COUNTY OF ONONDAGA        )

On the 5<sup>th</sup> day of December, in the year 2011, before me, the undersigned personally appeared **WILLIAM M. RYAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 2014



**ACKNOWLEDGEMENT BY JAMES STREET APARTMENTS, LLC  
OF THE PLEDGE AND ASSIGNMENT OF CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT AGENCY'S  
RIGHTS UNDER THE AGENCY LEASE**

James Street Apartments, LLC (the "*Company*") hereby acknowledges receipt of notice of the assignment by the City of Syracuse Industrial Development Agency (the "*Agency*") of certain of its rights and remedies under that certain Agency Lease Agreement dated as of December 22, 2011 (the "*Agency Lease*"), by and between the Agency as sublessor, and the Company, as subtenant, including the right to collect and receive all amounts payable by the Company thereunder, except certain moneys payable for the account of the Agency pursuant to the Unassigned Rights as defined in the Agency Lease. The Company, intending to be legally bound, hereby agrees with Mortgagee 2 (as defined in the Assignment) to (1) pay directly to Mortgagee 2 all sums due and to become due to Mortgagee 2 from the Company under Mortgage 2, except certain moneys payable for the account of the Agency pursuant to the Unassigned Rights, and (2) perform for the benefit of Mortgagee 2 all of the duties and undertakings of the Company under the Agency Lease, except moneys payable for the account of the Agency pursuant to the Unassigned Rights; provided that Mortgagee 2 shall not be obligated to perform, or be responsible for the performance of, any of the duties, undertakings, or obligations of the Agency under the Agency Lease.

The Company hereby consents to and approves of the provisions contained in the Agency Lease and, in particular, acknowledges the restrictions imposed on the Agency prohibiting, among other things, sale, transfer, or assignment by the Agency of any interest in the Project Facility, or any part thereof.

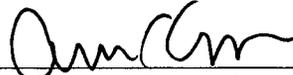
**IN WITNESS WHEREOF**, the Company has caused this Acknowledgement to be executed in its name by its duly authorized representative, dated as of the December 22, 2011.

**JAMES STREET APARTMENTS, LLC**

By: James Street Managing Member, LLC

By: Conifer Realty, LLC

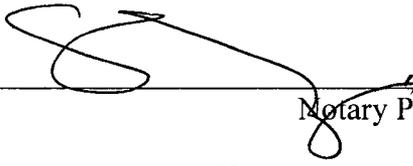
By: \_\_\_\_\_

  
Andrew I. Crossed

Executive Vice President

STATE OF NEW YORK            )  
  ) SS:  
COUNTY OF ONONDAGA        )

On the 6<sup>th</sup> day of December, in the year 2011, before me, the undersigned, personally appeared **ANDREW I. CROSSED**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

**S. STURMAN JENNINGS**  
Notary Public, State of New York  
No. 02JE6096835  
Qualified in Monroe County 2015  
Commission Expires August 11, 2015

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

## LEGAL DESCRIPTION

PARCEL ONE (615 James Street, Syracuse, NY, TA#017.00-19-05)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Number 1 of Block Number 31 in said City, bounded and described as follows:

BEGINNING AT A POINT, said point being North 55 degrees 44 minutes 50 seconds East a distance of 116.20" from the intersection of the northerly line of James Street with the easterly line of McBride Street.

THENCE North 30 degrees 29 minutes 10 seconds West for a distance of 264.27 feet to a point on the southerly line of East Willow Street;

THENCE North 55 degrees 44 minutes 50 seconds East for a distance of 83.80 feet along the southerly line of East Willow Street to a point;

THENCE South 30 degrees 29 minutes 10 seconds East for a distance of 264.27 feet to a point on the northerly line of James Street;

THENCE South 55 degrees 44 minutes 50 seconds West for a distance of 83.80 feet TO THE POINT AND PLACE OF BEGINNING.

and

PARCEL TWO (622 James Street, Syracuse, NY, TA#103.00-05-04)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Block 33 in said City, bounded and described as follows, viz:

BEGINNING at a point in the southeasterly line of James Street 188 feet northeasterly along said street line from the northeasterly line of N. McBride Street;

thence along said southeasterly line of James Street N. 55° 44' 50" E., 74.53 feet to a point;

thence S. 30° 45' 40" E., 125.00 feet to a point;

thence S. 55° 44' 50" W., 19.00 feet to a point;

thence S. 30° 45' 40" E., 92.76 feet to a point;

thence N. 59° 14' 20" E., 66.00 feet to a point;

thence S. 30° 45' 40" E., 104.09 feet to a point;

thence S. 59° 14' 20" W., 90.73 feet to a point;

thence N. 34° 07' 00" W., 179.73 feet to a point;

thence S. 55° 44' 50" W., 12.00 feet to a point;

thence N. 34° 07' 00" W., 140.00 feet to the point and place of beginning.

TOGETHER WITH the benefits, in common with others, over a 15 foot right of way known as Wilkinson Avenue running westerly to N. McBride Street as recited in deeds at Liber 276, page 39, Liber 924, page 275 and Liber 2443, page 599.

## MORTGAGE AND SECURITY AGREEMENT

HOME Loan Program

Property: See Schedule A

This Mortgage and Security Agreement ("*Mortgage*") made as of December 22, 2011 between the Mortgagors JAMES STREET APARTMENTS, a limited liability company organized under the laws of the State of New York, having an office at 183 East Main Street, Rochester, NY 14604 (hereinafter "JSA" or "Mortgagor JSA"), and the CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY, a New York Industrial Development Agency having an office at 333 West Washington Street, Syracuse, NY 13202 (hereinafter "SIDA" or "Mortgagor SIDA") (Mortgagor JSA and Mortgagor SIDA hereinafter collectively referred to as the "Mortgagors") and the Mortgagee CITY OF SYRACUSE, acting by and through its Department of Neighborhood and Business Development, (hereinafter "*Mortgagee*"), a New York municipal corporation whose office is at 233 East Washington Street, Syracuse, New York.

In order to secure the payment of an indebtedness in the principal amount of **TWO-MILLION DOLLARS (\$2,000,000.00)**, lawful money of the United States, to be paid with one percent (1%) interest thereon according to a certain promissory note dated as of the date herein (hereinafter the "*Note*"), and to secure all other sums which become due and payable pursuant to the Note or this Mortgage, the Mortgagors hereby mortgage to the Mortgagee all of the Mortgagors' right, title and interest in and to:

**ALL THAT CERTAIN LOT, PIECE OR PARCEL OF LAND** situate in the City of Syracuse, County of Onondaga, and State of New York, bounded and described in the attached Schedule "A" annexed hereto and made a part hereof.

**TOGETHER** with all right, title and interest of the Mortgagor in and to strips and gores of land adjacent to or adjoining said parcel;

**TOGETHER** with all right, title and interest of the Mortgagor in and to the land lying in the streets and roads in front of and adjoining said parcel;

**TOGETHER** also with the appurtenances and all the estate and rights of the Mortgagor in and to the parcel;

**TOGETHER** with all buildings, improvements, fixtures, chattels and articles of personal property now owned or leased or hereafter acquired by Mortgagor and attached to or used in connection with said parcel, including but not limited to furnaces, boilers, oil burners, radiators and piping, coal stokers, plumbing and bathroom fixtures, refrigeration, air conditioning and sprinkler systems, wash tubs, sinks, gas and electric fixtures, stoves, ranges, awnings, screens, window shades, elevators, motors, dynamos, incinerators, plants, shrubbery and all other equipment and machinery, appliances, fittings, and fixtures of every kind in or used in the operation of the buildings standing on the parcel, together with any and all replacements and additions, together with all permits and certifications and all architect's, engineer's and other

professional's plans and specifications, now created or to be created, in connection with any work to be done upon the above described parcel;

**TOGETHER** with all awards made to the Mortgagor at any time for taking by eminent domain the whole or any part of the parcel or any easement, including any awards for changes of grade of streets, which awards are hereby assigned to the Mortgagee, who is hereby authorized to collect and receive the proceeds of such awards and to give proper receipts and acquittance therefore, and to apply the same toward the payment of the mortgage debt, but only if the amount owing thereon is then due and payable; and the Mortgagor hereby agrees, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning the awards to the Mortgagee free, clear and discharged of any encumbrances of any kind or nature whatsoever; provided however, that if the mortgage debt is not then due and payable because of default or otherwise, Borrower shall have the right to retain such awards for the purposes of, and use for, its project. (The parcels and all that described in the preceding five paragraphs will hereafter be referred to as the "*Property*");

**TOGETHER** with all machinery, apparatus, equipment, appliances, floor covering, furniture, furnishings, supplies, materials, fittings, fixtures and personal property of every kind and nature whatsoever, now or hereafter located in or upon, affixed to or intended for use in or upon the real estate described in Schedule "A" (whether stored thereon or elsewhere), or any part thereof, now owned or hereafter acquired by Mortgagor, and used or usable in connection with any present or future operation or maintenance of the Property, and all replacements thereof, including, but without limiting the generality of the foregoing, all heating, lighting, ventilating and power equipment, pipes, ducts, pumps, tanks, compressors, engines, motors, conduits, plumbing and cleaning equipment, fire-extinguishing systems, refrigerating and ventilating apparatus, air-cooling and air conditioning apparatus, gas, water and electrical equipment, elevators, escalators, attached cabinets, shelving, partitions, carpeting, communications equipment and all of the right, title and interest of the Mortgagor in and to any equipment which may be subject to any title retention or security agreement superior in lien to the lien of this Mortgage (the "*Equipment*").

**EXCEPTING THEREFROM** SIDA's "Unassigned Rights" as that term is defined in the Agency Lease dated as of the 22<sup>nd</sup> day of December 2011 by and between SIDA and JSA.

**AND** the Borrower and Mortgagors further covenants with the Mortgagee as follows:

1. **Payment.** That Mortgagor JSA will pay the indebtedness as provided in the Note.

2. **Fire Insurance.** That Mortgagor JSA, for the benefit of the Mortgagors and the Mortgagee, will insure and keep insured all of the buildings now or hereafter constructed or erected upon the Property against loss by fire, in an amount at least equal to the mortgage indebtedness. Mortgagor JSA will deliver to Mortgagee proof of the said insurance, naming Mortgagee as "additional insured" on all policies so purchased. As long as the Mortgagor JSA is not in default hereunder, in the event of a loss or casualty, the proceeds of any such insurance shall be made available to the Mortgagor JSA to reconstruct or repair the Property.

3. **Casualty Insurance.** That Mortgagor JSA shall keep the Property insured, naming the Mortgagee therein as an “additional insured”, against loss or damage by casualties, other than fire, in such form and amount as the Mortgagor may from time to time reasonably require, and in default of these obligations, the Mortgagee may procure insurance at the expense of Mortgagor JSA, and the cost thereof, with interest at the interest rate set forth in the Note, shall be secured by this Mortgage and immediately be due and payable by the Mortgagor JSA to the Mortgagee. The acceptance by the Mortgagee of such fire or other hazard insurance policies as it receives from Mortgagor JSA shall not be deemed or construed as an approval by the Mortgagee of the form, sufficiency or amount of such insurance.

4. **Alterations and Demolition.** No building on the Property shall be removed or demolished without the consent of the Mortgagee.

5. **Events of Default.** The entire outstanding principal sum and any other sums payable under the Note shall become due, at the option of the Mortgagee, upon Mortgagor JSA’s failure to rent, lease or sell the HOME assisted residential units to low to moderate income families (as defined by the U.S. Department of Housing and Urban Development, hereinafter “HUD”), or failure to comply with any of HUD’s other HOME Program requirements applicable to this loan; or after default and failure to perform any obligations under the Note, Mortgage and Security Agreement, Building and Loan Agreement; or, except for acknowledged prior liens, the Mortgagor JSA grants or permits any other mortgage, security interest or other secondary financing secured by the Property, or any part of them, without prior written consent of the Mortgagee; or if Mortgagor JSA becomes bankrupt or insolvent or makes an assignment for the benefit of creditors; or after default in the payment of any tax, payment in lieu of tax, water rate, sewer rent or assessment; or after default in reimbursing the Mortgagee for premiums paid on insurance against loss by fire, as hereinbefore provided; or after default in furnishing, upon written request, a statement of the amount due on the Mortgage and whether there exist any offsets or defenses against the mortgage debt, as hereinafter provided. All sums secured by this Mortgage shall be due and payable upon sale of the Property prior to the expiration of the thirty-two (32) year term of the loan evidenced by the Note. Notices of default shall be served in accordance with paragraph numbered nine (9) of this Mortgage upon both Mortgagor JSA and Mortgagor SIDA. If Mortgagor JSA fails to cure a default within thirty (30) days of the notice of said default, Mortgagee may declare the full amount of debt immediately due and payable.

6. **Foreclosure; Appointment of a Receiver.** The holder of this Mortgage, in any action to foreclose the Mortgage, shall be entitled to the appointment of a receiver.

7. **Taxes and Other Charges.** Mortgagor JSA will pay, or cause to be paid, all taxes, assessments or water rates, and in default thereof, the Mortgagee may pay the same, which amount shall be added to the principal amount of the Note, which shall be secured by this Mortgage.

8. **Estoppel Certificate.** Mortgagor JSA within ten (10) days, upon request in person, or within twenty (20) days upon request by mail, will furnish a written statement, duly

acknowledged, of the amount due on this Mortgage and whether any offsets or defenses exist against the debt secured hereby.

9. **Notices.** Any notice or demand or request must be in writing and may be served in person, by mail or by private delivery service in accordance with the terms of the note.

10. **Title.** Mortgagor JSA warrants that it has good and marketable title to the Property.

11. **Compliance With Lien Law.** In compliance with Section 13 of the Lien Law, Mortgagor JSA will receive the advances secured by this Mortgage and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of the improvements, and that Mortgagor JSA will apply the same first to the payment of the cost of improvement before using any part of the total of the same for any other purpose.

12. **Foreclosure; Sale in One Parcel.** In case of a foreclosure sale, the Property, or so much thereof as may be affected by this Mortgage, may be sold in one parcel if doing so is commercially reasonable.

13. **Environmental Matters.**

(a) Mortgagor JSA represents and warrants that:

(i) It shall not allow or cause any oil or hazardous materials, hazardous substances or hazardous wastes or any other contaminant or pollutant to be released at, on, to, into or from the Property, except in accordance with applicable laws, rules and regulations and, if applicable, in accordance with the terms and conditions of a permit, certificate, license or other written approval of a governmental body;

(ii) All environmental permits, consents, licenses, certificates or approvals necessary to the operation of any activity on the Property have been obtained and are and shall be kept in full force and effect;

(iii) There are and will be no electrical transformers, capacitors, or other equipment, items or articles on or at the Property which contain polychlorinated biphenyls;

(iv) It has fully complied with all federal, state and local environmental laws, rules, regulations, orders, decrees, ordinances, and codes applicable to the use and condition of the Property; and

(v) It shall promptly notify the Mortgagee in writing of the filing of an environmental lien against the Property, the listing or proposed listing of the Property on the federal National Priorities List, the New York State Inactive Hazardous Waste Disposal Site Registry or comparable state list, or any environmental claim, notification, order, violation, action, suit, or proceeding with respect to the Property.

(b) Without prejudice to any other right, remedy or claim that the Mortgagee may have against Mortgagor JSA, Mortgagor JSA shall pay the Mortgagee an amount equivalent to the costs and expenses of any environmental audit, survey or investigation undertaken by the Mortgagee, its servants or agents prior to any foreclosure of this Mortgage.

(c) Mortgagor JSA shall indemnify, defend, and hold harmless the Mortgagee from and against all loss, liability, damage and expense, including, without limitation, costs associated with administrative and judicial proceedings, engineering, consulting and attorney's fees suffered or incurred by the Mortgagee on account of (i) Mortgagor JSA's failure to comply with any federal, state, or local environmental law, code, ordinance, rule or regulation or any interpretation or order of any regulatory or administrative authority with respect thereto, or the common law; (ii) any release or threatened release of oil or hazardous materials, hazardous substances or hazardous wastes or any other contaminant or pollutant at, on, to, or into the Property or from the Property on, to or into any adjoining property or other property ; (iii) any and all damage to natural resources or real property and/or harm or injury to any person resulting or alleged to have resulted from (A) such failure to comply with, or otherwise arising under, any federal, state, or local environmental law, code, ordinance, rule or regulation or any interpretation or order of any regulatory or administrative authority with respect thereto, or the common law, and/or (B) any release or threatened release of oil or hazardous materials, hazardous substances or hazardous wastes or any other contaminant or pollutant ; or (iv) the breach of any of the warranties and representations or the terms and conditions contained in these provisions.

(d) In the event that there shall be applied a lien against the Property pursuant to any federal, state or local law, code, ordinance, rule or regulation or under common law, pertaining to oil or hazardous materials, hazardous substances or hazardous wastes or any other contaminant or pollutant, Mortgagor JSA shall pay the claim and remove the lien from the Property no later than thirty (30) days from the date Mortgagor JSA receives notice of the lien. Notwithstanding the foregoing, in the event any governmental authority has commenced efforts to cause the Property to be sold pursuant to the lien, the Mortgagee reserves the right to demand that Mortgagor JSA pay the claim and remove the lien from the Property.

(e) In addition to the events set forth in this Mortgage allowing the Mortgagee to accelerate the loan secured by this Mortgage, the whole of the outstanding principal sum and all other sums due under the Note shall become due at the option of the Mortgagee in the event of Mortgagor's failure to keep, observe or perform any condition, requirement, or obligation set forth in these representations and warranties or in the event that any representation and warranty by the Mortgagor contains any untrue statement.

14. **Mortgagor JSA's Obligation to Comply with Company Lease, the Agency Lease and PILOT Agreement.** Mortgagor JSA shall (i) pay all other sums of money due and payable at any time and from time to time under the Company Lease, the Agency Lease and the PILOT Agreement as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Company Lease, the Agency Lease and/or PILOT Agreement for the payment of any such sum, and (ii) at all times fully perform, observe and comply with all other terms, covenants and conditions of the Company Lease, Agency Lease and

the PILOT Agreement to be performed, observed or complied with by Mortgagor JSA as lessor under the Company Lease and lessee under the Agency Lease, as applicable, and as a party to the PILOT Agreement. If the Company Lease, the Agency Lease and/or PILOT Agreement does not provide for a grace period for the payment of a sum of money, Mortgagor JSA shall make the payment on or before the date on which the payment becomes due and payable. Mortgagor JSA shall deliver evidence of the payment to Mortgagee within ten (10) days after receipt of a written request from Mortgagee for evidence of the payment.

15. **SIDA Executing at the Direction of Mortgagor JSA.** Mortgagor JSA directs SIDA to execute and deliver this Mortgage to the Mortgagee, and further agrees to indemnify SIDA (and its members, officers, directors, agents, servants and employees) for all fees and costs incurred in connection with the execution, delivery, recording, performing and enforcing of this Mortgage, including but not limited to reasonable attorney's fees.

16. **Hold Harmless Provisions.** JSA hereby releases SIDA and its members, officers, agents and employees from, agrees that SIDA and its members, officers, agents and employees shall not be liable for, and agrees to indemnify, defend, and hold SIDA and its members, officers, agents and employees harmless from and against any and all claims arising as a result of SIDA's participation in this Mortgage, including, but not limited to:

(a) Liability for loss or damage to Property or bodily injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Property, or arising by reason of or in connection with the occupation or the use thereof, or the presence on, in, or about the Property;

(b) JSA acknowledges and restates those provisions of the Agency Lease set forth in section 8.2 therein.

17. **No Recourse; Special Obligation.** The obligations and agreements of SIDA contained herein and in any SIDA Documents (as that term is defined in the Agency Lease) and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of SIDA and not of any member, officer, agent or employee of SIDA in his individual capacity; and the members, officers, agents and employees of SIDA shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of SIDA contained herein or therein shall not constitute or give rise to an obligation of the State New York or of the City of Syracuse, and neither the State of New York nor the City of Syracuse shall be liable hereon or thereon. Further, such obligations and agreements shall not constitute or give rise to a general obligation of SIDA, but rather shall constitute limited obligations of SIDA, payable solely from the revenues of SIDA derived, and to be derived from, the lease, sale, or other disposition of the Property, other than revenues derived from or constituting Unassigned Rights (as those terms are defined in the Agency Lease). No order or decree of specific performance with respect to any of the obligations of SIDA hereunder or there under shall be sought or enforced against SIDA unless:

(a) The party seeking such order or decree shall first have requested SIDA in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and SIDA shall have refused to

comply with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(b) If SIDA refuses to comply with such request and SIDA's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with SIDA an amount or undertaking sufficient to cover such reasonable fees and expenses; and

(c) If SIDA refuses to comply with such request and SIDA's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless SIDA and its members, officers, agents and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Agency, furnish to SIDA satisfactory security to protect SIDA and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

Any failure to provide notice, indemnity, or security to SIDA pursuant to this Section shall not alter the full force and effect of any Event of Default under the SIDA Lease.

(d) For purposes of this Section, JSA shall not be deemed to constitute an employee, agent or servant of SIDA or a person under SIDA's control or supervision.

18. **Right to Inspect.** The holder of this Mortgage, or its agents, shall, upon reasonable notice, have the right to inspect the Property from time to time at any reasonable hour of the day.

19. **Additional Rights of Mortgagee.** The exercise by the Mortgagee of any of its rights, remedies or options under this Mortgage shall not preclude the Mortgagee from thereafter exercising the same or any other rights, remedies and options which it may have under this Mortgage, irrespective of any previous action or proceeding taken by the Mortgagee under this Mortgage.

20. **Amendments.** This Mortgage may not be changed or terminated orally.

21. **Inurement.** The covenants contained in this Mortgage shall run with the land and bind the Mortgagors, the heirs, personal representatives, successors and assigns of the Mortgagor and all subsequent owners, encumbrancers, tenants and subtenants of the Property, and shall inure to the benefit of the Mortgagee, the personal representatives, successors and assigns of the Mortgagee and all subsequent holders of this Mortgage. The word "Mortgagor" shall be construed as if it read "Mortgagors" and the word "Mortgagee" shall be construed as if it read "Mortgagees" whenever the sense of this Mortgage so requires.

22. **Assumability.** This Mortgage is not assumable without compliance with HUD's HOME loan program regulations and the express written consent of the Mortgagee.

23. **Prepayment.** Prepayment of the debt secured by this Mortgage may only be made in accordance with the terms and conditions of the Note.

24. **Subordination.** This Mortgage shall only be subject and subordinate to:

(a) a , Mortgage, Assignment of Leases and Rents and Security Agreement dated December 22, 2011 given to New York State Housing Finance Agency by Mortgagor to secure a loan in the principal amount of \$8,775,000.00 and recorded in the Office of the Onondaga County Clerk immediately prior to this mortgage; and

(b) a Mortgage, Assignment of Leases and Rents and Security Agreement dated December 22, 2011 given to the New York State Housing Finance Agency by Mortgagor to secure a loan in the principal amount of \$850,000.00 and recorded in the Office of the Onondaga County Clerk prior to this mortgage; and

(c) Notwithstanding anything herein to the contrary, Mortgagee by accepting this Mortgage acknowledges and agrees that the rights of Mortgagee hereunder shall be subordinate to the rights of SIDA to receive payments in lieu of taxes pursuant to the PILOT Agreement dated as of December 22, 2011 by and between SIDA and JSA, and that such payments in lieu of taxes to be made by Mortgagor to SIDA shall have the same force, priority and effect as a real property tax lien under State law against the Mortgaged Property.

25. **Non-Recourse.** The obligations and liability of Mortgagor JSA for payment of principal, interest, and any charges under this Mortgage and the Note shall be enforceable solely against any property (including, without limitation, the mortgaged property), security, collateral and/or assets encumbered, pledged or assigned by Mortgagor JSA and other instruments securing the debt of the Note. Notwithstanding anything to the contrary, Mortgagor JSA, its members, partners, officers and/or directors, shall not be personally liable for the payment or satisfaction of such sums. In any action to foreclose the Mortgage, the Lender shall not enter any deficiency judgment against Mortgagor JSA.

This Mortgage has been duly executed by the Mortgagors as follows:

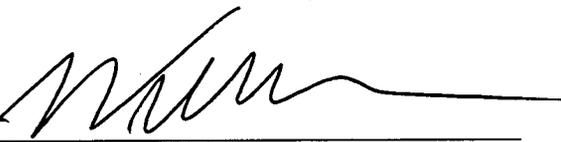
JAMES STREET APARTMENTS, LLC

By: James Street Managing Member, LLC

By: Conifer Realty, LLC

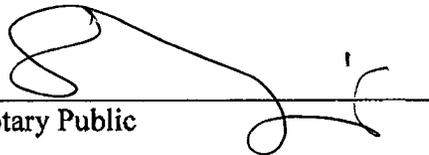
By:  \_\_\_\_\_  
Andrew I. Crossed,  
Executive Vice President

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

By:  \_\_\_\_\_  
William Ryan  
Chairman

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) ss.:

On this 10<sup>th</sup> day of December, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared Andrew I. Crossed, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

S. STURMAN JENNINGS  
Notary Public, State of New York  
No. 02JE6096835  
Qualified in Monroe County  
Commission Expires August 11, 2015

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) ss.:

On this 5<sup>th</sup> day of December, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared William Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 2014

**SCHEDULE "A"**

PARCEL ONE (615 James Street, Syracuse, NY, TA#017.00-19-05)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Number 1 of Block Number 31 in said City, bounded and described as follows:

BEGINNING AT A POINT, said point being North 55 degrees 44 minutes 50 seconds East a distance of 116.20" from the intersection of the northerly line of James Street with the easterly line of McBride Street.

THENCE North 30 degrees 29 minutes 10 seconds West for a distance of 264.27 feet to a point on the southerly line of East Willow Street;

THENCE North 55 degrees 44 minutes 50 seconds East for a distance of 83.80 feet along the southerly line of East Willow Street to a point;

THENCE South 30 degrees 29 minutes 10 seconds East for a distance of 264.27 feet to a point on the northerly line of James Street;

THENCE South 55 degrees 44 minutes 50 seconds West for a distance of 83.80 feet TO THE POINT AND PLACE OF BEGINNING.

and

PARCEL TWO (622 James Street, Syracuse, NY, TA#103.00-05-04)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Block 33 in said City, bounded and described as follows, viz:

BEGINNING at a point in the southeasterly line of James Street 188 feet northeasterly along said street line from the northeasterly line of N. McBride Street;

thence along said southeasterly line of James Street N. 55° 44' 50" E., 74.53 feet to a point;

thence S. 30° 45' 40" E., 125.00 feet to a point;

thence S. 55° 44' 50" W., 19.00 feet to a point;

thence S. 30° 45' 40" E., 92.76 feet to a point;

thence N. 59° 14' 20" E., 66.00 feet to a point;

thence S. 30° 45' 40" E., 104.09 feet to a point;

thence S. 59° 14' 20" W., 90.73 feet to a point;

thence N. 34° 07' 00" W., 179.73 feet to a point;

thence S. 55° 44' 50" W., 12.00 feet to a point;

thence N. 34° 07' 00" W., 140.00 feet to the point and place of beginning.

TOGETHER WITH the benefits, in common with others, over a 15 foot right of way known as Wilkinson Avenue running westerly to N. McBride Street as recited in deeds at Liber 276, page 39, Liber 924, page 275 and Liber 2443, page 599.

## PLEDGE AND ASSIGNMENT (MORTGAGE 3)

All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Table of Definitions attached to the Agency Lease as Exhibit "C".

This Pledge and Assignment (the "**Assignment**"), dated as of December 22, 2011, is from the City of Syracuse Industrial Development Agency, a public benefit corporation duly organized and existing under the laws of the State of New York, having its principal office at 333 West Washington Street, Suite 130, Syracuse, New York 13202 (the "**Agency**") to the City of Syracuse (together with its successors and assigns, "**Mortgagee 3**"), a municipal corporation organized and existing pursuant to New York State Law, and acting through its Department of Neighborhood and Business Development, having an office at City Hall Commons, 233 East Washington Street, Syracuse, New York 13202, as the beneficiary of a Mortgage and Security Agreement dated December 22, 2011 ("**Mortgage 3**") from James Street Apartments, LLC (the "**Company**") and the Agency to Mortgagee 3 to secure Mortgagee 3's loan of \$2,000,000 ("**Mortgage 3**") to the Company.

For value received, the receipt of which is hereby acknowledged, the Agency hereby pledges, assigns, transfers and sets over to Mortgagee 3 a security interest in its right to receive any and all moneys due or to become due and any and all other rights and remedies of the Agency under or arising out of the Agency Lease Agreement dated as of December 22, 2011 (the "**Agency Lease**"), by and between the Agency and the Company (except for the rights of the Agency, and moneys payable, pursuant to the Unassigned Rights, as defined in the Agency Lease) covering the improved real property, more fully described on **Exhibit "A"** attached hereto and the Equipment installed therein; provided, however, that the assignment made hereby shall not permit the amendment of the Agency Lease without the consent of the Agency, which consent shall not be unreasonably withheld.

Mortgagee 3 shall have no obligation, duty or liability under the Agency Lease, nor shall Mortgagee 3 be required or obligated in any manner to fulfill or perform any obligation, covenant, term or condition of the Agency thereunder or to take any other action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled hereunder at any time or times.

The Agency hereby irrevocably constitutes and appoints Mortgagee 3 its true and lawful attorney, with power of substitution for the Agency and in the name of the Agency or in the name of Mortgagee 3 or otherwise, for the use and benefit of Mortgagee 3 as holder of Mortgage 3 and all other loan documents, to ask, demand, require, receive, collect, compound and give discharges and releases of all claims for any and all moneys due or to become due under or arising out of the Agency Lease (except for moneys due or to become due pursuant to the

Unassigned Rights) and to endorse any checks and other instruments or orders in connection therewith.

The Agency further agrees that at any time and from time to time, upon the written request of Mortgagee 3, the Agency will promptly and duly execute and deliver any and all such further instruments and documents as Mortgagee 3 may deem desirable in order to obtain the full benefits of this Assignment and all rights and powers herein granted.

The Agency hereby ratifies and confirms the Agency Lease and does hereby warrant and represent (a) that the Agency Lease is in full force and effect, (b) that the Agency is not in default under the Agency Lease, and (c) that the Agency has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as this Assignment shall remain in effect, the whole or any part of the moneys, rights or remedies hereby assigned to anyone other than Mortgagee 3, except that the parties hereto acknowledge that the Agency has executed one or more similar Pledge and Assignments in favor of New York State Housing Finance Agency subject to the priority of this Assignment and Mortgage 1 pursuant to a certain Subordination Agreement dated as of December 22, 2011 by and among the Company, the Agency, New York State Housing Finance Agency, first Niagara Bank, N.A. and Mortgagee 3.

All moneys due and to become due under Mortgage 3 to Mortgagee 3 under or pursuant to the Agency Lease in accordance with this Assignment shall be paid directly to Mortgagee 3 at City of Syracuse, c/o Department of Neighborhood and Business Development, City Hall Commons, 233 East Washington Street, New York 13202 or at such other address as Mortgagee 3 may designate to the Company in writing from time to time.

If the Company shall pay or cause to be paid, or there shall be paid, to Mortgagee 3 or its successors and assigns, the outstanding principal balance and all amounts secured by Mortgage 3, including any applicable prepayment premiums, and all other sums due or to become due pursuant to the Agency Lease, Mortgage 3, or this Assignment, then this Assignment and the estate and rights created hereby shall cease, terminate and be void, and thereupon Mortgagee 3 shall cancel and discharge the lien of this Assignment and execute and deliver to the Agency, and record or file, if necessary, such instruments in writing as shall be requisite to release the lien hereof, and shall reconvey, release, assign and deliver unto the Agency the estate, right, title and interest in and to any and all property conveyed, sold, transferred, assigned or pledged to Mortgagee 3, or otherwise subject to the lien of this Assignment.

This Assignment shall be binding upon the Agency and its successors and assigns and shall inure to the benefit of Mortgagee 3 and its successors and assigns.

All covenants, stipulations, promises, agreements and obligations (collectively, the "**Obligations**") of the Agency contained in this Assignment, in Mortgage 3, in the Agency Lease and in any other Agency Documents shall be deemed to be the Obligations of the Agency and not of any member, officer, servant or employee of the Agency (collectively, the "**Employee of the Agency**") in his individual capacity, and no recourse under or upon any Obligation contained

therein or otherwise based upon or in respect to this Assignment or the Agency Lease, or for any claim based thereon or otherwise in respect hereof or thereof, shall be had against any past, present or future Employee of the Agency, as such, or of any successor public benefit corporation or political subdivision or any person executing any of the Agency Documents on behalf of the Agency either directly through the Agency or successor public benefit corporation or political subdivision or any person so executing any of such Agency Documents, it being expressly understood that the Agency Documents, are solely corporate obligations, and that no such personal liability whatsoever shall attach to, or is or shall be incurred by any such Employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing the Agency Documents because of the creation of the indebtedness thereby authorized, or under or by reason of the Obligations, contained in the Agency Documents or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every Employee of the Agency because of the creation of the indebtedness thereby authorized by the Agency Documents, or under or by reason of the Obligations contained in any of the Agency Documents or implied therefrom, are to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of the Agency Documents.

The Obligations and agreements of the Agency contained therein shall not constitute or give rise to an obligation of the State of New York or the City of Syracuse, New York, and neither the State of New York nor the City of Syracuse, New York shall be liable thereon, and further such Obligations shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the sublease of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

Notwithstanding any provision of this Assignment to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (a) the Agency shall have been requested to do so in writing by the Company or Mortgagee 3 and (b) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any member, officer, agent, servant or employee of the Agency) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity satisfactory to the Agency for protection against all such liability and for the reimbursements of all such fees, expenses and other costs.

No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (A) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (B) if the Agency refused to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will

incur fees and expenses, the Company shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (C) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless and defend the Agency and its members, officers, agents and employees against such liability incurred as a result of its compliance with such demand, and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request. Upon the termination of the Agency Lease on October 2, 2027 or such earlier date as set forth in the Agency Lease, the provisions of this Assignment shall terminate and no longer be in force and effect.

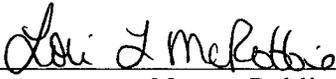
IN WITNESS WHEREOF, the Agency has duly executed this Assignment as of December 1, 2011.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

STATE OF NEW YORK            )  
  ) SS:  
COUNTY OF ONONDAGA        )

On the 5<sup>th</sup> day of December, in the year 2011, before me, the undersigned personally appeared **WILLIAM M. RYAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 2014



**ACKNOWLEDGEMENT BY JAMES STREET APARTMENTS, LLC  
OF THE PLEDGE AND ASSIGNMENT OF CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT AGENCY'S  
RIGHTS UNDER THE AGENCY LEASE**

James Street Apartments, LLC (the "*Company*") hereby acknowledges receipt of notice of the assignment by the City of Syracuse Industrial Development Agency (the "*Agency*") of certain of its rights and remedies under that certain Agency Lease Agreement dated as of December 22, 2011 (the "*Agency Lease*"), by and between the Agency as sublessor, and the Company, as subtenant, including the right to collect and receive all amounts payable by the Company thereunder, except certain moneys payable for the account of the Agency pursuant to the Unassigned Rights as defined in the Agency Lease. The Company, intending to be legally bound, hereby agrees with Mortgagee 3 (as defined in the Assignment) to (1) pay directly to Mortgagee 3 all sums due and to become due to Mortgagee 3 from the Company under Mortgage 3, except certain moneys payable for the account of the Agency pursuant to the Unassigned Rights, and (2) perform for the benefit of Mortgagee 3 all of the duties and undertakings of the Company under the Agency Lease, except moneys payable for the account of the Agency pursuant to the Unassigned Rights; provided that Mortgagee 3 shall not be obligated to perform, or be responsible for the performance of, any of the duties, undertakings, or obligations of the Agency under the Agency Lease.

The Company hereby consents to and approves of the provisions contained in the Agency Lease and, in particular, acknowledges the restrictions imposed on the Agency prohibiting, among other things, sale, transfer, or assignment by the Agency of any interest in the Project Facility, or any part thereof.

**IN WITNESS WHEREOF**, the Company has caused this Acknowledgement to be executed in its name by its duly authorized representative, dated as of the December 22, 2011.

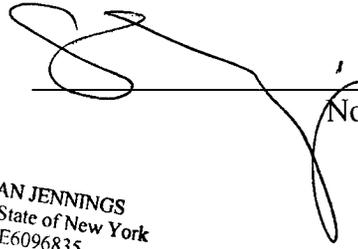
**JAMES STREET APARTMENTS, LLC**

By: James Street Managing Member, LLC  
By: Conifer Realty, LLC

By:   
\_\_\_\_\_  
Andrew I. Crossed  
Executive Vice President

STATE OF NEW YORK            )  
  ) SS:  
COUNTY OF ONONDAGA        )

On the 6<sup>TH</sup> day of December, in the year 2011, before me, the undersigned, personally appeared **ANDREW I. CROSSED**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

S. STURMAN JENNINGS  
Notary Public, State of New York  
No. 021E6096835  
Qualified in Monroe County  
Commission Expires August 11, 2015

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

## LEGAL DESCRIPTION

PARCEL ONE (615 James Street, Syracuse, NY, TA#017.00-19-05)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Number 1 of Block Number 31 in said City, bounded and described as follows:

BEGINNING AT A POINT, said point being North 55 degrees 44 minutes 50 seconds East a distance of 116.20" from the intersection of the northerly line of James Street with the easterly line of McBride Street.

THENCE North 30 degrees 29 minutes 10 seconds West for a distance of 264.27 feet to a point on the southerly line of East Willow Street;

THENCE North 55 degrees 44 minutes 50 seconds East for a distance of 83.80 feet along the southerly line of East Willow Street to a point;

THENCE South 30 degrees 29 minutes 10 seconds East for a distance of 264.27 feet to a point on the northerly line of James Street;

THENCE South 55 degrees 44 minutes 50 seconds West for a distance of 83.80 feet TO THE POINT AND PLACE OF BEGINNING.

and

PARCEL TWO (622 James Street, Syracuse, NY, TA#103.00-05-04)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Block 33 in said City, bounded and described as follows, viz:

BEGINNING at a point in the southeasterly line of James Street 188 feet northeasterly along said street line from the northeasterly line of N. McBride Street;

thence along said southeasterly line of James Street N. 55° 44' 50" E., 74.53 feet to a point;

thence S. 30° 45' 40" E., 125.00 feet to a point;

thence S. 55° 44' 50" W., 19.00 feet to a point;

thence S. 30° 45' 40" E., 92.76 feet to a point;

thence N. 59° 14' 20" E., 66.00 feet to a point;

thence S. 30° 45' 40" E., 104.09 feet to a point;

thence S. 59° 14' 20" W., 90.73 feet to a point;

thence N. 34° 07' 00" W., 179.73 feet to a point;

thence S. 55° 44' 50" W., 12.00 feet to a point;

thence N. 34° 07' 00" W., 140.00 feet to the point and place of beginning.

TOGETHER WITH the benefits, in common with others, over a 15 foot right of way known as Wilkinson Avenue running westerly to N. McBride Street as recited in deeds at Liber 276, page 39, Liber 924, page 275 and Liber 2443, page 599.

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional) <b>Remy Bernardo, Esq. (212)872-0369</b>
B. SEND ACKNOWLEDGMENT TO: (Name and Address)  <b>Yvonne Zavatto, Legal Dept. New York State Housing Finance Agency 641 Lexington Avenue - 5th Fl. New York, New York 10022</b>

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names**

1a. ORGANIZATION'S NAME <b>James Street Apartments, LLC</b>						
OR	1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
1c. MAILING ADDRESS <b>c/o Conifer Realty, LLC 183 East Main Street, 6th Fl</b>			CITY <b>Rochester</b>	STATE <b>NY</b>	POSTAL CODE <b>14604</b>	COUNTRY <b>USA</b>
1d. SEE INSTRUCTIONS <b>Not Applicable</b>	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION <b>Limited Liability Com</b>	1f. JURISDICTION OF ORGANIZATION <b>New York</b>	1g. ORGANIZATIONAL ID #, if any <input checked="" type="checkbox"/> NONE		

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names**

2a. ORGANIZATION'S NAME <b>City of Syracuse Industrial Development Agency</b>						
OR	2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
2c. MAILING ADDRESS <b>333 West Washington Street, Suite 130</b>			CITY <b>Syracuse</b>	STATE <b>NY</b>	POSTAL CODE <b>13202</b>	COUNTRY <b>USA</b>
2d. SEE INSTRUCTIONS <b>Not Applicable</b>	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION <b>Corporate Gov Agency</b>	2f. JURISDICTION OF ORGANIZATION <b>New York</b>	2g. ORGANIZATIONAL ID #, if any <input checked="" type="checkbox"/> NONE		

**3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)**

3a. ORGANIZATION'S NAME <b>New York State Housing Finance Agency</b>						
OR	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
3c. MAILING ADDRESS <b>641 Lexington Avenue</b>			CITY <b>New York</b>	STATE <b>NY</b>	POSTAL CODE <b>10022</b>	COUNTRY <b>USA</b>

**4. This FINANCING STATEMENT covers the following collateral:**

The assets and collateral described on "Schedule A" attached hereto and made a part hereof now owned or hereafter acquired. Also attached hereto and made a part hereof is a UCC Financing Statement Addendum, which indicates on line 18 that the initial financing statement set forth herein is in connection with a public-finance transaction (effective 30 years).

5. ALTERNATIVE DESIGNATION (if applicable):	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)	7. Check to REQUEST SEARCH REPORT (S) on Debtor(S) (optional)	8. OPTIONAL FILER REFERENCE DATA	9. All Debtors	Debtor 1	Debtor 2	

**James Street Apartments (HFA Mortgage dated 12/22/11) / File with New York Secretary of State / 6 pages**

**UCC FINANCING STATEMENT ADDENDUM**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

**9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT**

9a. ORGANIZATION'S NAME		
OR <b>James Street Apartments, LLC</b>		
9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names**

11a. ORGANIZATION'S NAME				
OR <b>City of Syracuse Industrial Development Agency</b>				
11b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
11c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
<b>333 West Washington Street, Suite 130</b>		<b>Syracuse</b>	<b>NY</b>	<b>13202</b>
11d. SEE INSTRUCTIONS		11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID #, if any
Not Applicable		<b>Corporate Gov Agency</b>	<b>New York</b>	<input type="checkbox"/> NONE

**12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)**

12a. ORGANIZATION'S NAME				
OR				
12b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
12c. MAILING ADDRESS				
CITY		STATE	POSTAL CODE	COUNTRY

13. This FINANCING STATEMENT covers  timber to be cut or  as-extracted collateral, or is filed as a  fixture filing.

14. Description of real estate:

**Premises: 615 and 622 James Street  
City of Syracuse  
Onondaga County, New York**

**Section/Block/ Lot: 017.00-19-05  
103.00-05-04**

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

**See "Schedule A" attached hereto and made a part of hereof.**

**Project: James Street Apartments  
HFA First Mortgage of 12/22/11**

17. Check only if applicable and check only one box.

Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

18. Check only if applicable and check only one box.

Debtor is a TRANSMITTING UTILITY

Filed in connection with a Manufactured-Home Transaction — effective 30 years

Filed in connection with a Public-Finance Transaction — effective 30 years

**UCC Debtor:** James Street Apartments, LLC., a New York limited liability company having an office at c/o Conifer Realty, LLC, 183 East Main Street, Rochester, New York 14604 ("Beneficial Mortgagor");

**Additional Debtor:** City of Syracuse Industrial Development Agency, a New York corporate governmental agency, having an office at 333 West Washington Street, Suite 130, Syracuse, New York 14604 ("Nominal Mortgagor");

**Secured Party:** New York State Housing Finance Agency, a corporate governmental Agency created pursuant to Article III of the New York State Private Housing Finance Law ("PHFL") and constituting a public benefit corporation, having an address at 641 Lexington Avenue, New York, NY 10022 ("Mortgagee" or "Lender" or "Agency")

**Project Name:** James Street Apartments  
**Premises:** 615 and 622 James Street, City of Syracuse, Onondaga County, New York.

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### SCHEDULE "A"

Page 1 of 4

Unless otherwise defined in this Schedule "A", all capitalized terms herein shall have the respective meanings given to such terms in a certain **Mortgage, Assignment of Leases and Rents and Security Agreement** effective as of **December 22, 2011**, by and among the Beneficial Mortgagor and the Nominal Mortgagor (collectively, the "**Mortgagor**") and the Mortgagee ("**Lender**"), whereby in order to secure Mortgagor's covenants and obligations of said Mortgage, Mortgagor mortgages to the Mortgagee all of Mortgagor's present and future right, title and interest in and to the following UCC Collateral property (collectively, the "**Mortgaged Property**" or "**Collateral**");

- I. The fee title of the Beneficial Mortgagor in and to the Premises and the leasehold and sub-leasehold interests of the Nominal Mortgagor and Beneficial Mortgagor under the Lease Agreements in and to the Premises and all easements, rights, privileges, hereditaments and appurtenances related thereto;
- II. All of the Beneficial Mortgagor's and the Nominal Mortgagor's right, title and interest in and to (i) all buildings, structures, improvements and additions now erected or hereafter constructed or placed upon the Premises or any part thereof (collectively, the "**Buildings**"); (ii) all building materials, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by the Beneficial Mortgagor for the purpose of being used or useful in connection with the construction, renovation and equipping of the Improvements (as defined hereinbelow), whether such materials, equipments, fixtures and fittings are actually located on or adjacent to the Premises or not, and whether in storage or otherwise, wheresoever the same may be located (collectively, the "**Building Materials**"); and (iii) all machinery, devices, fixtures, apparatus, interior improvements, appurtenances, and equipment of every kind and nature whatsoever now or hereafter attached to, placed in or upon the Premises or the Improvements, or any part thereof, or used or procured for the use in connection with the operation or maintenance of the Premises or any business conducted thereon (hereinafter collectively called "**Building Service Equipment**"; together with the Buildings and Building Materials, the "**Improvements**");

**UCC Debtor:** James Street Apartments, LLC., a New York limited liability company having an office at c/o Conifer Realty, LLC, 183 East Main Street, Rochester, New York 14604 ("Beneficial Mortgagor");

**Additional Debtor:** City of Syracuse Industrial Development Agency, a New York corporate governmental agency, having an office at 333 West Washington Street, Suite 130, Syracuse, New York 14604 ("Nominal Mortgagor");

**Secured Party:** New York State Housing Finance Agency, a corporate governmental Agency created pursuant to Article III of the New York State Private Housing Finance Law ("PHFL") and constituting a public benefit corporation, having an address at 641 Lexington Avenue, New York, NY 10022 ("Mortgagee" or "Lender" or "Agency")

**Project Name:** James Street Apartments  
**Premises:** 615 and 622 James Street, City of Syracuse, Onondaga County, New York.

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**SCHEDULE "A"**

Page 4 of 4

- XII. All property tax abatements and credits relating to any of the foregoing and all rights to refunds of real estate taxes and assessments with respect to the Premises; and
- XIII. All proceeds of federal low income housing tax credits under Section 42 of the Internal Revenue Code, to the extent assignable; and
- XIV. All rights and interests of the Nominal Mortgagor, if any, and the Beneficial Mortgagor pursuant to the Lease Agreements and any right, title or interest to damages arising out of or for breach or default in respect of any such agreements;
- XIV. All tangible personal property now or hereafter located at or intended to be used in connection with the construction and rehabilitation, use, operation or maintenance of the Improvements, including without limitation building materials, equipment, trade fixtures, furniture, furnishings and decorations (the "Tangible Personal Property");
- XV. Commercial tort claims related to the Premises, the Improvements or the Tangible Personal Property; promissory notes, letters of credit, electronic chattel paper, proceeds from accounts, payment intangibles, and general intangibles related to the Premises, as the terms "accounts", "general intangibles", and "payment intangibles" are defined in the applicable Uniform Commercial Code Article 9, as the same may be modified from time to time;
- XVI. All other assets of the Beneficial Mortgagor and the Nominal Mortgagor related in any way to the Premises, subject to certain limitations that may be set forth herein.

**UCC Debtor:** James Street Apartments, LLC., a New York limited liability company having an office at c/o Conifer Realty, LLC, 183 East Main Street, Rochester, New York 14604 ("Beneficial Mortgagor");

**Additional Debtor:** City of Syracuse Industrial Development Agency, a New York corporate governmental agency, having an office at 333 West Washington Street, Suite 130, Syracuse, New York 14604 ("Nominal Mortgagor");

**Secured Party:** New York State Housing Finance Agency, a corporate governmental Agency created pursuant to Article III of the New York State Private Housing Finance Law ("PHFL") and constituting a public benefit corporation, having an address at 641 Lexington Avenue, New York, NY 10022 ("Mortgagee" or "Lender" or "Agency")

**Project Name:** James Street Apartments  
**Premises:** 615 and 622 James Street, City of Syracuse, Onondaga County, New York.

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**SCHEDULE "A"**

Page 2 of 4

- III. All right, title and interest of the Beneficial Mortgagor and the Nominal Mortgagor in and to all equipment, appliances, furniture, furnishings, decorations, chattels and other personal property now or hereafter in or at the Premises or acquired in whole or in part or the cost of which is reimbursed to the Beneficial Mortgagor in whole or in part (all of the foregoing hereinafter collectively called "Furnishings");
- IV. All royalties, mineral, oil and gas rights and profits, riparian rights, water, water rights and water stock located on or used in connection with the Premises or the Improvements, whether existing now or hereafter acquired;
- V. All right, title and interest of the Beneficial Mortgagor and the Nominal Mortgagor in and to all policies of property insurance insuring the Premises and Improvements including unearned premiums with respect thereto or other proceeds for damage done to the Mortgaged Property and all awards heretofore made or hereafter to be made to or for the account of the Beneficial Mortgagor for the permanent or temporary taking by eminent domain of the whole or any part of the Mortgaged Property, or any lesser estate in, or easement appurtenant to the Mortgaged Property, all of which proceeds and awards are hereby assigned to the Mortgagee, subject to the further provisions of this Mortgage;
- VI. All of the rents, issues, benefits and profits of the Mortgaged Property (collectively the "Rents"), including, all leases, subleases, occupancy agreements, licenses, franchises and appurtenances now or hereafter entered into covering any part of the Mortgaged Property, including all interest of the Beneficial Mortgagor and the Nominal Mortgagor in and to any of the same and all security deposits held by the Beneficial Mortgagor and the Nominal Mortgagor all of which are hereby assigned to the Mortgagee;
- VII. All right, title and interest of every nature of the Beneficial Mortgagor and the Nominal Mortgagor in all moneys deposited or to be deposited in any funds or accounts maintained or deposited with Mortgagee or its assigns, including, without

**UCC Debtor:** James Street Apartments, LLC., a New York limited liability company having an office at c/o Conifer Realty, LLC, 183 East Main Street, Rochester, New York 14604 ("Beneficial Mortgagor");

**Additional Debtor:** City of Syracuse Industrial Development Agency, a New York corporate governmental agency, having an office at 333 West Washington Street, Suite 130, Syracuse, New York 14604 ("Nominal Mortgagor");

**Secured Party:** New York State Housing Finance Agency, a corporate governmental Agency created pursuant to Article III of the New York State Private Housing Finance Law ("PHFL") and constituting a public benefit corporation, having an address at 641 Lexington Avenue, New York, NY 10022 ("Mortgagee" or "Lender" or "Agency")

**Project Name:** James Street Apartments

**Premises:** 615 and 622 James Street, City of Syracuse, Onondaga County, New York.

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### SCHEDULE "A"

Page 3 of 4

limitation, the Escrow Fund and the Replacement Reserve Account (as said terms are defined in this Mortgage);

- VIII. The right in the name and on behalf of the Beneficial Mortgagor and the Nominal Mortgagor to appear in and defend any action or proceeding brought with respect to the Mortgaged Property, subject to the further provisions of this Mortgage, and to commence any action or proceeding to protect the interest of the Mortgagee with respect thereto;
- IX. All extensions, additions, renewals and replacements, substitutions and accessions with respect to any of the foregoing;
- X. All right, title and interest of the Beneficial Mortgagor and the Nominal Mortgagor, if any, in (i) all agreements between the Beneficial Mortgagor and the Nominal Mortgagor, their respective agents and contractors, and subcontractors, suppliers, materialmen, architects and engineers, whether now or hereafter in effect, providing for the construction or installation of the Improvements (including, without limitation, on any damages arising out of or for breach or default in respect of any such agreement, all other amounts from time to time paid or payable under or in connection with any such agreement and the right of the Beneficial Mortgagor to amend, modify, supplement or terminate any such agreement or to perform and to exercise all remedies thereunder), (ii) all consents, licenses and building permits required for renovation, construction, completion, occupancy and operation of the Improvements and Premises in accordance with all applicable requirements of law, and (iii) all plans and specifications for the construction of the Improvements;
- XI. All proceeds, both cash and non-cash, of the foregoing or conversion of the foregoing;

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional] Remy Bernardo, Esq. (212)872-0369	
B. SEND ACKNOWLEDGMENT TO: (Name and Address)  Yvonne Zavatto, Legal Dept. New York State Housing Finance Agency 641 Lexington Avenue - 5th Fl. New York, New York 10022	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME <b>James Street Apartments, LLC</b>					
OR	1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
1c. MAILING ADDRESS <b>c/o Conifer Realty, LLC 183 East Main Street, 6th Fl</b>		CITY <b>Rochester</b>	STATE <b>NY</b>	POSTAL CODE <b>14604</b>	COUNTRY <b>USA</b>
1d. SEE INSTRUCTIONS Not Applicable	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION <b>Limited Liability Com</b>	1f. JURISDICTION OF ORGANIZATION <b>New York</b>	1g. ORGANIZATIONAL ID #, if any	<input checked="" type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME <b>City of Syracuse Industrial Development Agency</b>					
OR	2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
2c. MAILING ADDRESS <b>333 West Washington Street, Suite 130</b>		CITY <b>Syracuse</b>	STATE <b>NY</b>	POSTAL CODE <b>13202</b>	COUNTRY <b>USA</b>
2d. SEE INSTRUCTIONS Not Applicable	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION <b>Corporate Gov Agency</b>	2f. JURISDICTION OF ORGANIZATION <b>New York</b>	2g. ORGANIZATIONAL ID #, if any	<input checked="" type="checkbox"/> NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME <b>New York State Housing Finance Agency</b>					
OR	3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
3c. MAILING ADDRESS <b>641 Lexington Avenue</b>		CITY <b>New York</b>	STATE <b>NY</b>	POSTAL CODE <b>10022</b>	COUNTRY <b>USA</b>

4. This FINANCING STATEMENT covers the following collateral:

The assets and collateral described on "Schedule A" attached hereto and made a part hereof now owned or hereafter acquired. Also attached hereto and made a part hereof is a UCC Financing Statement Addendum, which indicates on line 18 that the initial financing statement set forth herein is in connection with a public-finance transaction (effective 30 years).

5. ALTERNATIVE DESIGNATION (if applicable):	<input type="checkbox"/> LESSEE/LESSOR	<input type="checkbox"/> CONSIGNEE/CONSIGNOR	<input type="checkbox"/> BAILEE/BAILOR	<input type="checkbox"/> SELLER/BUYER	<input type="checkbox"/> AG. LIEN	<input type="checkbox"/> NON-UCC FILING
6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed (or record) in the REAL ESTATE RECORDS. Attach Addendum	<input type="checkbox"/> (or recorded) in the REAL ESTATE RECORDS. Attach Addendum	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional)	<input type="checkbox"/> (if applicable)	<input type="checkbox"/> (ADDITIONAL FEE)	<input type="checkbox"/> All Debtors	<input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2
8. OPTIONAL FILER REFERENCE DATA						

**James Street Apartments (HFA Fee and Leaschold Subsidy Mortgage dated 12/22/11/) / File with New York Secretary of Stat**

**UCC Debtor:** James Street Apartments, LLC., a New York limited liability company having an office at c/o Conifer Realty, LLC, 183 East Main Street, Rochester, New York 14604 ("Mortgagor");

**Additional Debtor:** City of Syracuse Industrial Development Agency, a New York corporate governmental agency, having an office at 333 West Washington Street, Suite 130, Syracuse, New York 14604 ("SIDA");

**Secured Party:** New York State Housing Finance Agency, a corporate governmental Agency created pursuant to Article III of the New York State Private Housing Finance Law ("PHFL") and constituting a public benefit corporation, having an address at 641 Lexington Avenue, New York, NY 10022 ("Mortgagee" or "Lender" or "Agency")

**Project Name:** James Street Apartments  
**Premises:** 615 and 622 James Street, City of Syracuse, Onondaga County, New York.

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### SCHEDULE "A"

Page 1 of 4

Unless otherwise defined in this Schedule "A", all capitalized terms herein shall have the respective meanings given to such terms in a certain **Fee and Leasehold Subsidy Mortgage** effective as of **December 22, 2011**, by and among the Mortgagor and the SIDA (collectively, the "**Mortgagor**") and the Mortgagee ("**Lender**"), whereby in order to secure Mortgagor's covenants and obligations of said Mortgage, Mortgagor mortgages to the Mortgagee all of Mortgagor's present and future right, title and interest in and to the following excepting therefrom SIDA's Unassigned Rights (as that term is defined in the Lease Agreements) (collectively, the "**Mortgaged Property**" or "**Collateral**"):

- I. The fee title of the Mortgagor in and to the Premises and the leasehold and sub-leasehold interests of the SIDA and Mortgagor under the Lease Agreements in and to the Premises;
- II. All of the Mortgagor's and SIDA's right, title and interest in and to (i) all buildings, structures, improvements and additions now erected or hereafter constructed or placed upon the Premises or any part thereof (collectively, the "**Buildings**"); (ii) all building materials, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by SIDA and Mortgagor for the purpose of being used or useful in connection with the construction, rehabilitation and equipping of the Improvements (as defined hereinbelow), whether such materials, equipments, fixtures and fittings are actually located on or adjacent to the Premises or not, and whether in storage or otherwise, wheresoever the same may be located (collectively, the "**Building Materials**"); and (iii) all machinery, devices, fixtures, apparatus, interior improvements, appurtenances, and equipment of every kind and nature whatsoever now or hereafter attached to, placed in or upon the Premises or the Improvements, or any part thereof, or used or procured for the use in connection with the operation or maintenance of the Premises or any business conducted thereon (hereinafter collectively called "**Building Service Equipment**"; together with the Buildings and Building Materials, the "**Improvements**");
- III. All right, title and interest of the SIDA and Mortgagor in and to all equipment, appliances, furniture, furnishings, decorations, chattels and other personal property

**UCC Debtor:** **James Street Apartments, LLC.**, a New York limited liability company having an office at c/o Conifer Realty, LLC, 183 East Main Street, Rochester, New York 14604 ("Mortgagor");

**Additional Debtor:** **City of Syracuse Industrial Development Agency**, a New York corporate governmental agency, having an office at 333 West Washington Street, Suite 130, Syracuse, New York 14604 ("SIDA");

**Secured Party:** **New York State Housing Finance Agency**, a corporate governmental Agency created pursuant to Article III of the New York State Private Housing Finance Law ("PHFL") and constituting a public benefit corporation, having an address at 641 Lexington Avenue, New York, NY 10022 ("Mortgagee" or "Lender" or "Agency")

**Project Name:** **James Street Apartments**

**Premises:** **615 and 622 James Street, City of Syracuse, Onondaga County, New York.**

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### SCHEDULE "A"

Page 2 of 4

now or hereafter in or at the Premises or acquired in whole or in part or the cost of which is reimbursed to the Mortgagor in whole or in part (all of the foregoing hereinafter collectively called "Furnishings");

- IV. All royalties, mineral, oil and gas rights and profits, riparian rights, water, water rights and water stock located on or used in connection with the Premises or the Improvements, whether existing now or hereafter acquired;
- V. All right, title and interest of the SIDA and Mortgagor in and to all policies of property insurance insuring the Premises and Improvements including unearned premiums with respect thereto or other proceeds for damage done to the Mortgaged Property and all awards heretofore made or hereafter to be made to or for the account of the SIDA and Mortgagor for the permanent or temporary taking by eminent domain of the whole or any part of the Mortgaged Property, or any lesser estate in, or easement appurtenant to the Mortgaged Property, all of which proceeds and awards are hereby assigned to the Mortgagee, subject to the further provisions of this Mortgage;
- VI. All of the rents, issues, benefits and profits of the Mortgaged Property (collectively the "Rents"), including, all leases, subleases, occupancy agreements, licenses, franchises and appurtenances now or hereafter entered into covering any part of the Mortgaged Property, including all interest of the SIDA and Mortgagor as landlord in and to any of the same and all security deposits held by the SIDA and Mortgagor, all of which are hereby assigned to the Mortgagee;
- VII. All right, title and interest of every nature of the Mortgagor in all moneys deposited or to be deposited in any funds or accounts maintained or deposited with Mortgagee, or its assigns, in connection herewith;

**UCC Debtor:** James Street Apartments, LLC, a New York limited liability company having an office at c/o Conifer Realty, LLC, 183 East Main Street, Rochester, New York 14604 ("Mortgagor");

**Additional Debtor:** City of Syracuse Industrial Development Agency, a New York corporate governmental agency, having an office at 333 West Washington Street, Suite 130, Syracuse, New York 14604 ("SIDA");

**Secured Party:** New York State Housing Finance Agency, a corporate governmental Agency created pursuant to Article III of the New York State Private Housing Finance Law ("PHFL") and constituting a public benefit corporation, having an address at 641 Lexington Avenue, New York, NY 10022 ("Mortgagee" or "Lender" or "Agency")

**Project Name:** James Street Apartments  
**Premises:** 615 and 622 James Street, City of Syracuse, Onondaga County, New York.

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**SCHEDULE "A"**

Page 3 of 4

- VIII. The right in the name and on behalf of Mortgagor to appear in and defend any action or proceeding brought with respect to the Mortgaged Property, subject to the further provisions of this Mortgage, and to commence any action or proceeding to protect the interest of the Mortgagee with respect thereto;
- IX. All extensions, additions, renewals and replacements, substitutions and accessions with respect to any of the foregoing;
- X. All right, title and interest of the SIDA, if any, and Mortgagor in (i) all agreements between the SIDA and/or Mortgagor and its agents and contractors, and subcontractors, suppliers, materialmen, architects and engineers, whether now or hereafter in effect, providing for the construction, rehabilitation or installation of the Improvements (including, without limitation, on any damages arising out of or for breach or default in respect of any such agreement, all other amounts from time to time paid or payable under or in connection with any such agreement and the right of the SIDA and Mortgagor to amend, modify, supplement or terminate any such agreement or to perform and to exercise all remedies thereunder), (ii) all consents, licenses and building permits required for construction, rehabilitation, completion, occupancy and operation of the Improvements and Premises in accordance with all applicable requirements of law, and (iii) all plans and specifications for the construction and rehabilitation of the Improvements;
- XI. All proceeds, both cash and non-cash, of the foregoing or conversion of the foregoing;
- XII. All property tax abatements and credits relating to any of the foregoing and all rights to refunds of real estate taxes and assessments with respect to the Premises;
- XIII. The proceeds of and the right to receive all federal low income housing tax credits under Section 42 of the Internal Revenue Code, to the extent assignable;

**UCC Debtor:** **James Street Apartments, LLC.**, a New York limited liability company having an office at c/o Conifer Realty, LLC, 183 East Main Street, Rochester, New York 14604 ("Mortgagor");

**Additional Debtor:** **City of Syracuse Industrial Development Agency**, a New York corporate governmental agency, having an office at 333 West Washington Street, Suite 130, Syracuse, New York 14604 ("SIDA");

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**Project Name:** **James Street Apartments**  
**Premises:** 615 and 622 James Street, City of Syracuse, Onondaga County, New York.

---

### SCHEDULE "A"

Page 4 of 4

- XIV. All rights and interests of the SIDA, if any, and the Mortgagor pursuant to the Lease Agreements and any right, title or interest to damages arising out of or for breach or default in respect of any such agreements;
- XV. All tangible personal property now or hereafter located at or intended to be used in connection with the construction, rehabilitation, use, operation or maintenance of the Improvements, including without limitation building materials, equipment, trade fixtures, furniture, furnishings and decorations (the "Tangible Personal Property");
- XVI. Commercial tort claims related to the Premises, the Improvements or the Tangible Personal Property; Promissory notes, letters of credit, electronic chattel paper, proceeds from accounts, payment intangibles, and general intangibles related to the Premises, as the terms "accounts", "general intangibles", and "payment intangibles" are defined in the applicable Uniform Commercial Code Article 9, as the same may be modified from time to time;
- XVII. All other assets of Mortgagor related in any way to the Premises, subject to certain limitations that may be set forth herein; and
- XVIII. Any rights affecting the development of the Premises.

**EXECUTION COPY**

---

**REGULATORY AGREEMENT**

**By and Among**

**NEW YORK STATE HOUSING FINANCE AGENCY,**

**JAMES STREET APARTMENTS, LLC**

**and**

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

---

**FOR THE**

**JAMES STREET APARTMENTS PROJECT**

---

**Regulatory Agreement for HFA Multi Family Housing Project  
Affordable Housing Revenue Bond Program  
State of New York Mortgage Agency Mortgage Insurance Program  
Low Income Housing Tax Credits**

---

Premises: James Street Apartments  
615 and 622 James Street  
City of Syracuse  
Onondaga County, New York

SBL: 017.00-19-05  
103.00-05-04

Record and Return to:  
Remy Bernardo, Jr., Esq.  
Associate Counsel  
New York State Housing Finance Agency  
641 Lexington Avenue  
New York, New York 10022  
212-688-4000

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This **REGULATORY AGREEMENT** ("Agreement"), entered into as of December 22, 2011 by and among **JAMES STREET APARTMENTS, LLC** ("Beneficial Owner"), a New York limited liability company having an office at c/o Conifer Realty, LLC, 183 East Main Street, 6th floor, Rochester, New York 14604; and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** ("Nominal Owner"), a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, with an office at 333 West Washington Street, Suite 130, Syracuse, New York 13202; and the **NEW YORK STATE HOUSING FINANCE AGENCY** ("Agency" or "HFA"), a corporate government agency created pursuant to Article III of the PHFL, having an office at 641 Lexington Avenue, New York, New York, 10022.

**WITNESSETH:**

**WHEREAS**, the Beneficial Owner is the fee title owner of certain land located at 615 and 622 James Street in the City of Syracuse, Onondaga County, New York ("Premises") as more fully described in Schedule "A" attached hereto and made a part hereof upon which are situated eighty-three (83) residential units known as James Street Apartments ("Project"); and

**WHEREAS**, in connection with the award by the Nominal Owner of a payment-in-lieu-of-tax agreement and other financial assistance to the Project, the Beneficial Owner shall transfer to the Nominal Owner a leasehold ownership interest of the Premises pursuant to the terms of a certain Company Lease Agreement dated as of December 22, 2011 between the Beneficial Owner and the Nominal Owner ("Company Lease"), and the Nominal Owner shall sub-lease the same to the Beneficial Owner pursuant to the terms of a certain Agency Lease Agreement dated as of December 22, 2011 between the Beneficial Owner and the Nominal Owner ("Agency Lease"; collectively with the Company Lease, the "Lease Agreements") excepting therefrom the Nominal Mortgagor's Unassigned Rights (as that term is defined in the Lease Agreements); and (collectively, the "Lease Agreements") between the Beneficial Owner and the Nominal Owner; and

**WHEREAS**, twenty-two percent (22%) of the Project's revenue-generating units, or 18 units, will be set aside for households whose incomes are at or below 50% of the area median income for the Syracuse Metropolitan Statistical Area ("AMI") adjusted for family size; and

**WHEREAS**, pursuant to a Building and Project Loan Agreement (the "Loan Agreement") dated as of the date hereof, the acquisition and rehabilitation of the Project is to be funded in part by a mortgage loan from the Agency in the principal amount of Eight Million Seven Hundred Seventy-Five Thousand Dollars (\$8,775,000) (the "Mortgage Loan") which Mortgage Loan will be evidenced by a promissory note (the "Note") evidencing the Beneficial Owner's liability and secured by a Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement granted by the

Owner and Nominal Owner (“Mortgage”) which will be recorded in the land records of the Office of the County Clerk in Onondaga County, State of New York (the “County Clerk’s Office”) (the Note, the Mortgage, the Loan Agreement and each and every document executed with, by or in favor of the Agency in connection with the Mortgage Loan are hereinafter collectively referred to as the “Loan Documents”); and

**WHEREAS**, pursuant to a resolution entitled “Affordable Housing Revenue Bonds Bond Resolution” adopted by the Agency on August 22, 2007, as amended (“General Resolution”) and a supplemental resolution entitled “Affordable Housing Revenue Bonds (Federal New Issue Bond Program), NIBP Series 1 Resolution” adopted by the Agency on December 3, 2009 as amended and supplemented on May 6, 2010, September 14, 2010 and April 27, 2011 (“2009 Supplemental Resolution”), the Agency has issued \$276,130,000 principal amount of its Affordable Housing Revenue Bonds (Federal New Issue Bond Program), 2009 Series 1 (“2009 Bonds”), \$ \_\_\_\_\_ of which have been remarketed and converted to fixed rate bonds on the date hereof (“Converted 2009 Bonds”); and

**WHEREAS**, pursuant to a supplemental resolution entitled “Affordable Housing Revenue Bonds (Additional Series 1 Parity Bonds), NIBP 2011 Series 4 Resolution” adopted by the Agency on November 9, 2011 (“2011 Supplemental Resolution”), the Agency has also issued \$ \_\_\_\_\_ principal amount of its Affordable Housing Revenue Bonds (Additional Series 1 Parity Bonds), NIBP 2011 Series 4 (“2011 Bonds”) (the 2011 Supplemental Resolution, the 2009 Supplemental Resolution and the General Resolution are collectively known as the “Resolutions”); and

**WHEREAS**, a portion of the Converted 2009 Bonds and a portion of the 2011 Bonds (collectively, the “Bonds”) have been used to fund the Mortgage Loan and the interest on the Bonds is to be exempt from federal income tax pursuant to §103 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations applicable thereunder (collectively, the “Code”);

**WHEREAS**, The Bank of New York Mellon shall act as trustee under the Resolution (the “Trustee”); and

**WHEREAS**, during the period of rehabilitation of the Project, the Mortgage Loan will be secured, inter alia, by an irrevocable, direct pay letter of credit (the “Letter of Credit”) issued by First Niagara Bank, N.A. (the “LOC Bank”) pursuant to the terms of a Letter of Credit Reimbursement Agreement (the “Reimbursement Agreement”) dated as of the date hereof between the LOC Bank and the Beneficial Owner and a confirming, standby letter of credit issued by the Federal Home Loan Bank of New York on behalf of the LOC Bank;

**WHEREAS**, the Letter of Credit shall be issued by LOC Bank in the amount of \$8,775,000 plus (i) an amount equal to sixty (60) days interest on the Mortgage Loan and (ii) an amount equal to sixty (60) days of the HFA Servicing Fee (as hereinafter defined), to the Agency to provide for the

payment of a portion of the principal of, and a portion of the interest accrued on, the Note prior to the effective date of the SONYMA Mortgage Insurance Policy (as hereinafter defined); and

**WHEREAS**, the State of New York Mortgage Agency (“SONYMA”) will issue its Commitment to Insure and Certificate of Insurance to provide a mortgage insurance policy (“SONYMA Mortgage Insurance Policy”), which policy will become effective simultaneously with the date of release of the Letter of Credit after completion of the rehabilitation of the Project (“Conversion Date”); and

**WHEREAS**, pursuant to the SONYMA Commitment, upon completion of the rehabilitation of the Project, the principal amount of the Mortgage Loan is expected to be reduced to an estimated \$4,750,000 and secured by the SONYMA Mortgage Insurance Policy; and

**WHEREAS**, simultaneously herewith, the Beneficial Owner will also borrow from the Agency the principal amount of \$850,000 (excluding interest accrued during construction) in the form of a subordinate loan (the “Subsidy Loan”), which Subsidy Loan shall be evidenced by a note (“Subsidy Loan Note”) and secured by a mortgage (“Subsidy Loan Mortgage”) which Subsidy Loan Mortgage will be recorded in the County Clerk’s Office and which shall be subordinate to the Mortgage; and

**WHEREAS**, the Agency has entered into a Servicing and Release Agreement dated as of the hereof (as amended from time to time, the “Servicing and Release Agreement”) with the LOC Bank and the Beneficial Owner in order to provide for the servicing of the Mortgage Loan and Subsidy Loan during the period of rehabilitation of the Project; and

**WHEREAS**, simultaneously herewith, the Beneficial Owner will also borrow from the City of Syracuse (“City”) a subordinate construction and permanent loan in the principal amount of Two Million Dollars (\$2,000,000) (the “Syracuse HOME Subsidy Loan”) which shall be evidenced by a promissory note (the “Syracuse HOME Subsidy Note”) and secured by a mortgage from the Beneficial Owner to the City (the “Syracuse HOME Subsidy Mortgage”) each of which dated on the date hereof, shall be subordinate in payment and priority to the Mortgage Loan and Subsidy Loan; and

**WHEREAS**, pursuant to a Subordination Agreement dated as of the date hereof by and among the Agency, Beneficial Owner, the City and First Niagara Bank, N.A., this Subsidy Mortgage and the Syracuse HOME Subsidy Mortgage shall each be subject and subordinate to the lien of the Mortgage, and the Syracuse HOME Subsidy Mortgage shall be subject and subordinate to the lien of this Subsidy Mortgage; and

**WHEREAS**, the Project will benefit from an agreement to make payments in lieu of taxes in accordance with a Payment in Lieu of Taxes Agreement (the “PILOT Agreement”) entered into by

and among the Beneficial Owner, Nominal Owner and the City and dated as of the date hereof; and

**WHEREAS**, upon the expiration or termination of the PILOT Agreement, the Nominal Owner will no longer retain any interest in the Premises or the Project, and the Beneficial Owner shall retain sole ownership of the Premises and the Project; and

**WHEREAS**, the Agency has found and determined that the Project is to be occupied by persons or families of low income pursuant to the restrictions set forth in this Agreement; and

**WHEREAS**, the Agency is a credit administering agency under §42 of the Code, and the Agency has approved the allocation to the Beneficial Owner of low-income housing tax credits ("LIHTC") pursuant to §42(h)(4) of the Code; and

**WHEREAS**, the Agency requires, as a condition of the issuance of the Bonds, financing of the Mortgage Loan, and the allocation to the Project of LIHTC, that the Beneficial Owner agree to the restrictions running with the land and binding on the Beneficial Owner's successors, assigns, heirs, grantees or lessees for the term of the Agreement as set forth herein, and the Mortgage, and that the Beneficial Owner consent to be regulated by the Agency to: (i) preserve the tax-exempt status of the Bonds; (ii) meet the requirements of §44.29-a of the PHFL; (iii) meet the requirements of §42 of the Code with regard to LIHTC; and (iv) to ensure that other public benefit requirements are met; and

**NOW THEREFORE**, the parties do hereby agree as follows:

1.0 **DEFINITIONS** - Except as otherwise defined herein, all capitalized words and phrases herein shall have the meanings assigned to such terms in the Mortgage and the Code. For general rules of interpretation, see section 7.1. In addition, the following words and phrases as used in this Agreement shall have the following meanings:

**"Act"** shall mean the New York State Housing Finance Agency Act.

**"Agency"** shall mean the New York State Housing Finance Agency.

**"Agreement"** shall mean this Regulatory Agreement.

**"Applicable Rules"** shall have the meaning defined for such term in the "Guidelines," as defined hereinafter.

**"Area Median Income"** or **"AMI"** shall mean the area median gross income for the Syracuse Metropolitan Statistical Area as determined from time to time by the Secretary of the United States Department of Housing and Urban Development ("HUD") as applicable to this Project. References to 60% of AMI shall mean amounts established by HUD constituting 120% of the Very Low Income Limit for HUD's Section 8 Programs and references to 50%

of AMI shall mean amounts established by HUD constituting the Very Low Income Limit for HUD's Section 8 programs.

**"Assumption Fee"** shall have the meaning assigned in section 5.5 of this Agreement.

**"Beneficial Owner"** shall refer to James Street Apartments, LLC, its successors and assigns.

**"Beneficial Owner Principals"** shall mean Messrs. Richard Crossed, Timothy Fournier and Andrew Crossed.

**"Beneficial Owner's Tax Certification"** shall have the meaning assigned in section 5.8(c).

**"Bonds"** shall have the meaning assigned in the recitals to this Agreement.

**"Code"** shall mean the Internal Revenue Code of 1986, as amended, the Treasury Regulations, and published administrative positions of the Internal Revenue Service set forth in Revenue Procedures, Revenue Rulings, and other Internal Revenue Service publications with binding authority applicable thereunder.

**"Compliance Period"** shall have the meaning assigned in section 3.1.

**"Credit Period"** shall have the meaning assigned in section 3.1.

**"Early Termination"** shall have the meaning assigned in section 3.2(b).

**"Eligible Basis"** shall have the meaning assigned in section 6.2(a)(7).

**"ELIHC"** shall have the meaning assigned in section 3.2(a).

**"Event of Default"** shall have the meaning assigned in section 2.1.

**"Extended Use Period"** shall have the meaning assigned in section 3.2(b).

**"Federal Section 8"** shall have the meaning assigned in section 3.1.

**"Governmental Entity"** shall have the meaning assigned in section 5.6(a).

**"Gross Rent Floor"** shall have the meaning assigned in the Code.

**"Guidelines"** shall mean the Agency's Fair Housing and Tenant Selection Guidelines, as the same may be amended from time to time.

**"Individuals of Low Income"** shall mean individuals and families: (i) whose income is 60% or less of AMI or is 50% or less of AMI, as applicable, for purposes of §§142(d)(2)(B) and 142(d)(3) of the Code and §1.103-8(b)(8)(v) of the Tax Regulations (except that "60 percent" shall be substituted for "80 percent" therein) and (ii) who are individuals of low and moderate income within the meaning of the New York State Housing Finance Agency Act, Article III of the PHFL.

**"Investor"** shall mean Conifer 2011 Tax Credit Fund, L.P. or another tax credit investor reasonably acceptable to the Agency.

**"Letter of Credit"** shall have the meaning assigned in the recitals to this Agreement.

**"LIHTC"** shall have the meaning assigned to it in the recitals of this Agreement.

**"LOC Bank"** shall have the meaning assigned in the recitals to this Agreement.

“**Low Income Units**” shall have the meaning assigned in section 4.2.a.

“**Managing Member**” shall mean James Street Managing Member, LLC.

“**Mortgage**” and “**Mortgage Loan**” shall have the meanings assigned in the recitals to this Agreement.

“**Nominal Owner**” shall mean the City of Syracuse Industrial Development Agency, its successors and assigns.

“**Note**” shall have the meaning assigned in the recitals to this Agreement.

“**Operating Agreement**” shall mean the Amended and Restated Operating Agreement of the Beneficial Owner with respect to the Project.

“**Organized Crime Figure**” shall have the meaning assigned in section 5.6(b).

“**PHFL**” shall have the meaning assigned in the recitals to this Agreement.

“**Premises**” shall have the meaning assigned in the recitals to this Agreement.

“**Prohibited Person**” shall have the meaning assigned in section 5.6(a).

“**Project**” shall have the meaning assigned in the recitals to this Agreement.

“**Qualified Basis**” shall have the meaning assigned in section 6.2(a)(7).

“**Qualified Project Period**” shall have the meaning assigned in section 3.1.

“**Replacements**” shall have the meaning assigned in section 5.3(b).

“**Replacement Reserve Account**” shall have the meaning assigned in section 5.3(a).

“**Resolution**” shall have the meaning assigned in the recitals to this Agreement.

“**Subsidy Loan**” shall have the meaning assigned in the recitals to this Agreement.

“**Subsidy Loan Mortgage**”, “**Subsidy Loan Note**” and “**Syracuse HOME Subsidy Loan**” shall have the meanings assigned in the recitals to this Agreement.

“**Syracuse HOME Subsidy Mortgage**”, “**Syracuse HOME Subsidy Note**” and **Syracuse HOME Subsidy Note**” shall have the meanings assigned in the recitals to this Agreement.

“**Transfer Fee**” shall have the meaning assigned in Section 5.5(d).

## 2.0 ENFORCEMENT -

2.1 Incorporation in Mortgage and Termination of Agreement (a) This Agreement and the restrictions hereunder are to be incorporated by reference in the Mortgage, whenever the Mortgage Loan is made in whole or part, so that an Event of Default (as hereafter defined) hereunder shall constitute an “Event of Default” under and as defined in the Mortgage and the Subsidy Mortgage. For purposes of this Agreement, an Event of Default shall be deemed to have occurred if the Beneficial Owner or the Nominal Owner, as the case may be, shall fail to observe any

requirement or perform any obligation imposed on the Beneficial Owner or the Nominal Owner, as the case may be, by this Agreement, and the Beneficial Owner or the Nominal Owner, as the case may be, shall fail to cure such default within thirty (30) days after the Beneficial Owner or the Nominal Owner, as the case may be, and the LOC Bank receive written notice of such default from the Agency, unless such default shall not be a willful default and can be cured but cannot by its nature be cured within such thirty (30) day period, in which case an Event of Default shall not be deemed to have occurred so long as the Beneficial Owner or the Nominal Owner, as the case may be, or the Investor or the LOC Bank commences such cure as soon as reasonably as possible and shall proceed with due diligence to cure such default; provided, however, that in any case an Event of Default shall be deemed to have occurred (i) when and if interest on the Bonds shall be includable in gross income for federal income tax purposes or (ii) thirty (30) days before the Agency shall be required to commence foreclosure of the Mortgage in order to prevent interest on the Bonds from becoming includable in gross income for such purposes. Furthermore, the Beneficial Owner's Investor shall have the right, but not the obligation to cure an Event of Default within the applicable cure period.

If the Agency assigns the Mortgage (except where the Mortgage is assigned to the LOC Bank pursuant to a draw on the Letter of Credit under Section 15(i) of the Servicing and Release Agreement), the Agency may retain the right to declare a default under and prosecute foreclosure thereof, based upon any such noncompliance and Event of Default; provided that the agreement with any successor mortgagee wherein such rights are retained shall contain provisions substantially similar to those set forth in Exhibit "A" attached hereto. Except as limited in section 3.2 hereof in regard to LIHTC, in the event of foreclosure or deed-in-lieu of foreclosure, this Agreement and the restrictions hereunder shall automatically terminate with respect to the Mortgage Loans, provided the Bonds are redeemed at the first available call date. However, if the obligor on the Mortgage Loans or a related person (within meaning of §144(a) (3) of the Code) thereafter obtains, during the term of this Agreement (as determined by section 3.1), an ownership interest in the Project for tax purposes, this Agreement shall be revived in full force and effect to the extent of the restrictions hereunder which affect the exclusion from federal income taxation of interest on the Bonds. In addition, this Agreement and the restrictions hereunder shall, in the Agency's sole discretion, cease to apply partially or entirely in the event of involuntary noncompliance caused by unforeseen events such as fire, seizure, requisition, condemnation, change in federal law, or action of a federal agency after the date of issue, which prevents the Agency from enforcing any restriction hereunder, provided the Bonds are retired at the first available call date.

2.2 Recording and Lien Provisions - The benefits and burdens of this Agreement shall run with the land and bind the interest of the Beneficial Owner and the Nominal Owner of the Project, and the land upon which the Project is constructed. The Beneficial Owner, at its cost and expense, shall cause this Agreement to be duly recorded, filed, re-recorded, and refiled in such places as to the Premises, and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by law in order to establish, preserve and protect the ability of the Agency to enforce this Agreement. At the request of the Beneficial Owner or the Nominal Owner, the Agency shall provide the Beneficial Owner with an instrument executed in recordable form at such time as the term of this Agreement has expired and the obligations of the Beneficial Owner and the Nominal Owner have been satisfied, releasing the Beneficial Owner, the Nominal Owner, the Project and the Premises from this Agreement.

2.3 Remedies The injury to the Agency arising from noncompliance with any of the terms of this Agreement would be great and the effect of misrepresentations of fact and any violations by Beneficial Owner or the Nominal Owner, if any, of warranties and covenants under this Agreement would be irreparable, and the amount of consequential damage would be difficult to ascertain and may not be compensable by money alone. Therefore, upon the occurrence of an Event of Default, the misrepresentation of material fact, or violation of any warranty or covenant under this Agreement by the Beneficial Owner or the Nominal Owner, the Agency, at its option, may apply to any state or federal court, for specific performance of this Agreement, for an injunction against any Event of Default or misrepresentation of fact under this Agreement, or for such other relief as may be appropriate in addition to its right to foreclose or require foreclosure of the Mortgage, entirely or partially, pursuant to the terms of the Mortgage. Noncompliance with any of the terms of this Agreement may jeopardize the tax-exempt status of the Bonds. The Agency is obligated to notify the Internal Revenue Service of non-compliance with this Agreement that results in noncompliance under the Code with respect to the LIHTC.

For purposes of this Agreement, the date of any Event of Default or misrepresentation shall be the date such Event of Default or misrepresentation was first discovered by the Beneficial Owner, the Nominal Owner or the Agency, or would have been first discovered by the Beneficial Owner, the Nominal Owner or the Agency by the exercise of reasonable diligence.

2.4 Indemnification (a) The Beneficial Owner shall indemnify and hold the Agency harmless from and against any and all claims, demands, liability, loss, cost or expense (including but not limited to actual attorney fees and other costs of litigation) which may be incurred by the Agency arising out of or in any way related to the Beneficial Owner's breach of any of its obligations under this Agreement or any action taken by the Agency (other than willful misconduct on the part of the

Agency) to enforce or exercise its rights under this Agreement as a result of such breach. The obligations under this section shall survive the termination or expiration of this Agreement as necessary to effectuate its provisions. This indemnity is not a guarantee of any portion of the Mortgage Loan.

(b) Any subsequent owner of the Project shall be liable or obligated for the breach or default of any obligation of any prior owner (including the Beneficial Owner) under this Agreement, including, but not limited to, payment of any indemnification obligation.

### 3.0 **TERM**

3.1 Term of Agreement - The term of this Agreement shall commence on the execution and delivery hereof, irrespective of when or if a Mortgage Loan is ever actually made, and shall extend through a period ("Qualified Project Period") which shall commence immediately and shall end on the latest of the following:

(i) the date which is fifteen (15) years after the date on which 50% of the residential units in the Project are first occupied;

(ii) the first date on which no Bonds (and any other private activity bonds relating to such Project) are outstanding;

(iii) if applicable, the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 ("Federal Section 8") terminates;

(iv) the date on which the Mortgage Loan is no longer outstanding;

(v) the date on which the Subsidy Loan is no longer outstanding;

(vi) the end of a period (the "Compliance Period") consisting of fifteen (15) taxable years of the Beneficial Owner commencing with the first taxable year of the credit period ("Credit Period") as defined in §42(f)(1) of the Code with respect to such Project;

(vii) the expiration or earlier termination of the Extended Use Period, as defined in 3.2 (b), below; or

(viii) forty (40) years from the date of the Mortgage Loan closing.

Additionally, as provided in section 3.2 hereof, certain provisions of this Agreement shall continue in effect beyond the end of the Qualified Project Period. The Beneficial Owner acknowledges that the Qualified Project Period and other periods required by this Agreement may represent a longer period than that which would otherwise be required by the Code to ensure the tax-exempt status of the Bonds or the allowance of LIHTC or any property tax exemption.

3.2 Special Rules for Tax Credits - (a) This Agreement constitutes an extended low income housing commitment (the "ELIHC") pursuant to §42(h)(6) of the Code, arising from an election by the Beneficial Owner to accept the benefits of LIHTC and the Agency financing. Failure to comply with the provisions of the ELIHC shall be an Event of Default under this Agreement and the Mortgage and the Agency or its successors may exercise any of the remedies available thereunder. Furthermore, the Agency may seek specific performance of the ELIHC by the Beneficial Owner or any successor in interest thereto, without declaring an Event of Default pursuant to the Mortgage and without waiving any remedies under the Mortgage, by filing an action in any court of competent jurisdiction in the State of New York. Any existing, past or prospective tenants of the Project who qualify, qualified or would qualify as low income occupants pursuant to §42(g) of the Code are hereby expressly agreed to be beneficiaries of this ELIHC and may apply to any court of competent jurisdiction in the State of New York for specific performance of any provisions of the ELIHC, notwithstanding any action which may or may not be taken by the Agency.

(b) The ELIHC shall begin on the first day of the Compliance Period and remain in effect until fifteen (15) years after the end of the Compliance Period ("Extended Use Period") except that the Extended Use Period will terminate earlier ("Early Termination") on the date of foreclosure of the Mortgage or deed-in-lieu of foreclosure (unless such events are part of an arrangement with the Beneficial Owner to cause an early termination as determined by the Internal Revenue Service). The Extended Use Period will not be subject to Early Termination pursuant to §42(h)(6)(E)(i)(II) of the Code.

(c) Notwithstanding anything herein to the contrary, the terms of this Agreement necessary to effectuate the terms and conditions of this Section 3.2 shall continue through the expiration of this Agreement or Early Termination.

(d) During the Extended Use Period:

(1) except as provided in section 4.2 of this Agreement, the Low Income Units constituting twenty-two percent (22%) (or such other percentage determined by the Agency upon issuance of the Internal Revenue Service form 8609 in relation to the Project (the "8609 Issuance Date") of the revenue-generating units in the Project, shall be occupied or available for occupancy by qualified families or individuals earning not more than 50% of the Area Median Income, as adjusted for family size;

(2) the rents for the Low Income Units, as adjusted by utility allowances and any rental subsidies approved by the Agency in accordance with the Code, shall not be more than 30% of 50% of AMI, adjusted for family size as follows: (i) for studio or efficiency apartments having no

separate bedrooms, the designated family size shall be a 1-person family; and (ii) for apartments containing at least one bedroom, the designated family size shall be equal to 1.5 times the number of bedrooms;

(3) no portion of any building in the Project shall be disposed of to any person unless all of such building is disposed of to such person;

(4) the Beneficial Owner shall not refuse to lease to a holder of a voucher or certificate of eligibility under Federal Section 8 program because of the status of the prospective tenant as such a holder;

(5) during the Extended Use Period and for the three (3) year period following an Early Termination:

(A) no existing tenant (i.e., the tenant occupying the respective Low Income Unit during the Extended Use Period, or upon the occurrence of an Early Termination of the Extended Use Period) may be removed whether by eviction, expiration of lease, or for any reason other than good cause; and

(B) no rents for any Low Income Unit occupied by such existing tenant may be increased, except as permitted under §42 of the Code; and

(6) the "applicable fraction" (as defined in §42(c)(1) of the Code) for the Project is currently estimated to be at least 22%. However, the actual percentage shall be determined by the Agency upon the 8609 Issuance Date.

#### 4.0 TENANTS AND LEASES

4.1 Rental Restrictions - Once available for occupancy each unit in the Project (other than any unit approved by the Agency for occupancy by a superintendent) must be rented or available for rental on a continuous basis to members of the "general public" (as defined in §42 (g) (9) of the Code) and occupied by individuals or families as their residence. No portion of the Project and none of the units in the Project will, at any time during the term of this Agreement, be used on a transient basis, for example, as a trailer park or trailer court or a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium or rest home. Use on a transient basis shall mean the rental of units for an initial lease term of less than 12 months.

4.2 Low Income Occupancy Requirements - a. During the Qualified Project Period, twenty-two percent (22%) of the Project's revenue producing apartments (i.e., 18 of 82 units) will be

occupied or held available for occupancy by Individuals of Low Income as determined in accordance with this Agreement and the Code (the "Low Income Units").

In accordance with Treasury Regulation §1.103-8(b) (8) and for LIHTC purposes, in accordance with Treasury Regulation §1.42 5 (b) (1) (vii) and Internal Revenue Notice 88-80, families of low income shall be determined in a manner consistent with determinations of lower income families under Federal Section 8 (or if such program is terminated, under such program as was in effect immediately before such termination). Determinations under the preceding sentence shall include adjustments for family size. Adjustments for smaller and larger families in effect on the date hereof are set forth in Exhibit "C". In accordance with procedures established by the Agency, the Beneficial Owner shall take reasonable steps to verify the low income status of all families or individuals who occupy Low Income Units.

b. A Low Income Unit shall continue to be treated as such, notwithstanding any increase in the income of the occupant of such Low Income Unit except as provided in the next sentence. Any Low Income Unit in which the aggregate income of the occupants as of the most recent recertification (as described in the Code) exceeds 140% of the applicable income limit (i.e. 140% of 50% of the AMI as adjusted for family size) shall not be treated as a Low Income Unit if after such determination but before the next determination, any residential unit of comparable or smaller size in the same building is occupied by a new resident whose income exceeds the applicable income limit. Occupancy of a unit shall refer to the date that the tenant has possession of the unit and the right to occupy such unit pursuant to a fully executed lease.

4.3 Low Income Unit Rents, Fees and Charges - a. The annual rents for the Low Income Units shall not exceed 30% of 50% of AMI as applicable, as adjusted for the number of individuals occupying the unit, as follows: for units not having a separate bedroom, one individual; and for units having one or more separate bedrooms, 1.5 individuals for each separate bedroom. "Rent" for purposes of this section does not include any payment under Federal Section 8 or any comparable rental assistance program, but does include: (i) any utility allowance determined by the HUD as may be adjusted by the Agency, or (ii) the cost of any utilities that would be covered by such utility allowance, as determined by the Agency, if the units were receiving Federal Section 8 assistance. To the extent that any unit in the Project is subsidized through project based Section 8 housing assistance payments, the annual rent payable by the tenant for such unit will be determined by the applicable Federal Section 8 program requirements.

b. Pursuant to the Code, the rents for Low Income Units shall be based on the AMI and shall be trended upward for inflation annually pursuant to the calculations of AMI made by HUD in

accordance with the Code, but in no case shall the rents for Low Income Units be adjusted downward. For example, if the AMI calculations in effect on the date hereof were to form the basis for setting maximum permitted rents, then such maximum rents would be set as follows:

**MAXIMUM PERMITTED MONTHLY RENTS**

Studio	\$575
One Bedroom	\$616
Two Bedroom	\$740

Further, the maximum rents will be reduced by a utility allowance, if applicable, that may be revised annually. The Beneficial Owner shall review the utility allowance annually pursuant to the provisions of Treasury Regulation Section 1.42-10(c)(2). Accordingly, each January, the Beneficial Owner shall submit to the Agency documentation satisfactory to the Agency of any utility estimates, usage, and cost projections and proposed utility allowance with respect to units in the building for the upcoming year. Based thereon, in accordance with the Code, the Agency shall approve the proposed utility allowance or determine the appropriate utility allowance applicable to the units in the building for such period. The Beneficial Owner's failure to provide such information on a timely, annual basis, to the satisfaction of the Agency, may result in the Agency delaying or denying a change in Low Income rents, and may constitute noncompliance with applicable requirements of the Code.

c. The Beneficial Owner shall not impose fees and charges upon the tenants of Low Income Units without the prior written consent of the Agency, except for the following: (1) a late payment charge not to exceed \$25.00 if rent is received after the 10th day past the due date; and (2) a bounced check fee not to exceed the actual fee charged by the bank, which may be adjusted from time to time upon request of the Beneficial Owner, and approved by the Agency at its sole discretion.

4.4 Lease Provisions for Low Income Units - Tenant leases for Low Income Units shall be for terms of at least one year and shall be expressly subordinate to the Mortgage. The form of lease to be utilized in renting the Low Income Units in the Project shall be subject to the Agency's prior approval, which shall not be unreasonably withheld. In a separate rider acceptable to the Agency which shall state that : (i) the lease shall be terminated and the tenant may be evicted for failure to qualify pursuant to the income standards for that unit if a tenant has falsely certified household income or household composition; (ii) false certification constitutes material noncompliance under the lease; (iii) tenants shall provide income certifications and any additional

recertifications of income as the Agency and the Beneficial Owner shall require; (iv) in the event the unit is not receiving a Federal Section 8 subsidy, the Beneficial Owner's right to increase rent for an existing tenant over the amounts provided in section 4.3(b) hereof upon the conclusion of the Qualified Project Period shall be conditioned upon the Beneficial Owner meeting the requirements of §42 of the Code as referenced in section 3.2 hereof and the Beneficial Owner furnishing such tenant with a notice at least six months prior to such increase in a form acceptable to the Agency, and that if such notice is not given, such tenant shall be entitled to lease renewals at the rents provided for in section 4.3(b) until such notice has been given and six months has elapsed; (v) subletting and the tenant's assignment of the lease shall be prohibited; and (vi) the Agency and its representatives or agents shall have the right to inspect such unit for the purpose of fulfilling the Agency's responsibilities under the Code. The form of lease to be utilized by the Beneficial Owner in renting the Low Income Units in the Project shall be subject to the Agency's prior written approval, provided, however, that the Agency shall not require use of any lease form that is inconsistent with the requirements of the Project Federal Section 8 subsidy. Failure to utilize an approved form of lease for such units shall subject the Beneficial Owner to a penalty equal to one month's rent for each affected unit.

4.5 Fair Market Housing Guidelines - The Beneficial Owner has submitted to the Agency for its records a marketing and tenant selection plan that is in compliance with the Agency's affirmative fair housing marketing guidelines. Such marketing plan specifically describes the method of marketing to and selection of tenants for the Low Income Units. Additionally, a certification as to compliance with the Guidelines and Applicable Rules, as defined in the Guidelines, must be submitted to the Agency at mortgage closing and on an annual basis for the term of this Agreement. The marketing plan shall specifically describe the method of marketing to and selection of tenants for the Low Income Units.

## 5.0 OPERATING RULES

5.1 Project Restrictions - The Project shall constitute a qualified multi-family residential rental project within the meaning of §142(d) of the Code and will be used for such purposes during the term of this Agreement. The Beneficial Owner warrants that the Project will be completed with due diligence substantially in accordance with building plans and specifications approved by the Agency for the Project and change orders approved by the Agency, to the extent approval of such change orders is required. The Project will consist of a building or structure or several proximate buildings or structures which are located on a single tract of land or contiguous tracts of land with or without facilities directly related and essential thereto. The term "tract" means any parcels of land which are contiguous except for the interposition of a road, street, stream or similar property.

Parcels are contiguous if their boundaries meet at one or more points. Pursuant to the plans and specifications and any change orders, all of the units in the Project have been or will be similarly constructed. The Beneficial Owner (or a party related to the Beneficial Owner) shall not occupy a unit in a building or structure unless such building or structure contains more than four units. All of the units in the Project will contain within the unit complete living, sleeping, eating, cooking and sanitation facilities, all of which are separate and distinct from other units. In addition, the Project shall contain such other services and amenities as described in Exhibit D, attached hereto. All facilities used in connection with the Project are: (i) located on the Premises, (ii) solely for the benefit of tenants at the Project, and (iii) of a character and size commensurate with the needs of such tenants. Beneficial Owner shall use its best efforts to ensure that handicapped or disabled individuals in the Project are afforded equal access to such facilities.

5.2 Low Income Unit Requirements - The Low Income Units shall constitute at least 22% of the units other than the superintendent's unit. These requirements shall continue throughout the Qualified Project Period. To ensure that Low Income Units are occupied by households of an appropriate number of individuals, the Beneficial Owner shall comply with the following standard for occupancy upon initial rental or re-rental of such units, or such smaller number if so required by local zoning or building department authorities:

<b>Number of Bedrooms</b>	<b>Number of Persons</b>	<b>Number of Units</b>
Studio	1.5	12
1 Bedroom	1-2	20
2 Bedrooms	2-4	51

5.3 Replacement Reserve Account - a. The Beneficial Owner shall establish the following reserve account that shall be held in an account controlled by the Agency, to be known as the “*Replacement Reserve Account*.” On the earlier of (i) the date of the effectiveness of the SONYMA Mortgage Insurance Policy, or (ii) the commencement of amortization of the Mortgage Loan, and on the first day of each month thereafter until this Agreement is terminated, the Beneficial Owner shall fund the Replacement Reserve Account in the amount equal to \$250 per unit, per year or \$1,729.17 per month (subject to adjustment as hereinafter provided). Said amounts may be reduced (not below zero) by the amounts required to be deposited by the Beneficial Owner into any replacement reserve account required to be maintained by any agreement with the LOC Bank. All interest earned on funds in the Replacement Reserve Account shall remain on deposit in the Replacement Reserve Account and will not be used to offset any required payments by the Beneficial Owner into the Replacement Reserve Account. The Agency shall not be responsible for any losses resulting from the investment of the Replacement Reserve Account or obtaining any specific level or percentage of earnings on such investment.

b. The amount of monthly payments to the Replacement Reserve Account shall remain constant, until and unless revised in the reasonable discretion of the Agency based on (i) the results of the physical needs assessment report as described in subsection (c) below, (ii) the replacement value of the Project; (iii) the Project's history of repairs, (iv) the existing physical condition of the Project, or (v) other factors deemed reasonably relevant by the Agency. Upon Beneficial Owner's written request, the Agency shall disburse to the Beneficial Owner, in a manner reasonably determined by the Agency, such amounts from the Replacement Reserve Account as may be necessary to reimburse or pay the Beneficial Owner for the actual approved cost of repairing and/or replacing building systems, equipment and other items of a capital nature, including, without limitation, the repair or refurbishing of common areas, required for the proper operation and marketing of the Project, or to remedy a situation deemed to be of an emergency nature (“Replacements”). No such disbursements shall be made, however, prior to the first (1<sup>st</sup>) anniversary of the date that deposits begin to be made by the Beneficial Owner into the Replacement Reserve Account. The Agency may require Beneficial Owner to reimburse into the Replacement Reserve Account the amount of any such disbursement, over a reasonable period of time to be determined by the Agency, unless the Agency determines that reimbursement would cause a financial hardship to the Project.

In no event shall the Beneficial Owner undertake work or purchase materials intended to be funded from the Replacement Reserve Account without the prior, written consent of the Agency, which shall not be unreasonably conditioned, withheld or delayed.

In no event shall the Agency approve or make any payment of funds from the Replacement Reserve Account unless such work and or materials have been performed or installed, as applicable and same has been approved by the Agency, which approval shall not be unreasonably withheld or delayed. If at any time the funds deposited in the Replacement Reserve Account are or will be insufficient to maintain the Replacement Reserve Account at a satisfactory level, as reasonably determined by the Agency, the Beneficial Owner, upon notification, shall at such times as may be designated by the Agency, deposit into the Replacement Reserve Account an amount determined by the Agency as reasonably necessary to restore the account to a sufficient level.

In no event shall the Agency be obligated to approve the disbursement of funds from the Replacement Reserve Account if an Event of Default has occurred (as said term is defined in the Mortgage and as referred to herein) and is continuing under this Agreement or the Loan Documents, or if an act, event or condition shall have occurred and then be existing as of that date, which solely with notice or lapse of time, would constitute an Event of Default under this Agreement or the Loan Documents. Notwithstanding the above, if an Event of Default has occurred, the LOC Bank may request the Agency in writing to release funds from the Replacement Reserve Account for Replacements and thereupon such funds shall be disbursed.

c. No earlier than the first day of the first month following the tenth anniversary of the date of the Mortgage and on each tenth anniversary thereafter during the term of the Mortgage Loan, the Beneficial Owner shall engage a licensed independent engineer or architect, acceptable to the Agency, to perform a physical needs assessment of the Project. The physical needs assessment shall be performed at the expense of the Beneficial Owner, which expense shall be reimbursable from the Replacement Reserve Account. At the discretion of the Agency, after review of the physical needs assessment report, the Beneficial Owner's required monthly payment to the Replacement Reserve Account may be adjusted within 90 days following the Agency's receipt of the physical needs assessment report so that the amount in the Replacement Reserve Account will, in the Agency's reasonable determination, be sufficient to pay for required Replacements as identified in said report. The Agency agrees that it shall exercise reasonable judgment as a prudent lender in determining such increases for required Replacements.

d. After payment in full of all sums secured by the Mortgage and the expiration of the Qualified Project Period, the Agency shall disburse to the Beneficial Owner all amounts remaining in the Replacement Reserve Account.

5.4 Project Management - a. (a) The Beneficial Owner shall not employ or otherwise use or retain a management entity for the Project other than Conifer Management, LLC without the

Agency's prior approval of such management entity and the terms of its retention including compensation, which approval shall not be unreasonably withheld. Any renewal or termination of the management entity's employment shall be subject to the Agency's approval, which approval shall not be unreasonably withheld. If the Beneficial Owner shall also retain a leasing/rental agent, other than the managing agent, such leasing/rental agent shall be subject to the Agency's approval, and may not be replaced without the Agency's prior approval, which approval shall not be unreasonably withheld. If the Beneficial Owner retains a managing agent without having first received approval of the Agency, the Beneficial Owner will be subject to a monetary penalty equal to the lesser of (i) the amount of the monthly management fee paid to the unapproved agent, or (ii) \$20,000, which amount shall be assessed initially and for each month such agent is in place without Agency approval.

(b) The Agency reserves the right to review the performance of the management entity. If the Agency notifies the Beneficial Owner of reasons for which it is not satisfied with the management of the Project, including but not limited to the failure to maintain the property or books and records of the Project, the Beneficial Owner shall cure such condition, or cause the managing agent to cure such condition, in a period of time not to exceed 30 days, provided that said time period may be extended for a reasonable period of time if Beneficial Owner is diligently and expeditiously seeking to cure such condition so long as such condition is curable in the Agency's reasonable judgment, or if such condition is not curable, Beneficial Owner shall engage a managing agent subject to approval by the Agency. The Beneficial Owner shall not thereafter employ or otherwise use or retain any managing agent for the property or any part thereof, without having first obtained the Agency's written approval of such managing agent and the agreement setting forth all the terms of such employment or retainer including compensation. The management agreement shall contain a provision that it is subject to termination upon written request by the Agency in accordance with the provisions hereof. The Beneficial Owner shall submit to the Agency such information as the Agency reasonably requires in order to review the background and qualifications of the new management entity, including proof of a valid New York State real estate broker's license, and corporate/individual/principal financial statements in a form acceptable to the Agency. If the Beneficial Owner has not submitted a managing agent acceptable to the Agency within 30 days or if there has been noncompliance hereunder which remains uncured for more than 30 days after notice provided by the Agency to the Beneficial Owner, the Agency may act as the managing agent or unilaterally appoint a managing agent. In this case, the Beneficial Owner shall be obligated to pay a management fee to the Agency or the Agency-appointed entity, respectively, in the amount equal to the fee paid including accrued incentive payments, if any, to the preceding managing agent.

(c) Notwithstanding the provisions of Section 5.4(b) above, in the event there is a need to replace the management entity due to premature termination or otherwise, which requires immediate temporary replacement of the management entity before approval can be obtained from the Agency, Beneficial Owner may employ a replacement management entity, provided the agreement for such employment is terminable upon receipt by Beneficial Owner of written notice that said management entity is not acceptable to the Agency.

(d) The Agency reserves the right to review the performance of the leasing agent and may require the removal and replacement of such agent in a manner similar to the provisions set forth in subsections (b) and (c), above, except that the Agency shall not act in the capacity of leasing agent.

5.5 Change of Principals and Transfer Restrictions - (a) As used in this Section 5.5, the term "transfer" shall include any sale, transfer, assignment or other conveyance, provided, however, that the meaning of the term "transfer" shall not include a mortgaging of the Property.

(b) In addition to the restrictions on conveyance of the Project and the Premises as set forth in the Mortgage, the Beneficial Owner and the Nominal Owner shall not transfer their respective interests in the Project, or any part thereof, without the prior written consent of the Agency which consent shall not be unreasonably withheld or delayed. Notwithstanding the anything to the contrary in this Agreement, the prior consent of the Agency shall not be required in connection with the exercise by the Nominal Owner of the Unassigned Rights (as that term is defined in the Agency Lease).

(c) No consent of the Agency shall be required for the transfer of any direct or indirect ownership interest in the Beneficial Owner, Nominal Owner or the Project, provided that after giving effect to such transfer: (i) there shall not be a change of more than an aggregate amount of 10% of the interests in Beneficial Owner, its Managing Member, and (ii) one or more of the Beneficial Owner Principals shall retain the day to day management and control of the Beneficial Owner and the Project.

Notwithstanding the foregoing, the withdrawal, removal and/or replacement of the Managing Member for cause in accordance with the Operating Agreement shall not require the consent of the Agency if the transfer of the Managing Member's interest is to an entity affiliated with or controlled by the Investor Member, provided that such entity has significant experience in owning and operating comparable multi-family properties) and provided further that any subsequent replacement for the Managing Member shall be subject to the Agency's consent and any applicable fees hereunder.

Notwithstanding any of the foregoing provisions, the following transfers of interests in the Beneficial Owner, the Managing Member or the Nominal Owner shall be permitted without the prior written consent of the Agency, provided that one or more of the Beneficial Owner Principals maintain all operational, managerial and financial control of the Beneficial Owner, and, in each case, the Beneficial Owner shall give the Agency prompt written notice thereof:

(1) any transfer among and between the Beneficial Owner Principals or any lineal descendants of any Principal, or to any trust for the benefit of said lineal descendants, or to entities wholly owned by the Beneficial Owner Principals, provided that one or more of the Beneficial Owner Principals shall continue to hold a direct or indirect controlling interest in the entity in which such principal has an interest,

(2) a transfer by the Investor of the Beneficial Owner to (A) a nationally recognized entity regularly engaged in the purchase and syndication of LIHTC, if (i) such transfer is in connection with the purchase of Project's LIHTC; and (ii) such entity is not a Prohibited Person as such term is defined in Section 5.6 below, and (iii) such entity does not have the immediate or conditional right to exercise operational, managerial and financial control of the Beneficial Owner and the Project; (B) to an affiliate of the Investor, or (C) removal of the Managing Member by the Investor pursuant to the terms of the Operating Agreement provided the Managing Member are replaced by an affiliate of the Investor regularly engaged in the ownership and operation of affordable multi-family housing.

(3) transfers by operation of law or, in the case of any member who is a natural person, transfers resulting from the death or incapacity of such member.

(d) The Beneficial Owner represents and warrants that as of the date of this Agreement (i) it intends to own the Project for a long-term holding period of eight years commencing from the date when at least 50% percent of the units have received a temporary certificate of occupancy and at least one unit is actually occupied ("Long Term Holding Period") and (ii) other than a transfer of the interest of the Investor as provided in Section 5.5(c), the Beneficial Owner has no present intent to transfer ownership or control of the Project. In connection with its consent to any transfer, as required by this Section 5.5, the Agency will charge the Beneficial Owner a fee of one-half of one percent (0.5%) of the then outstanding principal amount of the Mortgage ("Transfer Fee"); provided, however, that if the proposed transfer occurs during the Long Term Holding Period, then in lieu of a Transfer Fee the Agency will charge an assumption fee ("Assumption Fee") based on the then outstanding principal amount of the Mortgage as follows:

Year 1. - 5.0%

Year 2. - 4.0%  
Year 3. - 3.0%  
Year 4. - 2.0%  
Year 5. - 2.0%  
Year 6. - 2.0%  
Year 7 and Year 8. -1.0%

(e) In the event a transfer which requires Agency consent has occurred without the prior consent of the Agency, then in addition to the applicable Assumption Fee or Transfer Fee, the Beneficial Owner will be subject to a penalty of the greater of (i) an additional one half of one percent (0.5%) of the then outstanding principal balance of the Mortgage Loan, or (ii) \$5,000. The Agency agrees that it will not charge the Beneficial Owner the Transfer Fee or Assumption Fee in connection with any transfers that do not require the Agency's consent under Section 5.5(c) above, however, the Agency reserves the right to charge Beneficial Owner for any reasonable related out-of-pocket expenses and such other fees as the Agency, in its reasonable discretion, may deem appropriate for such transfers.

(f) The Beneficial Owner shall, within five days after request of the Agency, furnish to the Agency the names of the officers, directors, managers, members, partners and/or shareholders of the Beneficial Owner and the Managing Member, together with such other information as the Agency shall reasonably request with respect to such persons.

(g) Notwithstanding any of the foregoing provisions, in no event shall any conveyance of the Project or transfer of any direct or indirect interest of the Beneficial Owner be permitted if such conveyance or addition or substitution shall cause the Beneficial Owner to become a Prohibited Person, as defined below.

(h) Notwithstanding any other provision of this Agreement, at any time when the Agency no longer holds any interest in the Mortgage and none of the Bonds are outstanding, but this Agreement is still in effect pursuant to its terms, the Agency's consent shall not be required (and no Assumption Fee or Transfer Fee shall be charged by the Agency) with respect to any transfer of any interest in the Project or the Beneficial Owner, provided that such conveyance or change does not cause the Project to be owned by a Prohibited Person.

(i) The terms and conditions of this Agreement shall remain outstanding and enforceable against any new owner of the Project.

(j) Notwithstanding any of the foregoing provisions, any removal and replacement of the Managing Member in accordance with the terms of the Operating Agreement and consented to by the Agency shall not be subject to any Transfer or Assumption Fees.

5.6 Prohibited Persons - a "Prohibited Person" shall mean:

(a) any individual who has ever been convicted of a felony or any other crime involving moral turpitude, or is an Organized Crime Figure, as defined in Section 5.6(e) hereof, or is reputed to have substantial business or other affiliations with an Organized Crime Figure;

(b) any individual or entity against whom any action or proceeding is pending to enforce rights of any municipal, city, state or federal government, or any agency, department, public authority, public benefit corporation or local development corporation thereof ("Governmental Entity") arising out of a contractual obligation to any such Governmental Entity;

(c) any individual or entity with respect to whom any notice of monetary default which remains uncured has been given by any Governmental Entity;

(d) any individual who is an officer, director, or otherwise exercises managerial discretion or has an ownership interest in excess of 25% in:

(i) the owner of any one or more dwelling(s) subject to New York State Multiple Residence Law, which dwelling, while under the ownership of the owner in which the individual is an officer, director, or otherwise exercises managerial discretion, has been declared a nuisance by the responsible department, and such nuisance has not been removed by the owner in the time specified in the notice or order declaring the dwelling a nuisance (as such terms are defined and used in New York State Multiple Residence Law);

(ii) the owner of any one or more dwelling(s) subject to New York State Multiple Residence Law, with respect to which dwelling or combination of dwellings, on three distinct occasions, a tenant or tenants have withheld rent pursuant to a rent impairing violation having been noted in the official records of the responsible department, which violation the owner in which the individual is or was an officer, director, or otherwise exercises managerial discretion has failed to remove prior to that amount of time after which such failure permits a resident of such dwelling to legally withhold rent from the owner, and either no action to recover rent or possession has been brought by the owner, or the resident has prevailed in such action (as such terms are defined and used in New York State Multiple Residence Law);

(iii) the owner of any one or more dwelling(s) subject to New York State Multiple Dwelling Law, which dwelling, while under the ownership of the owner in which the individual is an officer, director, or otherwise exercises managerial discretion, has been declared a nuisance by the responsible department, and such nuisance has not been removed by the owner in the time specified in the notice or order declaring the dwelling a nuisance or fines and/or penalties have not been paid with respect thereto (as such terms are defined and used in New York State Multiple Dwelling Law);  
or

(iv) the owner of any one or more dwelling(s) subject to New York State Multiple Dwelling Law, with respect to which dwelling or combination of dwellings, on three distinct occasions, a tenant or tenants have withheld rent pursuant to a rent impairing violation having been noted in the official records of the responsible department, which violation the owner in which the individual is or was an officer, director, or otherwise exercises managerial discretion has failed to remove prior to that amount of time after which such failure permits a resident of such dwelling to legally withhold rent from the owner, and either no action to recover rent or possession has been brought by the owner, or the resident has prevailed in such action (as such terms are defined and used in New York State Multiple Dwelling Law).

(v) any entity which has ever been, or whose principals have ever been, suspended, debarred, disqualified, found non-responsible, had its and/or their prequalification revoked or otherwise has been declared ineligible to do business with any Governmental Entity or which could be deemed non-responsible under New York law.

(e) An individual shall be deemed to be an "Organized Crime Figure" if he or she is alleged as such in writing by a private investigation agency and such allegation has been confirmed by any state or federal prosecutorial, investigative or regulatory agency or authority

5.7 Changes to Structure of Beneficial Owner Entity - The Beneficial Owner may not modify, amend or otherwise change the terms of its organizational documents including its Operating Agreement, except (i) to effect a transaction permitted under section 5.5, (ii) adjust the amount of the Investor's capital contribution due to an increase or decrease of LIHTCs received by the Beneficial Owner pursuant to the Beneficial Owner's Operating Agreement or (iii) to correct any formal defect, omission or ambiguity in a manner that will not prejudice the rights of the Agency or affect the ability of the Beneficial Owner to perform its obligations under this Agreement, without the prior written approval of the Agency, which approval shall not be unreasonably withheld or delayed. Beneficial Owner shall provide Agency with any such documents, with revisions clearly indicated, within 30 days of the execution thereof.

5.8 General Tax Covenants; Use of Mortgage Proceeds; Other Restrictions -The Beneficial Owner and the Nominal Owner each covenant that they will not take any action, or fail to take any action, or make any use of the Project or the proceeds of the Bonds (including investment earnings), in a way which would adversely affect the exclusion of interest on the Bonds from federal income taxation under the Code. The Beneficial Owner further covenants and agrees that:

(a) The Beneficial Owner will submit a certification in the form attached hereto as Exhibit "B" with each requisition or request for disbursement of the Mortgage Loan except that such certificate shall not be required at the time of the first advance if waived by the Agency.

(b) No portion of the Mortgage Loan shall be used to provide any facilities other than the multi-family housing units and the portion of the Project which is functionally related and subordinate to such units.

(c) All certifications, representations and warranties made in the tax certification executed by the Beneficial Owner ("Beneficial Owner's Tax Certification"), in connection herewith, as the same may have been amended and approved by the Agency, together with all supplements thereto and all Disbursement Certifications, except as so amended and approved by the Agency, are and will be true and correct. All such certifications, representations and warranties are hereby incorporated and repeated herein with full force and effect. Specifically and not by way of limitation, the Beneficial Owner warrants the accuracy of the schedules of costs included therein. The Beneficial Owner and the Nominal Owner agree to execute and deliver such amendments and supplements to this Agreement as are necessary to preserve the tax exempt status of interest on the Bonds.

(d) The Beneficial Owner and the Nominal Owner each covenant that it will comply, to the extent such requirements do not irreconcilably conflict with the requirements of this Agreement, the Mortgage or any rule, regulation or policy of any state or federal entity, with any use or occupancy requirement of any governmental entity providing any subsidy, tax abatement or regulatory approval for the Project.

(e) In no event shall the Beneficial Owner, the Nominal Owner or any principal thereof become the registered owner of any of the Bonds.

5.9 SONYMA Restriction on Transfer - In addition to any other condition, requirement or restriction contained in this Regulatory Agreement, the Beneficial Owner and the Nominal Owner shall not convey, or further encumber, all or any part of the Project or the Beneficial Owner's interest in the Project, or obtain additional secondary financing (other than as contemplated by the Mortgage), or transfer, assign or convey any of its membership, stock or membership interests, as the

case may be, without the prior written consent of SONYMA except as permitted under Section 5.5 hereinabove.

## **6.0 REPORTING**

6.1 Information and Project Reports - (a) The Beneficial Owner shall submit to the Secretary of the Treasury, at such time and in such manner as the Secretary shall prescribe, an annual certification as to whether the Project continues to meet the requirements of §142(d) of the Code. The Beneficial Owner is on notice that the Code provides that failure to comply will subject the Beneficial Owner to penalty as provided in §6652(j) of the Code.

(b) The Beneficial Owner covenants and agrees to submit to the Agency annually, or more frequently if reasonably required in writing by the Agency, reports detailing such facts as the Agency reasonably determines are sufficient to establish compliance with the restrictions contained hereunder. In addition, the Beneficial Owner shall provide to the Agency monthly occupancy reports and an annual certification, in a form acceptable to the Agency, regarding tenant income qualification. The Beneficial Owner covenants and agrees to secure and maintain on file for inspection and copying by the Agency, for at least six (6) years after the later of (i) the due date (including any extensions) for any filings required to be made by the Beneficial Owner with the Internal Revenue Service or its successor agency for that year or (ii) the end of the Qualified Project Period, such information, reports and certifications as the Agency may from time to time require in writing. The Beneficial Owner further covenants and agrees promptly to notify the Agency if the Beneficial Owner discovers noncompliance with any restriction or covenant hereunder. The Agency agrees to notify the Beneficial Owner if the Agency discovers noncompliance with any restriction or covenant hereunder, but the Agency's failure to do so shall not affect the Beneficial Owner's obligations hereunder.

(c) Within ninety days of the closing of the Mortgage Loan, the Beneficial Owner shall furnish a copy of each lease and Low Income Rider entered into for each Low Income unit with a copy of each annual tenant income certification.

(d) Prior to the issuance of the Internal Revenue Service form 8609 with respect to the Project, the Beneficial Owner shall file with the Agency a certificate of actual cost, which shall be accompanied by a certification of an independent certified public accountant acceptable to the Agency. The independent certified public accountant shall certify, in a format satisfactory to the Agency, that the amounts claimed as costs are necessary and reasonable, and ordinarily within the scope of the Project. The Agency reserves the right to reject the certificate of actual cost if it is inconsistent with the required format or is otherwise unsatisfactory to the Agency. Additionally,

upon completion of the Project, the Beneficial Owner shall also certify to the Agency, based upon a review of its books and records by an independent certified public accountant acceptable to the Agency, that the Mortgage Loan proceeds have been spent in accordance with the Beneficial Owner's Tax Certification, as modified and approved by the Agency.

(e) From the date of the first rental of any unit in the Project and monthly throughout the term hereof, the Beneficial Owner shall submit to the Agency certifications (including a copy of the certification for any Federal Section 8 eligible tenant) and reports of the Beneficial Owner's compliance with the requirements of this Agreement in such detail as may be required by the Agency. The Beneficial Owner shall notify the Agency of the date of the following within ten days of the date thereof: (i) the issuance of any certificate of occupancy including any temporary certificate of occupancy; (ii) the rental of 50% of the units in the Project; and (iii) the rental of 80% of the units in the Project.

(f) The Beneficial Owner shall submit to the Agency within 90 days of the end of the fiscal year three copies of the Project's annual audited financial statements. The financial statements must: (i) include a balance sheet, a statement of operations, income, and expenses, a statement of cash flows, and all related notes; (ii) be prepared in accordance with generally accepted accounting principles ("GAAP"); (iii) be presented in a two-year comparative format; and (iv) be accompanied by an opinion of an independent certified public accountant acceptable to the Agency stating that the financial statements were audited in accordance with GAAP. The Agency may require that the financial statements be prepared in a specific format which, where practical, will be provided to the Beneficial Owner in advance, and may require that certain subjects be included in the notes to the financial statements. The Agency reserves the right to require interim period financial statements, certified by an officer of the Beneficial Owner, which shall be submitted within 60 days of the date of request, unless prior to the expiration of the applicable period, Beneficial Owner has requested an additional thirty (30) day extension, which request shall not be unreasonably denied by the Agency.

(g) Commencing with the first month a unit has been occupied and thereafter during the term of this Agreement the Beneficial Owner shall submit to the Agency, on or before the twentieth day of each month, a cash flow statement and a schedule of accounts payable for the preceding month certified by an authorized representative of the Beneficial Owner. The cash flow statement must be prepared on a monthly basis as well as a cumulative basis (for all months which preceded it in the current fiscal year) for both budgeted and actual results and presented in a format reasonably acceptable to the Agency.

6.2 Monitoring and Recordkeeping Requirements - (a) The Beneficial Owner shall keep records for each building in the Project showing for each year in the Qualified Project Period (except where otherwise indicated):

(1) The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);

(2) The percentage of residential rental units in the building that are Low Income Units;

(3) The rent charged for each residential rental unit in the building (including any utility allowance);

(4) The Low Income Unit vacancies in the building and information that shows when and to whom the next such available units originally designated Low Income Units were rented;

(5) The annual income certification of each tenant unless and until the Agency in its sole discretion may waive the requirement to collect and preserve income certifications on an annual basis;

(6) Documentation to support the income certification made by each tenant of a Low Income Unit (for example, a copy of the tenant's federal income tax return, Form W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation), in accordance with Treasury Regulation §1.42-5(b)(1)(vii);

(7) The eligible basis as defined in § 42(d) of the Code ("Eligible Basis") and the qualified basis as defined in §42(c) of the Code ("Qualified Basis") of the building at the end of the first year of the Credit Period;

(8) The character and use of the nonresidential portion of the building included in the building's Eligible Basis (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the Project); and

(9) Such other information as the Agency reasonably may request from time to time.

b. The Beneficial Owner shall retain the foregoing records for each building in the Project for at least six years after the due date (with extensions) for filing the Beneficial Owner's tax return for that year, except that the records for the first year of the Credit Period shall be retained for

at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period.

c. The Beneficial Owner shall certify in a sworn statement to the Agency, on the last business day of December of each year through and including the end of the Qualified Project Period, that, for the preceding 12 month period:

(1) The Project met the requirements of the 20-50 test under §42(g)(1)(A) of the Code, or the 40-60 test (25-60 in New York City) under §42(g)(1)(B) of the Code;

(2) There was no change in the applicable fraction as defined in § 42(c)(1)(B) of the Code of any building in the Project, or that there was a change, and a description of the change;

(3) The Beneficial Owner has received an annual income certification from each tenant of the Low Income Units (unless the Agency in its sole discretion waives the requirement to collect and preserve income certifications on an annual basis and documentation to support that certification, or a substitute permitted under Treasury Regulation §1.42-5(c)(1)(iii);

(4) Each Low Income Unit in the Project was rent-restricted under §42(g)(2) of the Code;

(5) All units in the Project were for use by the general public (except for a management unit) and used on a non-transient basis;

(6) Each building in the Project was suitable for occupancy, taking into account local health, safety, and building codes applicable to the Project; or, if there have been any violations of such health, safety or building code, a copy of any notice or summons related thereto has been forwarded to the Agency with a description of the violation and a remedial action plan of the Beneficial Owner. The Beneficial Owner shall further indicate whether the violation has been corrected as of the time of certification or Beneficial Owner's estimate of the time frame necessary for correction. The Beneficial Owner shall forward a copy of the violation to the Agency and retain the original violation report for review by the Agency during the inspection of the Project. Such reports must be retained until the completion of the Agency's inspection of the Project following the correction of the violation;

(7) There was no change in the Eligible Basis of any building in the Project or, if there was a change, the nature of the change;

(8) All tenant facilities included in the Eligible Basis of any building in the Project, were provided on a comparable basis without charge to all tenants in the building;

(9) If a Low Income Unit in a Project became vacant during the year; reasonable attempts were or are being made to rent that unit to tenants having a qualifying income before any units in such Project were or will be rented to tenants not having a qualifying income;

(10) An extended low-income housing commitment as defined in § 42(h)(6)(B) of the Code was in effect with respect to the Project, which included the requirement under Code §42(h)(6)(B)(iv) that the Beneficial Owner cannot refuse to lease a unit in the Project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s;

(11) Each building in the Project complies with the requirements of the Code applicable to the Bonds;

(12) The Project have been and are in compliance with the Guidelines; the Beneficial Owner's marketing and tenant selection plan applicable to the Project, as filed with the Agency for its records, complies with the Applicable Rules as defined in the Guidelines; and there has been no finding of discrimination under any of such Applicable Rules and there has been no complaint, investigation, administrative inquiry, or other action under such applicable rules, or, if there has been any such finding, complaint, investigation, administrative inquiry, or other action , there has been a listing and an explanation thereof;

(13) There were no findings of discrimination under the Fair Housing Act or, if there have been such findings, an explanation of what they were;

(14) The Beneficial Owner has complied with all the requirements of the LIHTC program, as the same may be amended or supplemented, and with any additional reporting requirements which the Agency may have imposed in order to monitor compliance therewith; and

(15) Such other matters as the Agency may reasonably request from time to time.

d. Each year, during the term of this Agreement, the Beneficial Owner shall retain and make available for inspection and review by the Agency a copy of the annual income certification (unless the Agency in its sole discretion waives the requirement to collect and preserve income certifications on an annual basis) from each tenant and a copy of the documentation the Beneficial

Owner has received to support that certification and such other information as the Agency deems necessary to comply with the monitoring requirements of § 42 of the Code.

e. The Agency shall have the right to perform audits of the Project through the end of the Qualified Project Period. For this purpose, an audit includes an inspection of any building in the Project, an inspection of any Low-Income Unit in any building in the Project and a review of the records described in paragraph (a) of this Section. The costs and expenses of any audit or inspection performed by Agency personnel shall be borne by the Agency. The Beneficial Owner shall be solely responsible for any costs incurred by Beneficial Owner or Beneficial Owner's consultants in connection with any such audit or inspection. However, in the event the Agency determines in its sole discretion that it is necessary to engage a third party to conduct such audit or inspection as a result of Beneficial Owner's failure to perform its obligations hereunder, then such expenses shall be borne by Beneficial Owner.

The Beneficial Owner shall use reasonable efforts to assist the Agency with obtaining access to any units in the Project, shall accompany Agency representatives with such inspections, and shall include a provision in the lease rider to the effect that the tenant shall give the Agency, its representatives or its agents the right to enter and physically inspect such Low Income Unit. If the Agency cannot obtain access to the Low Income Units in a sufficient number required to fulfill its obligations under the Code, notwithstanding the good faith efforts of the Beneficial Owner to assist the Agency in obtaining such access, the Agency will be obligated to report such lack of access to the Internal Revenue Service as an incident of non-compliance with LIHTC regulations.

f. The Agency shall provide prompt written notice to the Beneficial Owner if the Agency does not receive the certification described in paragraph (c) of this section 6.2 or discovers on audit, inspection or review (or in some other manner) that either Project is not in compliance with the provisions of §42 of the Code. Additionally, the Agency shall file Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance, with the Internal Revenue Service no later than 45 days after the end of the correction period (which period shall commence on the date that the Agency notifies the Beneficial Owner of noncompliance pursuant to the preceding sentence and shall extend for 60 days thereafter, unless the Agency determines that there is good cause for granting an extension of the correction period, in which case the period may be extended by the Agency for up to six months).

g. The Agency shall retain records of noncompliance or failure to certify for six years after the Agency's filing of the respective Form 8823. The Agency shall retain the certifications

described in paragraph (c) of this section 6.2 for three years from the end of the calendar year the Agency receives such certifications.

h. It is expressly understood by the Beneficial Owner that the Agency's monitoring of the Beneficial Owner's compliance with the requirements of § 42 of the Code does not and will not make the Agency liable in any manner whatsoever for any noncompliance with such requirements.

6.3 Late Filing Penalties - Unless otherwise specified herein, all reports, certifications or information required under this Article 6 shall be submitted to the Agency by the twentieth (20<sup>th</sup>) day of the month, following the month in which each relates, and shall be in a format reasonably acceptable to the Agency. The Agency shall notify the Beneficial Owner in the event it has not received any report required hereunder within fifteen (15) business days of the date due (as such due date may be extended upon approval of the Agency). If Beneficial Owner fails to submit such delinquent report within five (5) days after the date of such notice, the Beneficial Owner will be subject to a late filing fee equal to the lesser of (i) five percent (5%) of the then current monthly mortgage debt service obligation, or (ii) \$5,000, which amount shall be assessed initially and for each succeeding month until such report is submitted. Notwithstanding the above, and with respect only to annual audited financial statements required pursuant to Section 6.1(g), above which have been granted a 30 day filing extension, failure to file such reports upon the expiration of such 30 day period (as such period may be further extended at the sole discretion of the Agency) will immediately, and without any notice required from the Agency, subject the Beneficial Owner to a late filing penalty equal to the lesser of (i) five percent (5%) of the then current monthly mortgage debt service obligation, or (ii) \$20,000, which amount will be assessed initially and for each succeeding month until such report is submitted.

## 7.0 GENERAL PROVISIONS

7.1 Interpretation and Section Headings - In this Agreement: a. The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms as used in this Agreement refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before the date of this Agreement.

b. Unless the context otherwise requires, words of the masculine gender mean and include correlative words of the feminine and neuter genders, and words defined in the singular have the same meaning when used in the plural and vice versa.

c. Words importing persons include firms, associations, partnerships, trusts, corporations, limited liability companies and other legal entities including public bodies, as well as natural persons.

d. Any headings preceding the texts of any section, paragraph or subparagraph of this Agreement and table of contents appended to the copies hereof shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

e. All certifications, documents and instructions, including those regarding approvals, consents and acceptances, required to be given or made by any person or party hereunder shall be made in writing.

7.2 Parties Bound - This Agreement shall be binding upon the Beneficial Owner, the Nominal Owner and the Agency and any of their respective successors and assigns. Prior to any sale, transfer or other disposition of the Project, the Beneficial Owner and the Nominal Owner shall require the subsequent purchaser or transferee to assume in writing the Beneficial Owner's and Nominal Owner's obligations and duties under this Agreement and shall provide the Agency with a copy of such assumption. Such obligations and duties shall extend to the provisions that all partners or principals of the new owner shall also be bound hereby. Any sale, transfer or other disposition of the Project without such written assumption is null and void and not effective to result in the sale, transfer or other disposition of the Project or to relieve the Beneficial Owner or the Nominal Owner of obligations under this Agreement. The Beneficial Owner and the Nominal Owner acknowledge that to the extent controlled by the Beneficial Owner or the Nominal Owner or any of the purchasers, transferees, partners or principals of the new owner, it is intended that each person who is "related" to any party bound by this Agreement shall also be bound by this Agreement.

7.3 Compliance with Equal Opportunity Laws and Regulations - The Beneficial Owner and the Nominal Owner shall comply with all applicable state and federal laws and regulations regarding affirmative action, equal opportunity in employment and fair housing laws.

7.4 Governing Law - This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with and governed by the laws of the State of New York. In the event of conflict between the provisions of this Agreement and federal laws, regulations and requirements, the latter shall prevail.

7.5 Notices - All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when delivered by hand or by Federal Express, United Parcel Service or equivalent package delivery service, or mailed by certified or registered mail, return receipt

requested, to the parties hereto at the addresses first set forth hereinbelow or to such other place as the parties hereto from time to time designate in writing.

If to the Beneficial Owner:

James Street Apartments LLC  
c/o Conifer Realty, LLC  
183 East Main Street, 6th Floor  
Rochester, New York Rochester, NY 14609  
Attention: Andrew I. Crossed  
Attention: Susan Jennings, Esq.

with a copy to:

Red Stone Equity Partners, LLC  
200 Public Square, Suite 1550  
Cleveland, OH 44114  
Attn: General Counsel

And to the Nominal Owner:

City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202  
Attention: Chairman

with a copy to:

City of Syracuse  
233 East Washington Street  
Syracuse, New York 13202  
Attention: Corporation Counsel

If to the Agency or HFA:

New York State Housing Finance Agency  
641 Lexington Avenue  
New York, New York 10022  
Attention: Executive Vice President and  
Attention: Senior Vice President and Counsel

If to the LOC Bank:

First Niagara Bank, N.A.  
777 Canal View Boulevard, Suite 100  
Rochester, New York 14623  
Attention: John M. Berry, Vice President

with a copy to:

Phillips Lytle LLP  
1400 First Federal Plaza  
Rochester, New York 14614  
Attention: Victoria Grady, Esq.

7.6 Waiver - No omission by the Agency or act of the Agency other than a writing signed by it waiving a breach by the Beneficial Owner shall constitute a waiver thereof. No such waiver of any breach shall be deemed a waiver of any other or subsequent breach or affect or alter this Agreement, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

7.7 Severability - All rights, powers and remedies provided herein may be exercised only to the extent that exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable or not entitled to be recorded, registered, or filed under applicable law. If any provision shall be held to be invalid, illegal or unenforceable, only such provision or part thereof shall be affected by such holding and the validity of other provisions of this Agreement and of the balance of any provision held to be invalid, illegal or unenforceable in part only, shall in no way be affected thereby, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision or part thereof had not been contained therein.

7.8 Counterparts - This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be a duplicate original. All such counterparts shall constitute but one and the same instrument.

7.9 HFA Sign - Subject to compliance with local laws and codes, during rehabilitation of the Project and for a period of up to six months thereafter, Beneficial Owner shall at its own expense provide, erect, maintain, and insure a sign in a design format and of a size, materials and appearance required by the Agency, in a location at the Project site acceptable to the Agency, and stating that the Project has been financed by the Agency. If the Beneficial Owner uses a sign provided by the Agency, Beneficial Owner shall reimburse the Agency for the cost of the sign, including the cost of transporting the sign to the site of the Project.

7.10 Modification and Waiver - This Agreement and the provisions herein may not be waived, amended, modified or rescinded unless such waiver, amendment, modification or rescission is in writing, and signed by all of the parties to the Agreement.

7.11 Servicing Fee - (a) The Beneficial Owner shall pay to the Agency, in equal monthly

installments in arrears, a servicing fee (“HFA Servicing Fee”) of one quarter of one percent (.25%) per cent per annum on the outstanding principal amount of the Mortgage Loan. Notwithstanding the foregoing, the first monthly payment of the HFA Servicing Fee shall be pro-rated amount for the balance of the month in which the Mortgage Loan closing occurred.

(b) Commencing on the first date on which both the Bonds and Mortgage are no longer outstanding until the termination of this Regulatory Agreement, the Beneficial Owner shall pay to the Agency an annual monitoring fee in the amount of the greater of: (i) 1% of the total rent revenue due from the Low Income Units (whether or not collected); or (ii) \$10,000 per annum, which fee shall be payable in equal monthly installments (“Monitoring Fee”), provided, however, that such Monitoring Fee shall not be applicable so long as a servicing fee remains payable to the Agency pursuant to the terms of the Note.

7.12 Approval of Commercial Leases Affecting the Mortgaged Property - The Beneficial Owner shall submit to the Agency for its prior written approval, which shall not be unreasonably withheld, the identity of any prospective retail or other commercial tenant and the proposed usage of the space.

7.13 Green Building Guidelines. The Project shall comply with the Agency’s Green Building Guidelines.

7.14 Lease Agreements. The Beneficial Owner and Nominal Owner agree to comply with all the terms and conditions of the Lease Agreements. The Owner may not materially modify, amend or otherwise change the terms of the Lease Agreements without the prior written approval of the Agency and the LOC Bank.

7.15 Cure by Investor. The Agency agrees to provide copies of all notices related to the Regulatory Agreement to the Investor. The Investo shall have the same right to cure any default under this Regulatory Agreement as the Beneficial Owner or the Nominal Owner and any cure so made by the Investor pursuant to this paragraph will be recognized by the Agency on the same basis as if made or tendered by the Beneficial Owner or the Nominal Owner.

7.16 Certain Provisions Relating to the Lease Agreements Required by the Nominal Owner.

(a) The Beneficial Owner directs the Nominal Owner to execute and deliver this Regulatory Agreement to HFA, and agrees to indemnify the Nominal Owner (and its members, officers, directors, agents, servants and employees) for all fees and costs incurred in connection with

the execution, delivery, recording, performing and enforcing of this Regulatory Agreement, including but not limited to reasonable attorney's fees.

(b) The Beneficial Owner hereby releases the Nominal Owner and its members, officers, agents and employees from, agrees that the Nominal Owner and its members, officers, agents and employees shall not be liable for, and agrees to indemnify, defend, and hold the Nominal Owner and its members, officers, agents and employees harmless from and against any and all claims arising as a result of the Nominal Owners' undertaking of the Project and the execution of this Regulatory Agreement, including, but not limited to:

(1) All claims arising from the exercise by the Nominal Owner of the authority conferred upon it and performance of the obligations assumed pursuant to and under this Regulatory Agreement;

(2) All causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities, or expenses of the Nominal Owner are not incurred or do not result from the intentional wrongdoing of the Nominal Owner or any of its members, officers, agents or employees.

The obligations and agreements of the Nominal Owner contained herein and in any other instrument or document executed in connection herewith, and any instrument or document supplemental hereto, shall be deemed the obligations and agreements of the Nominal Owner and not of any member, officer, agent or employee of the Nominal Owner in his individual capacity; and the members, officers, agents and employees of the Nominal Owner shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby.

(c) The obligations and agreements of the Nominal Owner contained herein shall not constitute or give rise to an obligation of the State New York or of the City of Syracuse, and neither the State of New York nor the City of Syracuse shall be liable hereon. Further, HFA and the Beneficial Owner acknowledge that such obligations and agreements shall not constitute or give rise to a general obligation of the Nominal Owner, but rather shall constitute limited obligations of the Nominal Owner, payable solely from the revenues of the Nominal Owner derived, and to be derived from, the lease, sale, or other disposition of the Project, other than revenues derived from or constituting Unassigned Rights (as that term is defined in the Agency Lease). In the Event of a Default hereunder, HFA's only recourse with respect to the Nominal Owner shall be as to the Nominal Owners' interest in the Project.

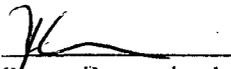
(d) For purposes of this Regulatory Agreement, the Beneficial Owner shall not be deemed to constitute an employee, agent or servant of the Nominal Owner or a person under the Nominal Owners' control or supervision.

(e) Upon the termination of the Lease Agreements on October 1, 2027 or such earlier date as set forth in the Agency Lease, the provisions of this section hereinabove and any rights and obligations of the Nominal Owner described in this Regulatory Agreement shall terminate and no longer be in force or effect, and any ownership interests of the Nominal Owner in the Premises and the Project shall be extinguished. Notwithstanding anything herein to the contrary, the Beneficial Owner's obligations to the Nominal Owner as set forth in the Lease Agreements shall survive the termination of the Lease Agreements.

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SIGNATURE PAGE FOLLOWS.**

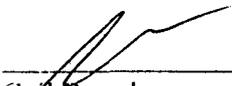
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their respective duly authorized representatives, as of the day and year first written above.

Approved by Counsel  
to the Agency:

By:   
Remy Bernardo, Jr.  
Associate Counsel

**AGENCY:**

**NEW YORK STATE HOUSING FINANCE  
AGENCY:**

By:   
Gail Bressler  
Vice President

**BENEFICIAL OWNER:**

**JAMES STREET APARTMENTS, LLC**

By: James Street Managing Member, LLC  
a New York limited liability company  
its managing member

By: Conifer Realty, LLC  
a New York limited liability company  
its sole member

By: \_\_\_\_\_  
Andrew I. Crossed  
Executive Vice President

**NOMINAL OWNER:**

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
William M. Ryan  
Chairman

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

**AGENCY:**

Approved by Counsel  
to the Agency:

**NEW YORK STATE HOUSING FINANCE  
AGENCY:**

By: \_\_\_\_\_  
Remy Bernardo, Jr.  
Associate Counsel

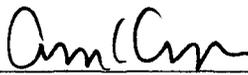
By: \_\_\_\_\_  
Gail Bressler  
Vice President

**BENEFICIAL OWNER:**

**JAMES STREET APARTMENTS, LLC**

By: James Street Managing Member, LLC  
a New York limited liability company  
its managing member

By: Conifer Realty, LLC  
a New York limited liability company  
its sole member

By:   
\_\_\_\_\_  
Andrew I. Crossed  
Executive Vice President

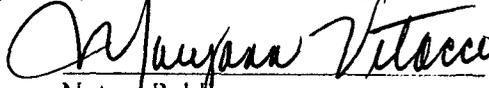
**NOMINAL OWNER:**

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
\_\_\_\_\_  
William M. Ryan  
Chairman

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the 8<sup>th</sup> day of December in the year 2011, before me, the undersigned, a notary public in and for said state, personally appeared **Gail Bressler** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument,

  
Notary Public  
Commission expires:

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

MARYANN VITACCO  
Notary Public, State of New York  
No. 01VI6129481  
Qualified in Richmond County  
Commission Expires June 27, 2013

On the \_\_\_ day of December in the year 2011, before me, the undersigned, a notary public in and for said state, personally appeared **Andrew I. Crossed** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
Commission expires:

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the \_\_\_ day of December in the year 2011, before me, the undersigned, a notary public in and for said state, personally appeared **William M. Ryan** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
Commission expires:

**ACKNOWLEDGMENT PAGE OF HFA REGULATORY AGREEMENT**

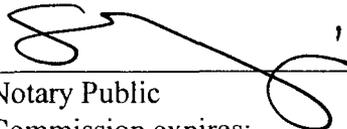
STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the \_\_\_\_ day of December in the year 2011, before me, the undersigned, a notary public in and for said state, personally appeared **Gail Bressler** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
Commission expires:

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the 8<sup>th</sup> day of December in the year 2011, before me, the undersigned, a notary public in and for said state, personally appeared **Andrew I. Crossed** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
Commission expires:

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

S. STURMAN JENNINGS  
Notary Public, State of New York  
No. 02JE6096835  
Qualified in Monroe County 26  
Commission Expires August 11, 15

On the 5<sup>th</sup> day of December in the year 2011, before me, the undersigned, a notary public in and for said state, personally appeared **William M. Ryan** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
Commission expires: LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 14

**SCHEDULE A**

**DESCRIPTION OF PREMISES**

See attached

PARCEL ONE (615 James Street, Syracuse, NY, TA#017.00-19-05)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Number 1 of Block Number 31 in said City, bounded and described as follows:

BEGINNING AT A POINT, said point being North 55 degrees 44 minutes 50 seconds East a distance of 116.20" from the intersection of the northerly line of James Street with the easterly line of McBride Street.

THENCE North 30 degrees 29 minutes 10 seconds West for a distance of 264.27 feet to a point on the southerly line of East Willow Street;

THENCE North 55 degrees 44 minutes 50 seconds East for a distance of 83.80 feet along the southerly line of East Willow Street to a point;

THENCE South 30 degrees 29 minutes 10 seconds East for a distance of 264.27 feet to a point on the northerly line of James Street;

THENCE South 55 degrees 44 minutes 50 seconds West for a distance of 83.80 feet TO THE POINT AND PLACE OF BEGINNING.

and

PARCEL TWO (622 James Street, Syracuse, NY, TA#103.00-05-04)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Block 33 in said City, bounded and described as follows, viz:

BEGINNING at a point in the southeasterly line of James Street 188 feet northeasterly along said street line from the northeasterly line of N. McBride Street;

thence along said southeasterly line of James Street N. 55° 44' 50" E., 74.53 feet to a point;

thence S. 30° 45' 40" E., 125.00 feet to a point;

thence S. 55° 44' 50" W., 19.00 feet to a point;

thence S. 30° 45' 40" E., 92.76 feet to a point;

thence N. 59° 14' 20" E., 66.00 feet to a point;

thence S. 30° 45' 40" E., 104.09 feet to a point;

thence S. 59° 14' 20" W., 90.73 feet to a point;

thence N. 34° 07' 00" W., 179.73 feet to a point;

thence S. 55° 44' 50" W., 12.00 feet to a point;

thence N. 34° 07' 00" W., 140.00 feet to the point and place of beginning.

TOGETHER WITH the benefits, in common with others, over a 15 foot right of way known as Wilkinson Avenue running westerly to N. McBride Street as recited in deeds at Liber 276, page 39, Liber 924, page 275 and Liber 2443, page 599.

## EXHIBIT A

### AGREEMENT BETWEEN AGENCY AND SUCCESSOR MORTGAGEE IN THE EVENT OF ASSIGNMENT OF THE MORTGAGE

After the Mortgage has been assigned to [insert name of successor mortgagee], the Agency's right to enforce the Mortgage, in its own right, shall be on the condition that the Agency may only cause an acceleration of the amounts due under the Mortgage Note and/or commencement of foreclosure of the Mortgage if the Agency has received the written consent of [insert name of successor mortgagee] or an opinion of a nationally recognized bond counsel acceptable to the Agency to the effect that such noncompliance under the Regulatory Agreement, the failure to accelerate the amount due under the Mortgage Note and/or commence foreclosure of the Mortgage, would adversely affect the exclusion from gross income for purposes of federal income taxation of interest on the Agency's bonds issued with respect to such Mortgage Loan. The Agency hereby agrees that it will only exercise its rights under the Loan Agreement, Mortgage and Regulatory Agreement to declare the outstanding balance of the Mortgage Loan to be due and payable and/or to foreclosure on the Mortgage as herein provided. This provision shall affect only the rights of [insert name of successor] and the Agency and it is not intended that the Beneficial Owner shall be a third party beneficiary hereof.

## EXHIBIT B

### DISBURSEMENT CERTIFICATE PURSUANT TO NYSHFA REGULATORY AGREEMENT

Pursuant to that certain Regulatory Agreement dated as of the 22nd day of December, 2011 (“Regulatory Agreement”), by and between the New York State Housing Finance Agency (“Agency”), James Street Apartments LLC (“Beneficial Owner”), and City of Syracuse Industrial Development Agency (“Nominal Owner”), the Beneficial Owner hereby certifies to the Agency as set forth below. All capitalized terms used but not defined herein shall have the meaning given to them in the Regulatory Agreement.

1. The Beneficial Owner has requested a disbursement of a portion of the Mortgage Loan in the amount and for the purposes described on the attachment hereto. Such disbursement is referred to herein as the “Disbursement”. The Certifications herein are made with respect to the Disbursement. This Disbursement will only be used for costs of the Project described in the Regulatory Agreement.

2. All certifications, representations and warranties made by the Beneficial Owner in the Regulatory Agreement and Beneficial Owner’s Tax Certification executed simultaneously with the Regulatory Agreement, as either may have been amended and approved by the Agency, together with all supplements thereto and all prior Disbursement Certifications, except as so amended and approved, remain true and correct on the date of this Disbursement Certification and are hereby incorporated and repeated herein with full force and effect. Specifically and not by way of limitation the Beneficial Owner warrants the accuracy of the schedules of costs, actual or estimated as the case may be, included in the Beneficial Owner’s Tax Certification. Beneficial Owner further warrants (x) that the Disbursement does not cause a change in the amount of any line item in the Beneficial Owner’s Tax Certification, or in the alternative (y) that if it does cause such a change, attached hereto is a completed and executed Beneficial Owner’s Tax Certification, revised to reflect any such change, together with the written approval thereof from the Agency.

3. After taking into account the Disbursement, no Mortgage Loan disbursements previously disbursed for payment of Expenditures with respect to the Project, as shown on Schedule A to the Beneficial Owner’s Tax Certification, will have been applied to pay or reimburse the Beneficial Owner for the payment of “Unqualified Costs” (as classified in the Beneficial Owner’s Tax Certification) of the Project in excess of the amounts shown on Schedule A of the Beneficial Owner’s Tax Certification.

4. After taking into account the Disbursement and all prior and expected Disbursements, the aggregate amount of all Mortgage Loan disbursements which have been or will be applied to pay

or reimburse the Beneficial Owner for the payment of the cost of land or any interest therein (including capitalized lease payments) is or will be less than twenty five percent (25%) of the aggregate amount of Mortgage Loan.

5. After taking into account the Disbursement and all prior and anticipated Disbursements, the "average maturity" of the Bonds will not exceed (120%) of the "average reasonably expected economic life" (within the meanings ascribed to such quoted terms in Section 147(b) of the Code) of the Project financed or to be financed with the Mortgage Loan.

6. The Disbursement is requested to pay, or reimburse the Beneficial Owner for the payment of costs of the Project theretofore paid or incurred. After giving effect to the payment of costs for which this Disbursement request is made, Beneficial Owner expects that, at the time the costs are certified for LIHTC purposes in connection with preparation of Form 8609 for any building in the Project, the proceeds of the tax-exempt bonds will be allocable to costs in the sequence and manner provided in Section 4.6 of the Loan Agreement.

7. The Beneficial Owner is in compliance with all of the terms and conditions of the Regulatory Agreement on the part of the Beneficial Owner to be observed or performed and is not aware of any impending failure in such compliance in any material respect.

IN WITNESS WHEREOF, the Beneficial Owner has caused this Certification to be duly executed and delivered as of the date first above written.

**JAMES STREET APARTMENTS, LLC**

By: James Street Managing Member, LLC  
a New York limited liability company  
its managing member

By: Conifer Realty, LLC  
a New York limited liability company  
its sole member

By: \_\_\_\_\_  
Andrew I. Crossed  
Executive Vice President

EXHIBIT C

ADJUSTMENTS FOR SMALLER AND LARGER FAMILIES  
TO THE AREA MEDIAN INCOME FIGURE

Number of Persons in Family

60% AMI LOW INCOME UNITS

1	2	3	4	5	6
42.0 %	48.0%	54.0%	60.0%	64.8 %	69.6%

THE PERCENTAGES SET FORTH ABOVE ARE PERCENTAGES TO BE APPLIED TO  
AREA MEDIAN INCOME TO DETERMINE APPROPRIATE INCOME LEVELS

**SERVICES AND AMENITIES FORM**

EXHIBIT D

Project: **Kasson and Leavenworth Apartments**

1) The project includes commercial space, either financed by the Agency or included in the total development cost of the project:        Yes   X   No

2) There will be   1   units reserved for resident managers, superintendents and/or employees:

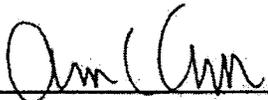
Unit # (If Known)	Unit Type	Residential or Commercial Use	Revenue or Non-Revenue Generating
	1-Bedroom	Resident superintendent	Non-revenue generating

3) The following services and amenities are offered by the project for a fee which is NOT included in the monthly base rent for all tenants (both affordable and market rate):

- o Parking spaces:
  - o All spaces
  - o Indoor parking or garages only
  - o Additional space(s) after one
  - o Other: \_\_\_\_\_
- Storage Space
- o Recreational facilities
- o Individual Utilities:
  - Electric
  - o Gas
  - o Water
  - o Heat
  - A/C
- Cable service
- o Laundry facilities:
  - o Washer/Dryer hook-up
  - o Washer/Dryer in unit
  - Laundry room
- o Structural or architectural features:
  - o Bay windows
  - o Balconies
  - o Den in apartment
  - o Fireplaces
  - o Vaulted ceilings
  - o Other: \_\_\_\_\_
- o Other services and/or amenities for which a fee will be charged: \_\_\_\_\_

4) If applicable, the service package for senior/congregate/assisted projects includes:  
N/A

Certification: I, Andrew I. Crossed, Owner, hereby certify that the information contained herein is accurate and correct.

Signed: 

Dated: February 9, 2011

Title: Executive Vice President, Conifer Realty, LLC,  
sole member of James Street Apartments, LLC

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**JAMES STREET APARTMENTS, LLC**

**and**

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

**and**

**NEW YORK STATE HOUSING FINANCE AGENCY**

**and**

**FIRST NIAGARA BANK, N.A.**

**and**

**CITY OF SYRACUSE**

---

**SUBORDINATION AGREEMENT**

---

DATED as of December 22, 2011

This instrument affects real property situate in the State of New York, County of Onondaga, and City of Syracuse, commonly known as

**615 & 622 James Street, City of Syracuse, Onondaga County, New York  
(Tax Map Numbers: 017.00-19-05; 103.00-05-04)**

all as more particularly set forth in Schedule A

---

RECORD AND RETURN TO:

Phillips Lytle LLP  
1400 First Federal Plaza  
Rochester, New York 14614  
Attention: Robert C. Johnson, Esq.

## SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement"), made as of December 22, 2011, between and among the NEW YORK STATE HOUSING FINANCE AGENCY, a corporate governmental agency established pursuant to Article III of the New York State Private Housing Finance Law, constituting a public benefit corporation, with a place of business at 641 Lexington Avenue, New York, New York 10022 ("HFA"), FIRST NIAGARA BANK, N.A., a national banking association, with a place of business at 777 Canal View Boulevard, Suite 100, Rochester, New York 14623 ("Bank"), the CITY OF SYRACUSE, a municipal corporation existing under the laws of the State of New York, with its principal place of business at City Hall, 233 East Washington Street, Syracuse, New York 13202 ("City") and JAMES STREET APARTMENTS, LLC, a New York limited liability company, with a place of business at 183 East Main Street, Suite 600, Rochester, New York 14604 ("Borrower") and the CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, with a place of business at 333 West Washington Street, Suite 130, Syracuse, New York 13202 ("SIDA").

### WITNESSETH:

WHEREAS, the Borrower has acquired title to certain premises known as 615 & 622 James Street, City of Syracuse, Onondaga County, New York, as more particularly described in Schedule A annexed hereto (the "Mortgaged Premises"); and

WHEREAS, pursuant to its Commitment dated as of December 8, 2011 (the "HFA Commitment"), HFA has agreed to provide a loan to the Borrower in the aggregate principal amount of Eight Million Seven Hundred Seventy-five Thousand Dollars (\$8,775,000.00) (the "First Mortgage Loan") to be funded from a portion of the proceeds of HFA's Affordable Housing Revenue Bonds (the "Bonds"), and which shall be evidenced by a certain Mortgage Note in the principal amount of the First Mortgage Loan given by the Borrower to HFA and dated the date hereof, and as the same may be hereafter amended, modified, supplemented, severed, assigned, substituted, renewed or restated from time to time (collectively, the "First Mortgage Note") and secured by a certain Fee and Leasehold Mortgage, Assignment of Leases and Security Agreement encumbering the Mortgaged Premises, securing the principal sum of the First Mortgage Loan, given by the Borrower and SIDA to HFA, dated of even date herewith and to be recorded in the Office of the Clerk of Onondaga County, New York, as the same may be hereafter amended, modified, supplemented, severed, assigned, substituted, renewed or restated from time to time and the other documents executed and delivered in connection therewith (collectively, the "First Mortgage"); and

WHEREAS, the Borrower in compliance with the HFA Commitment, has requested and the Bank has agreed to issue a direct pay letter of credit to HFA (the "Letter of Credit") to secure the First Mortgage Loan pursuant to the terms of a Letter of Credit Reimbursement Agreement between the Bank and the Borrower dated of even date herewith (as amended or modified from time to time, the "Reimbursement Agreement"); and

WHEREAS, pursuant to a Servicing and Release Agreement dated as of the date hereof (as amended from time to time, the "Servicing Agreement") by and among HFA, the Bank and the Borrower, the Bank shall service the First Mortgage Loan during the term of the Letter of Credit until the earlier to occur of the following ("Termination of Letter of Credit"): (1) Release Date or (2) event of Wrongful Dishonor (as such terms are defined in the Servicing Agreement); and

WHEREAS, the State of New York Mortgage Agency ("SONYMA") has issued a certain Commitment to Insure ("SONYMA Commitment") to provide a mortgage insurance policy for the First Mortgage ("SONYMA Mortgage Insurance Policy"), which mortgage insurance policy will become effective upon satisfaction of certain conditions set forth in Part II of the SONYMA Commitment ("SONYMA Conversion"); and

WHEREAS, pursuant to the HFA Commitment, HFA has agreed to provide a loan to the Borrower in the aggregate principal amount of Eight Hundred Fifty Thousand Dollars (\$850,000.00) (the "HFA Subsidy Loan") which shall be evidenced by a certain Subsidy Note in the principal amount of the HFA Subsidy Loan given by the Borrower to HFA and dated the date hereof, and as the same may be hereafter amended, modified, supplemented, severed, assigned, substituted, renewed or restated from time to time (collectively, the "HFA Subsidy Note") and secured by a certain Fee and Leasehold Subsidy Mortgage encumbering the Mortgaged Premises, securing the principal sum of the HFA Subsidy Loan, given by the Borrower and SIDA to HFA, dated of even date herewith and to be recorded in the Office of the Clerk of Onondaga County, New York, as the same may be hereafter amended, modified, supplemented, severed, assigned, substituted, renewed or restated from time to time and the other documents executed and delivered in connection therewith (collectively, the "HFA Subsidy Mortgage"); and

WHEREAS, the City has agreed to provide or has provided a loan to the Borrower in the principal amount of Two Million Dollars (\$2,000,000.00), which loan is or shall be evidenced by a certain Promissory Note in the amount of Two Million Dollars (\$2,000,000.00) executed by Borrower, dated on or about the date herewith (the "City Note"), secured by a certain Mortgage and Security Agreement, dated on or about the date herewith, encumbering the Mortgaged Premises, from the Borrower to the City to be recorded in the Onondaga County Clerk's Office and the other documents executed and delivered in connection therewith (collectively, the "City Mortgage"); and

WHEREAS, SIDA has executed certain Pledge and Assignments to HFA in connection with HFA's rights as mortgagee of the First Mortgage and the HFA Subsidy Mortgage, respectively, each dated as of the date hereof (collectively, the "Pledge and Assignment to HFA"), and SIDA has executed a certain Pledge and Assignment to the City dated as of the date hereof in connection with the City's rights as mortgagee of the City Mortgage (the "Pledge and Assignment to the City"); and

WHEREAS, to induce HFA to make the First Mortgage Loan and the HFA Subsidy Loan and for the Bank to issue the Letter of Credit, the City has agreed to subordinate the City Note and the City Mortgage to the First Mortgage Note and the First Mortgage, the HFA Subsidy Note and the HFA Subsidy Mortgage, and the indebtedness evidenced by the Reimbursement Agreement (the "Reimbursement Obligations" as more particularly defined in the Reimbursement Agreement);

NOW, THEREFORE, in consideration of good and valuable consideration exchanged between the parties, it is hereby agreed as follows:

1. The indebtedness evidenced by the City Note is and shall be subordinated to the First Mortgage Note, the HFA Subsidy Note and the Reimbursement Obligations and the lien of the City Mortgage is and shall be subject and subordinate in all respects to the liens of the First Mortgage and the HFA Subsidy Mortgage and to all advances heretofore made or which may hereafter be made pursuant to the First Mortgage and the HFA Subsidy Mortgage.

2. The City Mortgage and the Pledge and Assignment to the City are hereby subordinated and made subject to the terms and conditions of the First Mortgage, the HFA Subsidy Mortgage and the Pledge and Assignment to HFA notwithstanding the order of recording thereof, if applicable, and shall continue to be subject to said terms and conditions in the event of foreclosure of the City Mortgage or the City obtaining title to the Mortgaged Premises, in accordance with the law and provisions of the City Mortgage.

3. In the event there shall be any default under the terms of the City Mortgage, including, but not limited to, the failure to pay principal or interest of said City Mortgage for sixty (60) days, the City shall give HFA and the Bank notice of such default and shall give HFA and/or the Bank a reasonable opportunity to cure such default before commencing foreclosure proceedings.

4. All notices or other communications with respect to the subject matter of this Agreement shall be in writing and shall be deemed to have been given when sent by certified mail, return receipt requested, to the parties at the addresses first set out herein. A party may change the address by giving notice as provided herein, which will be effective upon receipt.

5. This Agreement may not be amended, modified, waived or rescinded in whole or in part nor may any other action or consent be given unless it is in writing, signed by and delivered to all the parties to this Agreement.

6. If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

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

8. Upon Termination of the Letter of Credit, all rights and obligations of the Bank under this Agreement shall terminate including, but not limited to, the right to receive any notice or opportunity to cure default as required hereunder.

9. Upon SONYMA Conversion and throughout the term of the First Mortgage, HFA and the City shall not exercise any right of re-entry, reversion or foreclosure or any other remedy set forth in the documents relating to the HFA Subsidy Mortgage and City Mortgage, respectively, unless and until either (a) SONYMA (in its sole discretion) shall consent thereto, or (b) the First Mortgage shall be fully satisfied and discharged.

10. The obligations and agreements of SIDA contained herein and in any other instrument or document executed in connection herewith, and any instrument or document supplemental hereto, shall be deemed the obligations and agreements of SIDA and not of any member, officer, agent or employee of SIDA in his individual capacity; and the members, officers, agents and employees of SIDA shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of SIDA contained herein or therein shall not constitute or give rise to an obligation of the State of New York or of the City of Syracuse, and neither the State of New York nor the City of Syracuse shall be liable hereon or thereon. Further, such obligations and agreements shall not constitute or give rise to a general obligation of SIDA, but rather shall constitute limited obligations of SIDA, payable solely from the revenues of SIDA derived, and to be derived from, the lease, sale, or other disposition of the Project Facility, other than revenues derived from or constituting Unassigned Rights (as that term is defined in the Lease Agreements (as defined in the First Mortgage)). No order of decree or specific performance with respect to any of the obligations of SIDA hereunder or thereunder shall be sought or enforced against SIDA unless:

(a) The party seeking such order or decree shall first have requested SIDA in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and SIDA shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(b) If SIDA refuses to comply with such request and SIDA's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the Borrower shall have placed in an account with SIDA an amount or undertaking sufficient to cover such reasonable fees and expenses; and

(c) If SIDA refuses to comply with such request and SIDA's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the Borrower shall (1) agree to indemnify and hold harmless SIDA and its members, officers, agents and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by SIDA, furnish to SIDA satisfactory security to protect SIDA and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

Any failure to provide notice, indemnity, or security to SIDA pursuant to this Section shall not alter the full force and effect of any Event of Default under the Lease Agreements, First Mortgage or HFA Subsidy Mortgage.

(d) For purposes of this Section, the Borrower shall not be deemed to constitute an employee, agent or servant of SIDA or a person under SIDA's control or supervision.

(e) Nothing contained in this Section 10 shall limit or be construed to limit or impair any action at law or in equity by the Mortgagee, SONYMA or their designee against the Mortgaged Premises with respect to the performance of any obligation by the Borrower under the First Mortgage, HFA Subsidy Mortgage or the Loan Documents (as such term is defined in the First Mortgage).

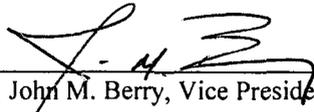
(f) Upon the termination of the Agency Lease (as such term is defined in the Lease Agreements) on October 1, 2027 or such earlier date as set forth in the Agency Lease, the provisions of this Section 10 shall terminate and no longer be in force or effect, and any ownership interests of SIDA in the Mortgaged Premises shall be extinguished.

[Signature Pages Follow]

Doc # 02-257052.4

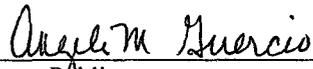
IN WITNESS WHEREOF, the parties have each duly executed this Agreement as of the day and year first above written.

**FIRST NIAGARA BANK, N.A.**

By:   
John M. Berry, Vice President

COUNTY OF NEW YORK  
STATE OF NEW YORK ss:

On the 8<sup>th</sup> day of December in the year 2011 before me, the undersigned, a Notary Public in and for said State, personally appeared John M. Berry personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

**ANGELA M. GUERCIO**  
**NOTARY PUBLIC, State of New York**  
Registration # 01GU812226  
Qualified in Monroe County  
Commission Expires February 7, 2013

**JAMES STREET APARTMENTS, LLC**

a New York limited liability company

By: James Street Managing Member, LLC

a New York limited liability company

its managing member

By: Conifer Realty, LLC

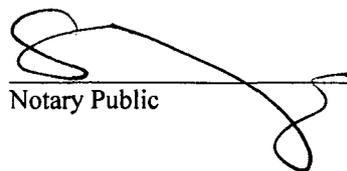
a New York limited liability company

its sole member

By:   
Andrew I. Crossed, Executive Vice President

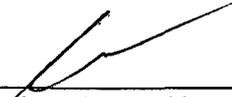
COUNTY OF NEW YORK  
STATE OF NEW YORK ss:

On the 8<sup>th</sup> day of December in the year 2011 before me, the undersigned, a Notary Public in and for said State, personally appeared Andrew I. Crossed, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose names is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

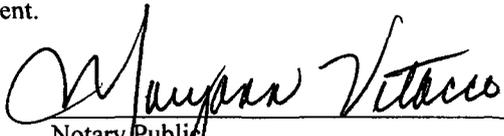
S. STURMAN JENNINGS  
Notary Public, State of New York  
No. 02JE6096835  
Qualified in Monroe County  
Commission Expires August 11, 2015

NEW YORK STATE HOUSING FINANCE AGENCY

By:   
Gail Bressler, Vice President

COUNTY OF NEW YORK  
STATE OF NEW YORK ss:

On the 2<sup>nd</sup> day of December in the year 2011 before me, the undersigned, a Notary Public in and for said State, personally appeared Gail Bressler, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose names is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

MARYANN VITACCO  
Notary Public, State of New York  
No. 01VI6129481  
Qualified in Richmond County  
Commission Expires June 27, 2013

CITY OF SYRACUSE

By:   
Paul Driscoll, Commissioner  
Neighborhood and Business Development

COUNTY OF ONONDAGA  
STATE OF NEW YORK ss:

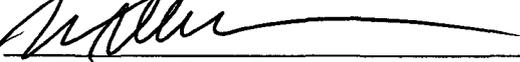
On the 6<sup>th</sup> day of December in the year 2011 before me, the undersigned, a Notary Public in and for said State, personally appeared Paul Driscoll, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose names is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

THOMAS RAYMOND BABILON  
Notary Public, State of New York  
No. 01BA6091431  
Qualified in Onondaga County  
Commission Expires April 28, 2015

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

COUNTY OF NEW YORK  
STATE OF NEW YORK ss:

On the 5<sup>th</sup> day of December in the year 2011 before me, the undersigned, a Notary Public in and for said State, personally appeared William M. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 14

SCHEDULE A

Legal Description

PARCEL ONE (615 James Street, Syracuse, NY, TA#017.00-19-05)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Number 1 of Block Number 31 in said City, bounded and described as follows:

BEGINNING AT A POINT, said point being North 55 degrees 44 minutes 50 seconds East a distance of 116.20" from the intersection of the northerly line of James Street with the easterly line of McBride Street.

THENCE North 30 degrees 29 minutes 10 seconds West for a distance of 264.27 feet to a point on the southerly line of East Willow Street;

THENCE North 55 degrees 44 minutes 50 seconds East for a distance of 83.80 feet along the southerly line of East Willow Street to a point;

THENCE South 30 degrees 29 minutes 10 seconds East for a distance of 264.27 feet to a point on the northerly line of James Street;

THENCE South 55 degrees 44 minutes 50 seconds West for a distance of 83.80 feet TO THE POINT AND PLACE OF BEGINNING.

and

PARCEL TWO (622 James Street, Syracuse, NY, TA#103.00-05-04)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Block 33 in said City, bounded and described as follows, viz:

BEGINNING at a point in the southeasterly line of James Street 188 feet northeasterly along said street line from the northeasterly line of N. McBride Street;

thence along said southeasterly line of James Street N. 55° 44' 50" E., 74.53 feet to a point;

thence S. 30° 45' 40" E., 125.00 feet to a point;

thence S. 55° 44' 50: W., 19.00 feet to a point;

thence S. 30° 45' 40" E., 92.76 feet to a point;

thence N. 59° 14' 20" E., 66.00 feet to a point;

thence S. 30° 45' 40: E., 104.09 feet to a point;

thence S. 59° 14' 20" W., 90.73 feet to a point;

thence N. 34° 07' 00" W., 179.73 feet to a point;

thence S. 55° 44' 50" W., 12.00 feet to a point;

thence N. 34° 07' 00" W., 140.00 feet to the point and place of beginning.

TOGETHER WITH the benefits, in common with others, over a 15 foot right of way known as Wilkinson Avenue running westerly to N. McBride Street as recited in deeds at Liber 276, page 39, Liber 924, page 275 and Liber 2443, page 599.

**CITY OF SYRACUSE**

**and**

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT  
AGENCY**

**and**

**JAMES STREET APARTMENTS, LLC**

**PAYMENT IN LIEU OF TAX AGREEMENT**

**Dated as of: December 1, 2011**

**JAMES STREET APARTMENTS, LLC  
Federal Tax ID #: 27-3472526**

**THIS PAYMENT IN LIEU OF TAX AGREEMENT**, (this "*Agreement*") dated as of December 1, 2011, by and among the **CITY OF SYRACUSE**, a municipal corporation of the State of New York, having an office at City Hall, Syracuse, New York 13202 (hereinafter referred to as the "*Municipality*"), the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized and existing under the laws of the State of New York (hereinafter referred to as the "*Agency*"), having an office at City Hall Commons, 201 East Washington Street, Syracuse, New York 13202, and **JAMES STREET APARTMENTS, LLC**, a limited liability company organized and existing pursuant to the laws of the State of New York, whose address is, 183 East Main Street, Suite 600, Rochester, New York 14604 (hereinafter referred to as the "*Company*").

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

**WHEREAS**, the New York State Industrial Development Agency Act, being Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of the State of New York, as amended (hereinafter referred to as the "*Enabling Act*") authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish real and personal property, whether or not now in existence or under construction, which shall be suitable for, among others, manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, the Enabling Act further authorizes each such agency to lease and to sell its projects, to charge and collect rent therefor, to issue its bonds or notes for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds or notes, to mortgage any or all of its facilities and to pledge the revenues and receipts therefrom to the payment of such bonds or notes; and

**WHEREAS**, pursuant to and in accordance with the provisions of the Enabling Act, Chapter 641 of the 1979 Laws of the State of New York, as amended (said chapter and the

Enabling Act being hereinafter collectively referred to as the "*Act*") created the Agency for the benefit of the Municipality and the inhabitants thereof; and

**WHEREAS**, the Agency, by Resolution adopted on April 19, 2011, (the "*Resolution*"), resolved to undertake the "*Project*" (as hereinafter defined); and

**WHEREAS**, the Project will consist of: (A)(i) the Agency's acquisition of a leasehold interest in an approximate 0.51 acre parcel of improved real property located at 615 James Street ("*Leavenworth Parcel*") and an approximate 0.50 acre parcel of improved real property located at 622 James Street ("*Kasson Parcel*") in the City of Syracuse, New York, and more fully described in the attached Exhibit "A", (the "*Land*"); (ii) the reconstruction and renovation of: (a) an approximately 51,602 square foot seven (7) story building ("*Leavenworth Apartments*") for mixed income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 37,138 square foot, seven (7) story building ("*Kasson Apartments*" and together with the Leavenworth Apartments the "*Apartments*") for mixed income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on land and jointly housing 83 units of housing, each apartment building containing laundry and storage facilities together with on-site parking for residents (collectively, the "*Facility*"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the "*Equipment*") and together with the Land and the Facility, the ("*Project Facility*"); and (B) the granting of certain financial assistance in the form of exemptions from real property tax, and sales and use taxation (collectively, the "*Financial Assistance*"); and (C) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Agency will lease the Project Facility from the Company pursuant to that certain Company Lease Agreement dated as of December 1, 2011, (the "*Company Lease Agreement*"), between the Company and the Agency, and sublease the Project Facility back to the Company pursuant to that certain Agency Lease Agreement dated as of December 1, 2011, (the "*Agency Lease Agreement*"), between the Agency and the Company (collectively the Company

Lease Agreement and the Agency Lease Agreement are hereinafter referred to as the ("*Lease Agreement*"); and

**WHEREAS**, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

**WHEREAS**, the Company, to further induce the Agency to assist with the Project, has agreed with the Municipality and the Agency to enter into this Agreement; the Municipality's participation in this Agreement has been duly authorized by Ordinance No.163 of 2011, adopted by the Municipality's Common Council on April 25, 2011, and approved by Mayor Stephanie A. Miner on April 27, 2011; and the Agency's participation in this Agreement has been duly authorized by its Resolution adopted on April 19, 2011;

**NOW, THEREFORE**, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

## **ARTICLE I**

### **REPRESENTATIONS AND WARRANTIES**

#### **Section 1.01. Representations and Warranties by Municipality**

The Municipality does hereby represent, warrant and covenant as follows:

(a) **Authorization**. The Municipality has secured all approvals of appropriate officers, boards and bodies of the Municipality necessary to duly authorize the execution, delivery and performance of this Agreement by the Municipality and the performance by the Municipality of its obligations hereunder.

(b) **Validity**. The Municipality is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by the terms, conditions or provisions of any law, any order of any court or other agency or authority of government, or any agreement or instrument to which the Municipality is a party or by which the Municipality is bound, and this Agreement is a legal, valid and binding obligation of the Municipality enforceable in accordance with its terms.

**Section 1.02. Representations and Warranties by Agency**

The Agency does hereby represent and warrant as follows:

(a) Existence and Power. The Agency has been duly established under the provisions of the Act and has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(b) Intentions. The Agency intends to acquire a leasehold interest in the Project Facility from the Company and to sublease the Project Facility back to the Company, all pursuant to the provisions of the Lease Agreement.

(c) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State of New York to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated.

(d) Validity. The Agency is not prohibited from entering into this Agreement and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by the terms, conditions or provisions of the Act, any other law, any order of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound, and this Agreement is a legal, valid and binding obligation of the Agency enforceable in accordance with its terms.

**Section 1.03. Representations and Warranties by Company**

The Company does hereby represent and warrant as follows:

(a) Existence. The Company is a company duly organized and validly existing as a limited liability company under the laws of the State of New York.

(b) Authorization. The Company is authorized and has the power under the laws of the State of New York to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant

to this Agreement. The Company has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated. The Company is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by (and the execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its Articles of Organization, Operating Agreement or any other restriction or any law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement will neither be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, nor result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Agreement is a legal, valid and binding obligation of the Company enforceable in accordance with its terms.

(c) Governmental Consent. No further consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Agreement by the Company or as a condition to the validity of this Agreement.

## ARTICLE II

### COVENANTS AND AGREEMENTS

#### **Section 2.01. Tax-Exempt Status of the Project Facility**

(a) Assessment of the Project Facility. Pursuant to the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of ownership or control of the Project Facility by the Agency, and for so long thereafter as the Agency shall own or control the Project Facility, the Project Facility shall be entitled to an exemption upon the first available

assessment roll of the Municipality prepared subsequent to the acquisition by the Agency of ownership or control of the Project Facility. The time of commencement of the Agency's exemption shall be controlled by the Municipality's taxable status date, in conformity with Section 412-a of the Real Property Tax Law. The Company will be required to pay to the Municipality all taxes and assessments lawfully levied and/or assessed against the Project Facility, in spite of the Agency's actual ownership or control of the Project Facility, until the Project Facility shall be entitled to exempt status on the tax roll of the Municipality.

(b) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. The Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

**Section 2.02. Payments in Lieu of Taxes**

(a) Agreement to Make Payments. The Company agrees that it shall make periodic payments in lieu of real property taxes in the amounts hereinafter provided. The said payments due to the Agency hereunder shall be paid by the Company, to the Municipality, by check made payable to "*Commissioner of Finance*". Upon receipt of the Company's payment, it shall be the Municipality's obligation to appropriately disburse any portion of the said payment to the County of Onondaga, or such other taxing jurisdiction, pursuant to the Act. This Company obligation shall exist for so long as the Agency retains an interest in the Project Facility. Notwithstanding the appearance of the Agency's exemption on the Municipality's tax roll for the 2013/2014 City and School portion of the real property tax due on the Land and Facility, the year 1 payment due under Exhibit "B" shall commence on January 1, 2013. Without regard to the Agency exemption, the Company shall continue paying real property tax through 2012, based upon the assessment and the combined real property tax rate in effect for that period as if the Project Facility were privately owned and the Agency had no interest in the same.

(b) Amount of Payments in Lieu of Taxes. Unless otherwise stated, the Company's agreed upon annual payment in lieu of tax hereunder shall be an amount determined by reference to

Exhibit "B", attached hereto and made a part hereof. The payments in lieu of tax due, as set forth in Exhibit "B", include any real property tax exemptions that might be afforded to the Company if the Project Facility were owned by the Company and not the Agency. Because the payments due under Exhibit "B" are the result of a deviation from the Agency's Uniform Tax Exemption Policy, and are a negotiated sum, which has been agreed to by all parties to this Agreement, the Company, its successors or assigns hereby waive any and all right to challenge or contest by any administrative or applicable judicial means, those payments, or the basis for those payments, due pursuant to Exhibit "B". It shall also be an event of default under Article IV of this Agreement should the Company bring such a challenge or contest to the assessment on the Project Facility and/or Additional Property.

(c) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition shall be made to the Facilities, or any new or additional building shall be constructed on the real property described in Exhibit "A" that is in addition to the Facilities (such structural additions and additional buildings being hereinafter referred to as "*Additional Property*"), the Company agrees to make additional periodic payments in lieu of real property taxes (such additional payments being hereinafter collectively referred to as "*Additional Payments*") to the Municipality with respect to such Additional Property. Such Additional Payments shall be computed as follows:

By multiplying (1) the value placed on such Additional Property, as value is determined by the Municipality's Assessor by (2) the tax rate or rates of the Municipality that would be applicable to such Additional Property if such Additional Property were owned or controlled by the Company and not the Agency, and (3) then reducing the amount so determined by the amounts of any properly acquired tax exemptions that would be afforded to the Company by the Municipality for such Additional Property as if it was owned or controlled by the Company and not the Agency.

(d) Revaluation. In the event of a real property assessment revaluation by the Municipality, the Company shall continue to make its payments in accordance with this Agreement; however, in the event that Exhibit "B" is no longer in effect, but payments are still being made

hereunder for any reason, (including, but not limited to, the Agency still having an interest in the Project Facility), and would be effected by revaluation, each year's payments subsequent to such revaluation shall be adjusted to properly reflect the revaluation, it being the intent of the parties that the level of payments following revaluation shall be equal to those payments contemplated by this Agreement.

(e) Damage or Destruction. In the event that all or substantially all of the Project Facility is damaged or destroyed, the Company shall continue to make the payments required by this Agreement for as long as the Agency shall own or control the Project Facility, without regard to such damage or destruction.

(f) Time of Payments. The Company agrees to pay the amounts due the Agency hereunder to the Municipality for each year of this Agreement, within the period that the Municipality allows payment of taxes levied in such calendar year without penalty. The Company shall be entitled to receive receipts from the Municipality for such payments.

(g) Method of Payment. All payments by the Company hereunder shall be paid to the Municipality in lawful money of the United States of America, cash, money order or check.

### **Section 2.03. Obligation of Municipality**

The Municipality shall submit to the Company written semi-annual statements specifying the amount and due date or dates of any payments due to the Agency hereunder. Each said semi-annual statement shall be submitted to the Company at the same time that tax bills are mailed by the Municipality to the owners of privately owned property.

### **Section 2.04. Obligations of Agency**

(a) Requirement that any Project Facility Agreements Require Payments in Lieu of Taxes. So long as the Project Facility shall be entitled to exemption from real property taxes as provided in Section 2.01(a) hereof, the Agency agrees, to the extent permitted by law, that it shall not make any agreement regarding the leasing or sale of the Project Facility which does not require that payments in lieu of taxes shall be paid to the Municipality in at least the amounts set forth in Article II hereof.

(b) Requirement that Mortgagees subordinate to Payments. The Agency and the

Company agree that any mortgages on the Project Facility, given by either of them, shall provide that the rights of the mortgagees thereunder shall be subordinate to this Agreement and to the right of the Municipality to receive payments in lieu of taxes pursuant to Article II hereof.

**Section 2.05. Company to Furnish Information**

The Company agrees to promptly comply with the reporting and information requirements of the Agency and the Act, and to immediately furnish the applicable information required or requested by the Agency and/or the State of New York. The Company further agrees to assist the Agency with the preparation of any reports, or answer any inquiries, required by the State of New York in connection with the Act or the Agency's participation in the Project.

**Section 2.06. Interest**

If the Company shall fail to make any payment required by this Agreement when due, its obligation to make the payment so in default shall continue as an obligation of the Company until such payment in default shall have been made in full, and the Company shall pay the same together with interest thereon, to the extent permitted by law, at the greater of **(i) eighteen per cent (18%) per annum, or (ii) the rate per annum which would be payable if such amounts were delinquent taxes, until so paid in full.**

**ARTICLE III**

**LIMITED OBLIGATION OF THE AGENCY**

**Section 3.01. No Recourse; Limited Obligation of the Agency**

(a) No Recourse. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency and not of any member, director, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Agreement, or otherwise based on or in respect of this Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, director, officer, agent, servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any

person executing this Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Agreement. It is expressly understood that this Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, director, officer, agent, servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Agreement under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom. Any and all such personal liability of, and any and all such rights and claims against, every such member, director, officer, agent, servant or employee under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(b) Limited Obligation. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or the Municipality, and neither the State of New York nor the Municipality shall be liable thereon. Furthermore, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project.

(c) Further Limitation. Notwithstanding any provision of this Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (i) the Agency shall have been requested to do so in writing by the Company and (ii) if compliance with such request is expected to result in the incurrence by the Agency (or any of its members, directors, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

**ARTICLE IV**  
**EVENTS OF DEFAULT**

**Section 4.01. Events of Default**

Any one or more of the following events shall constitute an event of default under this Agreement, and the terms "*Event of Default*" or "*Default*" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) Failure of the Company to pay any amount due and payable by it pursuant to this Agreement or the Lease Agreement.

(b) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed under this Agreement (other than as referred to in paragraph (a) above) or the Lease Agreement, and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied.

(c) Any warranty, representation or other statement by or on behalf of the Company contained in this Agreement or the Lease Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Agreement or the Lease Agreement.

(d) The Company violates any federal, state or local environmental law or allows or causes any Hazardous Materials (as Hazardous Materials is defined and described in any federal, state or local law) to be released at, on, to, into or from the Project Facility, except as permitted by the Lease Agreement or within the terms and conditions of a permit, certificate, license or other written approval of an authorized governmental body, and fails to remedy such violation within thirty (30) days; or if such failure cannot be cured within thirty (30) days, fails to commence a cure within thirty (30) days and thereafter diligently prosecute the cure thereof.

(e) The occurrence of any Event of Default or Default under this Agreement, the Lease Agreement or any other Project documents.

(f) Failure of the Company to enter into financing for the Project and commence

construction of the Project Facility within six months of the date of this Agreement.

The payment schedule contained in Exhibit "B" is for the benefit of the Company and its Project Facility. In the event that the Company defaults hereunder, and the Lease Agreement cannot be terminated, and/or the Agency's participation in the Project and this Agreement is not or cannot be terminated, the Company, or any assignee, or successor shall no longer be entitled to make payments under this Agreement pursuant to Exhibit "B". In such an event, payments shall be made hereunder, for any remaining term of the Project, as if the Project Facility was privately owned and assessed and without any further regard to Exhibit "B".

**Section 4.02. Remedies on Company Default**

Whenever any Event of Default under Sections 4.01(a), 4.01(b), 4.01(c), 4.01(d), 4.01(e) or 4.01 (f) shall have occurred and be continuing with respect to this Agreement, and/or the Company shall be in default under the Lease Agreement, the Municipality or the Agency may take whatever action at law or in equity, following applicable notice, as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Agreement and/or the Lease Agreement.

**Section 4.03. Recording of Lease Terminations and Other Documents**

Whenever any Event of Default under Sections 4.01(a), 4.01(b), 4.01(c), 4.01(d), 4.01(e) or 4.01 (f), shall have occurred and be continuing with respect to this Agreement or the Lease Agreement, the Agency may, upon notice to the Company provided for in this Agreement or the Lease Agreement, terminate the Lease Agreement and record such termination or other necessary documents in the Onondaga County Clerk's Office, terminating the Agency's interest in the Project Facility and terminating this Agreement.

The recording of such a termination and any other documentation shall constitute delivery to, and acceptance of such, by the Company. In order to facilitate such a termination, the Company hereby appoints the Chairman or the Vice Chairman of the Agency as its agent for the purpose of executing and delivering all documents necessary to allow such termination by the Agency.

In the event that the Lease Agreement, for any reason, is extended by its terms, or for any reason this Agreement expires or terminates, but the Agency retains an interest or remains in title to

the Project Facility, the Company shall continue to make payments in lieu of taxes to the Municipality for as long as the Agency retains an interest in, or remains in title to, the Project Facility. Those payments shall be the equivalent of the real property taxes that would be due on the Project Facility if it were owned by the Company and not the Agency. It is the intention of the parties hereto, that for so long as the Agency shall possess title to, or an interest in, the Property, the Company, or any permitted successors or assigns, shall make payments in lieu of taxes to the Municipality that are either based upon Exhibit "B", or if Exhibit "B" is no longer applicable for any reason, are the equivalent of the real property taxes that would be due and owing if the Project Facility were privately owned.

**Section 4.04. Payment of Attorney's Fees and Expenses**

If the Company should default in performing any of its obligations, covenants and agreements under this Agreement and the Agency or the Municipality should employ attorneys (whether in-house or outside counsel) or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency and/or the Municipality the reasonable fees and disbursements of such attorneys and such other reasonable expenses so incurred.

Furthermore, should the Company bring a challenge or contest to the assessment on the Project Facility and/or Additional Property during the term of this agreement, and the Agency and/or the Municipality waives its right to declare a default under this agreement in regards to such challenge or contest, or such challenge or contest is determined not to be a default of this agreement by any Court of competent jurisdiction, the Company agrees that in the event that the Company is unsuccessful in its challenge or contest to the assessment, it will, on demand, pay to the Agency and/or the Municipality the reasonable fees and disbursements of any attorneys employed (whether in-house or outside counsel) for the defense of such action as well as such other reasonable expenses so incurred.

**Section 4.05. Remedies; Waiver and Notice**

(a) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

(b) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(c) Notice Not Required. In order to entitle the Agency or the Municipality to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement.

(d) No Waiver. In the event any provision contained in this Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

**ARTICLE V**

**MISCELLANEOUS**

**Section 5.01. Term of Agreement**

(a) General. This Agreement shall become effective and the obligations of the Municipality, the Agency and the Company shall arise absolutely and unconditionally upon the execution and delivery of this Agreement. The Agreement shall terminate on the same date that the Lease Agreement terminates, or on any earlier date permitted under the Lease Agreement. In the event of a termination of the Agency's interest in the Project Facility, the Company's payments due hereunder shall be pro-rated to the extent necessary to allow the Municipality to issue a supplemental tax bill based upon the Agency's transfer of ownership or control of the Project

Facility to the Company, and the loss of the Agency's tax exemption on the said Project Facility.

(b) Conflict. In the event of a conflict between this Agreement or any of its terms on the one hand, and the Lease Agreement or any other Project documents on the other hand, the provisions most favorable to the Agency shall govern. The Agency and the Company agree that the Agency's participation in the Project is for the benefit of the Company and that the Municipality must receive payments from the Company hereunder, during the entire term of this Agreement and/or the Agency's ownership or control of the Project Facility.

**Section 5.02. Company Acts**

Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

**Section 5.03. Amendment of Agreement**

This Agreement may not be amended, changed, modified or altered unless such amendment, change, modification or alteration is in writing and signed by the Municipality, the Agency, and the Company.

**Section 5.04. Notices**

All notices, certificates or other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended recipient or by overnight courier or such other means as shall provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

- (a) To the Municipality:  
City of Syracuse  
City Hall, Room 300  
233 East Washington Street  
Syracuse, New York 13202  
Attention: Mayor  
Attention: Corporation Counsel

- (b) To the Agency:  
City of Syracuse Industrial Development Agency  
City Hall, Room 300  
233 East Washington Street  
Syracuse, New York 13202  
Attention: Chairman  
Attention: Corporation Counsel
- (c) To the Company:  
James Street Apartments, LLC c/o Conifer Realty, LLC  
183 East Main Street, Suite 600  
Rochester, NY 14604  
Attention: Andrew Bodewes

The Municipality, Agency, and Company may, by notice given hereunder to each of the others, designate any further or different addresses to which the subsequent notices, certificates or other communications to them shall be sent.

**Section 5.05. Binding Effect**

This Agreement shall inure to the benefit of, and shall be binding upon the Municipality, Agency, and Company, and their respective successors and assigns.

**Section 5.06. Severability**

If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

**Section 5.07. Counterparts**

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 5.08. Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Venue of any action or proceeding brought hereunder shall be in the State or Federal Courts located in Onondaga County, New York.

**Section 5.09. Assignment**

This Agreement may not be assigned, unless such assignment is expressly permitted by the Lease Agreement.

**[No Further Text – Signature Pages Follows]**

IN WITNESS WHEREOF, the Municipality, Agency, and Company have caused this Agreement to be executed in their respective names on the date first above written.

Attest

By: John P. Copanas  
John P. Copanas, City Clerk

CITY OF SYRACUSE

By: Stephanie A. Miner  
Stephanie A. Miner, Mayor

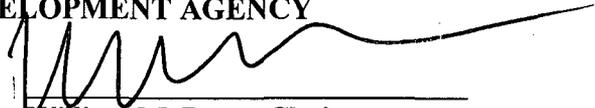
STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) ss.:

On this 2nd day of December, 2011, before me personally came Stephanie A. Miner, Mayor of the City of Syracuse, with whom I am personally acquainted, who, being by me duly sworn, did depose and say: that she resides in the City of Syracuse, New York; that she is Mayor of the City of Syracuse, the corporation described in and which executed the within instrument; that she knows the corporate seal of said City of Syracuse and it was so affixed pursuant to the Charter of the City and that she signed said instrument as Mayor of said City of Syracuse by like authority; and the said Stephanie A. Miner further says that she is acquainted with John P. Copanas and knows him to be the City Clerk of said City of Syracuse and that the signature of John P. Copanas was hereto subscribed pursuant to said Charter and in the presence of her, the said Stephanie A. Miner, Mayor.

Joseph W. Barry, III  
Notary Public  
JOSEPH W. BARRY, III  
Notary Public in the State of New York  
Qualified in Onondaga County  
No. 02BA5051526  
My Commission Expires 11/6/13

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

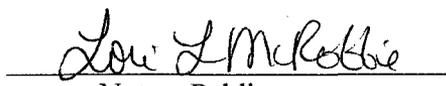
By:

  
\_\_\_\_\_

William M. Ryan, Chairman

STATE OF NEW YORK            )  
COUNTY OF ONONDAGA       ) ss:

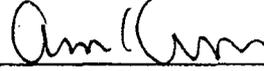
On the 5<sup>th</sup> day of December, 2011, before me the undersigned, a Notary Public in and for said state, personally appeared William M. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or he person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_

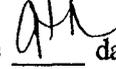
Notary Public

**LORI L. McROBBIE**  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 14

**JAMES STREET APARTMENTS, LLC**  
**By: James Street Managing Member, LLC**  
**By: Conifer Realty, LLC**

By:   
**Andrew I. Crossed**  
**Executive Vice President**

**STATE OF NEW YORK**                    )  
**COUNTY OF ONONDAGA**            ) ss:

On the  day of December, in the year 2011, before me the undersigned, a notary public in and for said state, personally appeared Andrew I. Crossed, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or he person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

**MARLENE E. BESWICK**  
**Notary Public, State of New York**  
**No. 01BE6062083**  
**Qualified in Ontario County**  
**Commission Expires 07/30/2013**

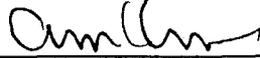
**ACKNOWLEDGEMENT BY**

**JAMES STREET APARTMENTS, LLC**

James Street Apartments, LLC, (the "*Limited Liability Company*") hereby acknowledges receipt and review of this Agreement, and consents to, and approves of, the terms and provisions contained herein.

**IN WITNESS WHEREOF**, the Limited Liability Company has caused this Acknowledgment to be executed in its name by its duly authorized representative, dated as of December 1, 2011.

**JAMES STREET APARTMENTS, LLC**  
**By: James Street Managing Member, LLC**  
**By: Conifer Realty, LLC**

By:   
**Andrew I. Crossed**  
**Executive Vice President**

**STATE OF NEW YORK**  
**COUNTY OF ONONDAGA** ) ss:

On the 01 day of December, in the year 2011, before me the undersigned, a notary public in and for said state, personally appeared Andrew I. Crossed, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or he person upon behalf of which the individual acted, executed the instrument.



Notary Public

**MARLENE E. BESWICK**  
Notary Public, State of New York  
No. 01BE6062083  
Qualified In Ontario County  
Commission Expires 07/30/20 13

**EXHIBIT "A"**

**DESCRIPTION OF LAND**

PARCEL ONE (615 James Street, Syracuse, NY, TA#017.00-19-05)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Number 1 of Block Number 31 in said City, bounded and described as follows:

BEGINNING AT A POINT, said point being North 55 degrees 44 minutes 50 seconds East a distance of 116.20" from the intersection of the northerly line of James Street with the easterly line of McBride Street.

THENCE North 30 degrees 29 minutes 10 seconds West for a distance of 264.27 feet to a point on the southerly line of East Willow Street;

THENCE North 55 degrees 44 minutes 50 seconds East for a distance of 83.80 feet along the southerly line of East Willow Street to a point;

THENCE South 30 degrees 29 minutes 10 seconds East for a distance of 264.27 feet to a point on the northerly line of James Street;

THENCE South 55 degrees 44 minutes 50 seconds West for a distance of 83.80 feet TO THE POINT AND PLACE OF BEGINNING.

and

PARCEL TWO (622 James Street, Syracuse, NY, TA#103.00-05-04)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Block 33 in said City, bounded and described as follows, viz:

BEGINNING at a point in the southeasterly line of James Street 188 feet northeasterly along said street line from the northeasterly line of N. McBride Street;

thence along said southeasterly line of James Street N. 55° 44' 50" E., 74.53 feet to a point;

thence S. 30° 45' 40" E., 125.00 feet to a point;

thence S. 55° 44' 50": W., 19.00 feet to a point;

thence S. 30° 45' 40" E., 92.76 feet to a point;

thence N. 59° 14' 20" E., 66.00 feet to a point;

thence S. 30° 45' 40": E., 104.09 feet to a point;

**EXHIBIT "B"**

**PILOT SCHEDULE**

James Street Apartments, LLC PILOT Schedule		
Year	Assessment	Payment
1	\$520,600 x tax rate*	-
2	\$520,600 x tax rate	-
3	\$520,600 x tax rate	-
4	\$520,600 x tax rate	-
5	\$520,600 x tax rate	-
6	\$520,600 x tax rate	-
7	\$520,600 x tax rate	-
8	\$520,600 x tax rate	-
9	$[(\text{full assessment} - \$520,600) \times .20] + (\$520,600 \times \text{tax rate})$	-
10	$[(\text{full assessment} - \$520,600) \times .40] + (\$520,600 \times \text{tax rate})$	-
11	$[(\text{full assessment} - \$520,600) \times .60] + (\$520,600 \times \text{tax rate})$	-
12	$[(\text{full assessment} - \$520,600) \times .80] + (\$520,600 \times \text{tax rate})$	-
13	\$2,310,600 x tax rate	-
14	\$2,310,600 x tax rate	-
15	\$2,310,600 x tax rate	-

\*tax rate = Combined Syracuse City, County, School District and Water District Real Property Tax Rate in effect for each year, or portion thereof, covered by the Agreement

City of Syracuse

CITY CLERK'S OFFICE

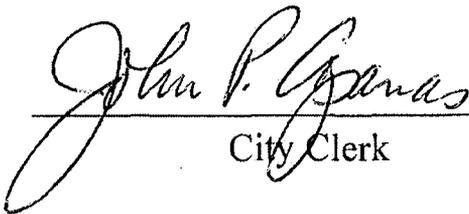
I, JOHN P. COPANAS, City Clerk of the City of Syracuse, New York do hereby certify that the attached is a true copy of an ORDINANCE:

Adopted by the Common Council on

April 25, 2011

Approved by the Mayor on

April 27, 2011

  
\_\_\_\_\_  
City Clerk

TO:

Mayor  
Assessment Commissioner  
Aviation Commissioner  
Board of Elections  
Bureau of Accounts  
Citizen Review Board  
City Auditor  
City School District  
Code Enforcement  
Neighborhood and Business Development  
Finance Commissioner  
Corporation Counsel  
United States Congressperson  
Governor of New York State  
New York State Senate  
New York State Assembly  
New York State Senator  
Onondaga County Legislature

Management & Budget Director  
Parks & Recreation Commissioner  
Personnel & Labor Relations Dir.  
Police Chief  
Public Works Commissioner  
Public Works/Bookkeeper  
Purchase Department  
Real Estate Division  
Research Director  
Water Department  
Zoning Administration  
United States Senator  
Department of Engineering  
Finance/Treasury  
Finance (Water Bureau)  
Fire Chief  
Grants Management Director  
Board of Education

**ORDINANCE AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF SYRACUSE, THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY AND JAMES STREET APARTMENTS, LLC FOR ANNUAL PAYMENTS IN LIEU OF TAXES WITH RESPECT TO THE PROPERTIES LOCATED AT 615 JAMES STREET AND 622 JAMES STREET, SYRACUSE, NEW YORK**

BE IT ORDAINED, that the Mayor, on behalf of the City of Syracuse, be and she is hereby authorized to enter into a Payment in Lieu of Tax Agreement (the "*Agreement*") with the City of Syracuse Industrial Development Agency ("*SIDA*") and James Street Apartments, LLC, (the "*Company*") covering the properties located at 615 James Street and 622 James Street for the Project as described in the attached Exhibit "A"; with payments in lieu of taxes under the Agreement to be calculated pursuant to the PILOT Schedule attached as Exhibit "B"; and

BE IT FURTHER ORDAINED, that the Agreement shall contain those terms and conditions that shall be determined by the Corporation Counsel to be in the best interest of the City of Syracuse, and that payments made thereunder will be shared with Onondaga County in the same proportion that real property tax revenues are shared.

## JAMES STREET APARTMENTS – PROJECT SUMMARY

### Project Information

The Kasson/Leavenworth Apartments are two historic apartment buildings totaling 82 units. The Leavenworth is located at 615 James Street and the Kasson is located at 622 James Street. Both buildings were encumbered by HUD mortgages. In 2007, after repeatedly failing HUD inspections, HUD became mortgagee in possession. HUD then spent the next two and half years attempting to auction the buildings without success. During this time the City of Syracuse expressed its concerns about the continued vacancy of these buildings. Sen. Schumer facilitated cooperation between the City and HUD.

Sen. Schumer convinced HUD that the City should have a role in determining how the buildings would be redeveloped. Working together, the City solicited proposals from qualified developers for the redevelopment of these buildings. After reviewing a significant number of proposals, the City, recognizing Conifer Realty, LLC's strengths as a leader in the affordable housing industry and considerable experience developing, owning and managing both affordable and market rate apartments, selected Conifer to take ownership of and redevelop these buildings. HUD granted the buildings to the City, who, in turn transferred the properties to Conifer in August 2010 for \$1.00 each.

Redevelopment of the Kasson/Leavenworth Apartments is the housing priority for the City of Syracuse. The Project will contribute to the revitalization and stabilization of the neighborhood by reoccupying two significant foreclosed and vacant buildings. Rehabilitation of these buildings will support other efforts by the City to promote growth in the area surrounding St. Joseph Hospital. The City of Syracuse has committed \$950,000 from its 2010 HOME allocation to the Project and is working to commit additional funds.

This Project presents a wonderful and unique opportunity to preserve and reoccupy two historic buildings while simultaneously creating new, quality, mixed-income family housing. Of the buildings' combined 82 units, 64 units will be market-rate, 17 units will be occupied by families earning 50% or less of the area median income and the remaining unit will house the onsite manager/superintendent. The project will have 12 studio apartments, 8 one-bedroom apartments and 62 two-bedroom units. See Table 1.

**Table 1. Proposed Unit Mix**

Building	Studio 50%	Studio Mkt.	1 Bd 50%	1 Bd Mkt.	1 Bd Super.	2 Bd 50%	2 Bd Mkt.	TOTAL
<b>Leavenworth</b>	3	9	2	5	1	8	26	<b>54</b>
<b>Kasson</b>	-	-	-	-	-	4	24	<b>28</b>
<b>TOTAL</b>	<b>3</b>	<b>9</b>	<b>2</b>	<b>5</b>	<b>1</b>	<b>12</b>	<b>50</b>	<b>82</b>

The Leavenworth is a seven-story building with a full basement and approximately 46,508 square feet of residential space. The Kasson is also a seven-story building with a full basement with approximately 36,995 square feet of residential space. Parking for residents of the Leavenworth will be provided by a private parking lot behind to the building. Residents of the both buildings will have exclusive access to a parking lot located behind the Kasson.

Each building will provide laundry and storage facilities in the basements. A community exercise room will be located in the Leavenworth and shared by residents of both buildings.

### Project Design and Use Information

The Kasson and the Leavenworth are excellent examples of an urban architectural form which evolved around the turn of the 20th century as an alternative to the grand single family homes favored by the wealthy in the late 19th century. At the time, James Street was lined with individual mansions and stately elm trees, and was a highly desirable address so it was logical to construct examples of the new residential forms in such an established neighborhood.

The seven-story Kasson Apartments (1898) was designed by prominent local architects Merrick and Randall in the Second Renaissance Style using light-colored brick with terra cotta accents and Neoclassical detailing. Originally each floor contained just two spacious flats, one on either side of a central stair, elevator shaft, and light well, and each incorporated receiving rooms and quarters for servants.

Across the street the Leavenworth Apartments (1912) is also seven stories tall and was originally marketed as both suites and bachelor apartments. The architect, Charles Colton, was particularly accomplished and was responsible for numerous local landmarks including Syracuse's historic City Hall. The building's front and side facades are characterized by large brick gables, stepped in the Flemish style, with Colonial Revival detailing.

As described by the NYS Office of Parks, Recreation and Historic Preservation, both buildings retain "a high degree of integrity of location, setting, design, materials, craftsmanship, feeling and association" making them eligible for listing in the National Register of Historic Places.

### Project Location and Market Information

The James Street neighborhood is close to downtown and St. Joseph's Hospital, making it an attractive location for young professionals. Several affordable housing developments are also within the neighborhood. The City firmly believes a market-rate transaction will help create a more diverse neighborhood and contribute to the revitalization and stabilization of the neighborhood. More importantly, reuse of these vacant historic buildings will remove blight and promote further growth in this neighborhood. Furthermore, the City has recognized a specific need for market rate housing in its Comprehensive Plan to attract more residents. The City has also committed \$1,500,000 from its HOME allocation. Additionally, the City has agreed to provide a PILOT that will result in a substantial tax reduction for the development. This PILOT is critical to the overall feasibility of this redevelopment effort. HCR is currently processing the bond funding application and we anticipate bond approval by the HCR in May 2011.

The redevelopment of the Project will preserve and reoccupy 2 historic vacant buildings while simultaneously creating new, quality, mixed-income family housing and is a crucial aspect of the revitalization efforts of the City to promote growth in the area surrounding the St. Joseph Hospital. The Project will take advantage of historic preservation tax credits and result in two buildings becoming lead and asbestos free and providing very high quality housing near downtown Syracuse. All of these aspects of the redevelopment will result in highly marketable apartments, particularly with young professionals. Having young professionals live close to downtown is critical to strengthening the core of upstate cities like Syracuse.

### Scope of Work

The proposed rehabilitation of both buildings will include:

- New kitchens
- New Energy Star appliances
- New baths
- New window treatments
- Hardware upgrades
- Painting and plaster repair
- All new common space
- New high-efficiency HVAC systems
- Restoration of exterior brick and facades

### Jobs Created

During construction, the Project will employ 78-80 construction workers. Upon completion, the project will support two full time management staff and two full time maintenance staff. Additionally, one of the Project's units will be set aside as a non-income generating unit for use by the maintenance superintendent.

Exhibit "B"

James Street Apartmets, LLC PILOT Schedule		
Year	Assessment	Payment
1	\$520,600 x tax rate*	-
2	\$520,600 x tax rate	-
3	\$520,600 x tax rate	-
4	\$520,600 x tax rate	-
5	\$520,600 x tax rate	-
6	\$520,600 x tax rate	-
7	\$520,600 x tax rate	-
8	\$520,600 x tax rate	-
9	[(full assessment - \$520,600) x .20] + (\$520,600 x tax rate)	-
10	[(full assessment - \$520,600) x .40] + (\$520,600 x tax rate)	-
11	[(full assessment - \$520,600) x .60] + (\$520,600 x tax rate)	-
12	[(full assessment - \$520,600) x .80] + (\$520,600 x tax rate)	-
13	\$2,310,600 x tax rate	-
14	\$2,310,600 x tax rate	-
15	\$2,310,600 x tax rate	-

\*tax rate = Combined Syracuse City, County, School District and Water District Real Property Tax Rate in effect for each year, or portion thereof, covered by the Agreement

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**City of Syracuse**  
**Industrial Development Agency**  
333 West Washington Street, Suite 130  
Syracuse, New York 13202  
Tel (315) 448-8100 Fax (315) 448-8036

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April 19, 2011

James Street Apartments, LLC  
183 East Main Street, Suite 600  
Rochester, New York 14604  
Attn: Andrew Bodewes

**Re: City of Syracuse Industrial Development Agency  
James Street Apartments, LLC Project  
Sales Tax Appointment Letter**

Dear Mr. Bodewes:

Pursuant to a resolution duly adopted on April 19, 2011, the City of Syracuse Industrial Development Agency (the "**Agency**") appointed James Street Apartments, LLC (the "**Company**") the true and lawful agent of the Agency to undertake a project (the "**Project**") consisting of: (A)(i) the Agency's acquisition of a leasehold interest in an approximate 0.51 acre parcel of improved real property located at 615 James Street ("**Leavenworth Parcel**") and an approximate 0.50 acre parcel of improved real property located at 622 James Street ("**Kasson Parcel**") in the City of Syracuse, New York, and more fully described in the attached Exhibit "A", (the "**Land**"); (ii) the reconstruction and renovation of: (a) an approximately 51,602 square foot seven (7) story building ("**Leavenworth Apartments**") for mixed income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 37,138 square foot, seven (7) story building ("**Kasson Apartments**" and together with the Leavenworth Apartments the "**Apartments**") for mixed income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on land and jointly housing 83 units of housing, each apartment building containing laundry and storage facilities together with on-site parking for residents (collectively, the "**Facility**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the "**Equipment**") and together with the Land and the Facility, the ("**Project Facility**"); and (B) the granting of certain financial assistance in the form of exemptions from real property tax, and sales and use taxation (collectively, the "**Financial Assistance**"); (C) the appointment of the

Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, improvement and equipping of the Project Facility; and (D) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

This appointment includes, and this letter evidences, authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Project Facility and the following activities as they relate to any renovation, improvement and equipping of any of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (1) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with renovation, improvement and equipping; (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with renovation, improvement and equipping; and (3) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs), installed or placed in, upon or under such building or facility, including all repairs and replacements of such property, and with respect to such specific purchases or rentals, are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York.

This agency appointment includes the power to delegate such agency, in whole or in part to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents, and to such other parties as the Company chooses. The Company hereby agrees to complete "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for itself and each agent, subagent, contractor, subcontractor, contractors or subcontractors of such agents and subagents, and to such other parties as the Company chooses who provide materials, equipment, supplies or services and deliver said form to the Agency within fifteen (15) days of appointment such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

In exercising this agency appointment, the Company, its agents, subagents, contractors and subcontractors should give the supplier or vender a copy of this letter to show that the Company, its agents, subagents, contractors and subcontractors are each acting as agent for the Agency. The supplier or vendor should identify the Project Facility on each bill or invoice and indicate thereon which of the Company, its agents, subagents, contractors and subcontractors acted as agent for the Agency in making the purchase.

In order to be entitled to use this exemption, you or your contractor should present to the supplier or other vendor of materials for the Project Facility, a completed "Contractor Exempt Purchase Certificate" (Form ST-120.1), checking box "(a)". You should give the supplier or vendor a copy of this letter to show that you (or the contractor) are acting as agent for the Agency in making the purchase. A copy of this letter retained by any vendor or seller may be accepted by such vendor or seller as a "statement and additional documentary evidence of such

exemption” as provided by New York Tax Law §1132(1)(ii), thereby relieving such vendor or seller from the obligation to collect sales and use tax with respect to the construction and installation and equipping of the Project Facility.

In addition, General Municipal Law §874(8) requires you to file an Annual Statement with the New York State Department of Taxation and Finance on “Annual Report of Sales and Use Tax Exemptions” (Form St-340) regarding the value of sales and use tax exemptions you, your agents, consultants or subcontractors have claimed pursuant to the agency we have conferred on you with respect to this project. The penalty for failure to file such statement is the removal of your authority to act as our agent.

The agency created by this letter is limited to the Project Facility, and will expire on **December 31, 2012**. You may apply to extend this agency authority by showing good cause.

This letter is provided for the sole purpose of securing exemption from New York State Sales and Use Taxes for this project only. No other principal/agent relationship is intended or may be implied or inferred by this letter.

The Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder. By acceptance of this letter, the vendor hereby acknowledges the limitations on liability described herein.

(SIGNATURE PAGE TO FOLLOW)

Very truly yours,

CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY

By:



---

William M. Ryan, Chairman

SUSAN R. KATZOFF  
PARTNER

ONE PARK PLACE  
300 SOUTH STATE STREET  
SYRACUSE, NEW YORK 13202  
T 315.425.2700 • F 315.425.2701

DIRECT DIAL 315.425.2880  
DIRECT FAX 315.425.8597  
SKATZOFF@HBLAW.COM

January 5, 2012

New York State Tax Department  
IDA Unit  
Building 8, Room 738  
W.A. Harriman Campus  
Albany, New York 12227

Re: IDA Appointment of Project Operator or Agent for Sales Tax Purposes  
City of Syracuse Industrial Development Agency Appointment of  
James Street Apartments, LLC and Conifer-LeChase Construction, LLC

Dear Ladies and Gentlemen:

Enclosed for filing on behalf of the City of Syracuse Industrial Development Agency, please find form ST-60 in connection with the appointment by the IDA of James Street Apartments, LLC and Conifer-LeChase Construction, LLC as its agents for sales tax purposes in connection with the IDA project identified therein.

Please acknowledge receipt of the enclosed by date stamping the copy of this letter enclosed herewith and returning it in the postage-paid envelope provided.

Please do not hesitate to contact me with any questions.

Very truly yours,

**COPY**  
Susan R. Katzoff

SRK:llm  
Enclosure





# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

# ST-60

(2/11)

The industrial development agency or authority (IDA) must submit this form within 30 days of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

Name of IDA City of Syracuse Industrial Development Agency		IDA project number (use OSC numbering system for projects after 1998)	
Street address 333 West Washington Street, Suite 130		Telephone number ( 315 ) 448-8100	
City Syracuse		State NY	ZIP code 13202
Name of IDA project operator or agent James Street Apartments, LLC	Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer identification or social security number 27-3472526	
Street address 183 East Main Street, Suite 600		Telephone number ( 558 ) 324-0500	Primary operator or agent? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
City Rochester		State NY	ZIP code 14604
Name of project James Street Apartments, LLC Project		Purpose of project (see instructions) other - housing	
Street address of project site 615 & 622 James Street			
City Syracuse		State NY	ZIP code 13203
Description of goods and services intended to be exempted from sales and use taxes building materials, equipment, fixtures and furnishings installed in the Project Facility			

Date project operator or agent appointed (mm/dd/yy) 04/19/11	Date project operator or agent status ends (mm/dd/yy) 12/31/12	Mark an X in the box if this is an extension to an original project: <input type="checkbox"/>
--	--	---

Estimated value of goods and services to be exempted from sales and use taxes as a result of the project's designation as an IDA project:

\$3,224,735

<b>Certification:</b> I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.			
Print name of officer or employee signing on behalf of the IDA William M. Ryan		Print title Chairman	
Signature	Date 12-05-2011	Telephone number ( 315 ) 448-8100	

## Instructions

### Filing requirements

An IDA must file this form within 30 days of the date the IDA appoints any project operator or other person as agent of the IDA, for purposes of extending any sales and compensating use tax exemptions.

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA need not file this form if the IDA does not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, the IDA must, within 30 days of the change, file a new form with the new information.

If an IDA revokes or cancels the appointment of an agent, or if a form it filed is not valid for any reason, the IDA must send a letter to the address below for filing this form, indicating that it has done so or that the previously filed form is no longer valid, and the effective date of the change. It should attach to the letter a copy of the form it originally filed. The IDA need not send a letter for a form that is not valid merely because the "Completion date of project" has passed.

### Purpose of project

For Purpose of project, enter one of the following:

- Services
- Agriculture, forestry, fishing
- Finance, insurance, real estate
- Transportation, communication, electric, gas, sanitary services
- Construction
- Wholesale trade
- Retail trade
- Manufacturing
- Other (specify)

### Mailing instructions

Mail completed form to:

**NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227**

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1098, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

### Need help?

	<b>Internet access: <a href="http://www.tax.ny.gov">www.tax.ny.gov</a></b> (for information, forms, and publications)
	<b>Sales Tax Information Center:</b> (518) 485-2889 To order forms and publications: (518) 457-5431
	<b>Text Telephone (TTY) Hotline</b> (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

# ST-60

(2/11)

The industrial development agency or authority (IDA) must submit this form within 30 days of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

Name of IDA City of Syracuse Industrial Development Agency		IDA project number (use OSC numbering system for projects after 1998)	
Street address 333 West Washington Street, Suite 130		Telephone number ( 315 ) 448-8100	
City Syracuse	State NY	ZIP code 13202	
Name of IDA project operator or agent Conifer-LeChase Construction, LLC	Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer identification or social security number 27-3472526	
Street address 92 Cascade Drive	Telephone number ( 558 ) 760-5336	Primary operator or agent? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
City Rochester	State NY	ZIP code 14614	
Name of project James Street Apartments, LLC Project	Purpose of project (see instructions) other - housing		
Street address of project site 615 & 622 James Street			
City Syracuse	State NY	ZIP code 13203	
Description of goods and services intended to be exempted from sales and use taxes building materials, equipment, fixtures and furnishings installed in the Project Facility			

Date project operator or agent appointed (mm/dd/yy) 04/19/11	Date project operator or agent status ends (mm/dd/yy) 12/31/12	Mark an X in the box if this is an extension to an original project: <input type="checkbox"/>
Estimated value of goods and services to be exempted from sales and use taxes as a result of the project's designation as an IDA project: \$3,224,735		

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA William M. Ryan	Print title Chairman	Date 12-05-2011	Telephone number ( 315 ) 448-8100
Signature			

## Instructions

### Filing requirements

An IDA must file this form within 30 days of the date the IDA appoints any project operator or other person as agent of the IDA, for purposes of extending any sales and compensating use tax exemptions.

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA need not file this form if the IDA does not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, the IDA must, within 30 days of the change, file a new form with the new information.

If an IDA revokes or cancels the appointment of an agent, or if a form it filed is not valid for any reason, the IDA must send a letter to the address below for filing this form, indicating that it has done so or that the previously filed form is no longer valid, and the effective date of the change. It should attach to the letter a copy of the form it originally filed. The IDA need not send a letter for a form that is not valid merely because the "Completion date of project" has passed.

### Purpose of project

For Purpose of project, enter one of the following:

- Services
- Agriculture, forestry, fishing
- Finance, insurance, real estate
- Transportation, communication, electric, gas, sanitary services
- Construction
- Wholesale trade
- Retail trade
- Manufacturing
- Other (specify)

### Mailing instructions

Mail completed form to:

**NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227**

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1098, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

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NYS DEPARTMENT OF TAXATION & FINANCE  
OFFICE OF REAL PROPERTY TAX SERVICES

RP-412-a (1/95)

**INDUSTRIAL DEVELOPMENT AGENCIES**  
APPLICATION FOR REAL PROPERTY TAX EXEMPTION  
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)

**1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)**

Name City of Syracuse Industrial Development Agency  
Street 333 West Washington Street, Suite 130  
City Syracuse  
Telephone no. Day (315) 448-8100  
Evening ( ) N/A  
Contact Ben Walsh  
Title Executive Director

**2. OCCUPANT (IF OTHER THAN IDA)**

(If more than one occupant attach separate listing)

Name James Street Apartments, LLC  
Street 183 East Main Street, Suite 600  
City Rochester  
Telephone no. Day ( ) 585 324-0500  
Evening ( ) N/A  
Contact Andrew I. Crossed  
Title Executive Vice President

**3. DESCRIPTION OF PARCEL**

- a. Assessment roll description (tax map no./roll year) 017.00-19-05 and 103.00-05-04
- b. Street address 615 James Street and 622 James St.
- c. City, Town or Village Syracuse
- d. School District Syracuse
- e. County Onondaga
- f. Current assessment \$221,100 & \$105,700
- g. Deed to IDA (date recorded; liber and page) N/A - straight lease transaction

**4. GENERAL DESCRIPTION OF PROPERTY** (if necessary, attach plans or specifications)

- a. Brief description (include property use) two buildings for use as residential apartments - seven stories each
- b. Type of construction Brick, stone, masonry
- c. Square footage 51,602 and 37,138
- d. Total cost \$13,792,693.84
- e. Date construction commenced N/A
- f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) 2027

**5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION**

(Attach copy of the agreement or extract of the terms relating to the project).

- a. Formula for payment see attached PILOT Agreement

- b. Projected expiration date of agreement December 31, 2027

c. Municipal corporations to which payments will be made

	Yes	No
County <u>Onondaga</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Town/City _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Village _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>
School District _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>

d. Person or entity responsible for payment

Name James Street Apartments, LLC  
 Title \_\_\_\_\_  
 Address 183 East Main Street, Suite 600, Rochester, NY 14604

e. Is the IDA the owner of the property?  Yes  No (check one)

If "No" identify owner and explain IDA rights or interest Telephone (585) 324-0500  
 in an attached statement. Owner - James Street Apartments, LLC  
Residential interest

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one)  Yes  No

If yes, list the statutory exemption reference and assessment roll year on which granted:  
 exemption Ordinance # 509-75 assessment roll year 1976

7. A copy of this application, including all attachments, has been mailed or delivered on 1/12/12 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

**CERTIFICATION**

I, William M. Ryan, Chairman \_\_\_\_\_ of \_\_\_\_\_  
 Name Title  
City of Syracuse Industrial Development Agency hereby certify that the information  
 Organization

on this application and accompanying papers constitutes a true statement of facts.

January 10, 2012  
 Date

  
 Signature

**FOR USE BY ASSESSOR**

1. Date application filed \_\_\_\_\_
2. Applicable taxable status date \_\_\_\_\_
- 3a. Agreement (or extract) date \_\_\_\_\_
- 3b. Projected exemption expiration (year) \_\_\_\_\_
4. Assessed valuation of parcel in first year of exemption \$ \_\_\_\_\_
5. Special assessments and special as valorem levies for which the parcel is liable:

\_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Assessor's signature

## CLOSING MEMORANDUM

### CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

#### (JAMES STREET APARTMENTS, LLC PROJECT)

**DATE AND TIME OF PRE-CLOSING:** December 6, 2011  
10:00 a.m.

**DATE AND TIME OF CLOSING:** December 22, 2011  
TBD

**PLACE OF PRE-CLOSING:** Hiscock & Barclay, LLP  
One Park Place  
300 South State Street  
Syracuse, New York 13202

#### **I. Action Taken Prior to Closing**

At the request of James Street Apartments, LLC, a New York limited liability company (the “*Company*”), the City of Syracuse Industrial Development Agency (the “*Agency*”), a public benefit corporation organized under the laws of the State of New York, has undertaken a project (the “*Project*”) consisting of: (A)(i) the acquisition of a leasehold interest in two parcels of improved real property including an approximately .51 acre parcel located at 615 James Street (Leavenworth Parcel) and an approximately .50 acre parcel located at 622 James Street (Kasson Parcel) (collectively, the “*Land*”); (ii) the reconstruction and renovation of: (a) an approximately 51,602 square foot seven (7) story building (“*Leavenworth Apartments*”) for mixed-income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 37,138 square foot, seven (7) story building (“*Kasson Apartments*” and together with the Leavenworth Apartments the “*Apartments*”) for mixed-income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on the Land and jointly housing 83 units of housing, each Apartment containing laundry and storage facilities together with on-site parking for residents (collectively, the “*Facility*”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the “*Equipment*”, together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax and sales and use taxation (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, improvement and equipping of the Project Facility; and (D) the lease of

the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company also requested that the Agency appoint the Company as its agent for purposes of completing the Project and the granting of certain Financial Assistance.

The Company is the owner of the Project Facility.

The Agency will acquire a leasehold interest in the Project Facility from the Company pursuant to a Company Lease Agreement dated as of December 22, 2011 (the "**Company Lease**"), between the Company, as landlord and the Agency, as tenant. The Agency will sublease the Project Facility back to the Company, pursuant to an Agency Lease Agreement dated as of December 22, 2011 (the "**Agency Lease**") between the Agency, as sublessor and the Company, as sublessee. Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in Exhibit "C" to the Agency Lease.

The Company has granted, and at its request the Agency has joined, a mortgage lien and security interest on its interest in the Project Facility to Mortgagee 1 (as defined herein) to secure a loan made by New York State Housing Finance Agency (HFA) ("**Mortgage 1**") to the Company to finance certain costs of the Project pursuant to a Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement dated December 22, 2011 ("**Mortgage 1**").

To further secure Mortgage 1, the Agency will pledge and assign to Mortgagee 1 all monies due and to become due under the Agency Lease (other than the Unassigned Rights) pursuant to a Pledge and Assignment dated as of December 22, 2011 ("**Pledge and Assignment 1**").

The Company has also granted, and at its request the Agency has joined, a mortgage lien and security interest on its interest in the Project Facility to secure a second loan made by Mortgagee 1 to the Company to finance certain costs of the Project pursuant to a Fee and Leasehold Subsidy Mortgage dated December 22, 2011 ("**Mortgage 2**").

To further secure Mortgage 2, the Agency will pledge and assign to Mortgagee 2 all monies due and to become due under the Agency Lease (other than the Unassigned Rights) pursuant to a Pledge and Assignment dated as of December 22, 2011 ("**Pledge and Assignment 2**").

The Company has further granted, and at its request the Agency has joined, a mortgage lien and security interest on its interest in the Project Facility to Mortgagee 3 (as defined herein) to secure a certain loan made by the City of Syracuse ("**Mortgage 3**") to the Company to finance certain costs of the Project pursuant to a Mortgage and Security Agreement dated December 22, 2011 ("**Mortgage 3**").

To further secure the Loan, the Agency will pledge and assign to Mortgagee 3 all monies due and to become due under the Agency Lease (other than the Unassigned Rights) pursuant to a Pledge and Assignment dated as of December 22, 2011 ("**Pledge and Assignment 3**").

Among the actions taken by the Agency with respect to the Project prior to Closing were the following:

- March 2, 2011                      The Company submitted an application for financial assistance for the project.
- March 29, 2011                    Notice of the Public Hearing was mailed to the chief executive officers of the affected tax jurisdictions pursuant to Section 859-a of the Act.
- April 1, 2011                      Notice of the Public Hearing was published in the Post-Standard pursuant to Section 859-a of the Act.
- April 19, 2011                    The Agency conducted the Public Hearing pursuant to Section 859-a of the Act.
- April 19, 2011                    A resolution was adopted authorizing the undertaking of a Project and appointing James Street Apartments, LLC as Agent of the Agency for the purpose of the acquisition, reconstruction, renovation and equipping of the Project, and authorizing the execution and delivery of an agreement between the Agency and James Street Apartments, LLC (the “**Inducement Resolution**”).
- April 19, 2011                    A resolution was adopted approving a payment in lieu of tax schedule at the request of Near West Side Initiative, Inc. (the “**PILOT Resolution**”).
- April 19, 2011                    A resolution was adopted authorizing the execution and delivery of certain documents by the Agency in connection with the Project (the “**Final Approving Resolution**”).
- April 25, 2011                    An ordinance adopted by the City of Syracuse Common Council approving the PILOT schedule.
- July 26, 2011                    A resolution was adopted approving the Agency’s participation in financing by the Company in connection with the Company’s costs associated with the Project Facility and authorizing the execution of certain documents in connection therewith (the “**Financing Resolution**”).
- November 15, 2011              A resolution was adopted approving a change in the amount of financing in connection with the Company’s costs associated with the Project Facility (the “**Resolution**”).

November 15, 2011

A resolution was adopted clarifying the Payment in Lieu of Tax Agreement previously approved by the Agency in connection with a certain Project undertaken at the request of James Street Apartments, LLC (the “*Clarifying PILOT Resolution*”).

November 15, 2011

A resolution was adopted authorizing the issuance of a temporary sales tax appointment letter to the Company and the execution and delivery of certain documents in connection therewith (the “*Temporary Sales Tax Resolution*”).

## **II. Action To Be Taken At Closing**

The following documents, or copies thereof, are to be delivered (except as indicated) to the Agency (A), Agency's Counsel (AC), the Company (C), Company's Counsel (CC), Mortgagee 1 (M1), Mortgagee 2 (M2), and Mortgagee (3) as follows:

<b>A. Basic Documents</b>	<b>Responsible Party</b>	<b>Signatories</b>
1. Company Lease Agreement	AC	C, A
2. Memorandum of Company Lease Agreement with TP-584	AC	C, A
3. Agency Lease Agreement	AC	C, A
4. Memorandum of Agency Lease Agreement with Form TP-584	AC	C, A
5. Bill of Sale	AC	C
6. Certificates of casualty, liability, workers' compensation and other required insurance	C	
7. Environmental Compliance and Indemnification Agreement	AC	C
8. Closing Receipt	AC	C, A
9. Mortgage 1 (HFA tax exempt bond financing)	M1	C, A
10. Pledge and Assignment (Mortgage 1)	AC	C, A, M1
11. Mortgage 2 (HFA subsidy loan)	M2	C, A
12. Pledge and Assignment (Mortgage 2)	AC	C, A, M2
13. Mortgage 3 (City HOME loan)		C, A
14. Pledge and Assignment (Mortgage 3)		C, A, M3
15. UCC-1 Financing Statement (Mortgage 1)	M1	
16. UCC-1 Financing Statement (Mortgage 2)	M2	

17.	Regulatory Agreement		
18.	Subordination Agreement		
19.	PILOT Agreement	AC	C, A, City
20.	Ordinance 163 of 2011 adopted by the City of Syracuse Common Council approving the PILOT schedule	AC	
21.	Sales Tax Exemption Letter	AC	A
22.	Form ST-60 indicating appointment of the Company to act as the agent of the Agency, evidencing filing with the New York State Department of Revenue	AC	A
23.	Form 412A (dated 2012)	AC	A
24.	Closing Memorandum	AC	

**B. Items To Be Delivered By The Agency**

1.	General Certificate of the Agency relating to incumbency and signatures of officers, execution and delivery of Agency Documents to which it is a party, no litigation and continued existence, with the following items included as exhibits:	AC	A
	(a) Exhibit "A" - Chapter 641 of the Laws of 1979 of the State of New York, as amended	AC	
	(b) Exhibit "B" - Certificate of Establishment of the Agency and Certificates of appointment of current members	AC	
	(c) Exhibit "C" - By-laws	AC	
	(d) Exhibit "D" - Notice of Public Hearing with evidence of publication and copies of letters to affected tax jurisdictions	AC	

pursuant to Sections 859-a and 874 of the Act

- (e) Exhibit "E" - Inducement Resolution AC
- (f) Exhibit "F" – PILOT Resolution AC
- (g) Exhibit "G" - Final Approving Resolution
- (h) Exhibit "H" – Financing Resolution
- (i) Exhibit "I" – Resolution
- (j) Exhibit "J" – Clarifying PILOT Resolution

**C. Items To Be Delivered By The Company**

- 1. General Certificate of the Company relating to capacity and signatures of officers, execution and delivery of the Documents to which it is a party, no litigation and approval, with the following items included as exhibits: C C
  - (a) Exhibit "A" - Articles of Organization C
  - (b) Exhibit "B" - Operating Agreement C
  - (c) Exhibit "C" Good Standing Certificate C
  - (d) Exhibit "D" Company Resolution C

**D. Opinions of Counsel**

1. Opinion of Hiscock & Barclay, LLP, AC  
special counsel to the Agency, addressed to the  
Company and the Agency.
2. Opinion of Susan Sturman Jennings, Esq., CC  
counsel to the Company, the Manager and the  
Sole Member addressed to the Agency, the  
Company and the Lenders.

**III. Action To Be Required Concurrently With Or After Closing**

Memorandum of Company Lease Agreement, Memorandum of Agency Lease Agreement, the Mortgages and the UCC-1 Financing Statements are to be filed with the Onondaga County Clerk.

Application on Form 412A is to be filed with the City of Syracuse Tax Assessor on or after January 1, 2012.

Closing completed as above.

**SCHEDULE "A"**

**PERSONS APPEARING**

For the Agency:	City of Syracuse Industrial Development Agency William M. Ryan, Chairman
For the Company:	James Street Apartments, LLC Andrew Bodewes
For the Company's Counsel:	Susan Sturman Jennings, Esq.
Agency's Counsel:	Hiscock & Barclay, LLP Susan R. Katzoff, Esq.
For Mortgagee 1 and 2:	New York State Housing Finance Agency
Mortgagee 1 and 2 Counsel:	Remy Bernardo, Jr., Esq.
For Mortgagee 3:	City of Syracuse
Mortgagee 3 Counsel:	Thomas Babilon, Esq.

**GENERAL CERTIFICATE OF THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

This certificate is made in connection with the execution by the City of Syracuse Industrial Development Agency (the "**Agency**") of the Company Lease, the Agency Lease, the PILOT Agreement, and any other document now or hereafter executed by the Agency (collectively, the "**Agency Documents**") with respect to a project (the "**Project**") undertaken at the request of James Street Apartments, LLC (the "**Company**") consisting of: (A)(i) the acquisition of a leasehold interest in two parcels of improved real property including an approximately .51 acre parcel located at 615 James Street (Leavenworth Parcel) and an approximately .50 acre parcel located at 622 James Street (Kasson Parcel) (collectively, the "**Land**"); (ii) the reconstruction and renovation of: (a) an approximately 51,602 square foot seven (7) story building ("**Leavenworth Apartments**") for mixed-income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 37,138 square foot, seven (7) story building ("**Kasson Apartments**" and together with the Leavenworth Apartments the "**Apartments**") for mixed-income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on the Land and jointly housing 83 units of housing, each Apartment containing laundry and storage facilities together with on-site parking for residents (collectively, the "**Facility**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the "**Equipment**", together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax and sales and use taxation (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, improvement and equipping of the Project Facility; and (D) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

Capitalized terms used herein which are not otherwise defined herein and which are defined in the Agency Lease Agreement dated as of December 22, 2011 (the "**Agency Lease**"), between the Agency and the Company, and shall have the meanings ascribed to such terms in the Agency Lease except that, for purposes of this certificate, (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this certificate and not as of any future date, and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

I, the undersigned Chairman of the Agency, Do Hereby Certify:

1. I am an officer of the Agency and am duly authorized to execute and deliver this certificate in the name of the Agency.

2. The Agency is an industrial development agency duly established under Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended (the "**Enabling Act**") and Chapter 641 of the Laws of 1979 of the State (said Chapter with the Enabling Act, the "**Act**") (a certified copy of Chapter 641 of the Laws of 1979 of the State is attached hereto as **Exhibit "A"**), and it is a corporate governmental agency constituting a public benefit corporation of the State.

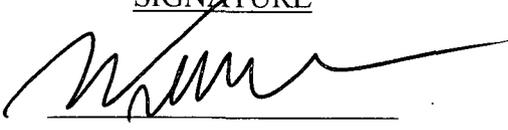
3. The Act empowers the Agency, among other things, to acquire, construct reconstruct, lease, improve, maintain, equip, sell and dispose of land and any building or other improvement, and all real and personal property, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the City of Syracuse and the State and to improve their standard of living. The Act further authorizes the Agency to lease any and all of its facilities on such terms and conditions as it deems advisable, to acquire, construct, lease, improve, and equip one or more projects as defined in the Act, to mortgage any or all of its facilities and to pledge the revenues and receipts from the sale or transfer of its facilities.

4. The Agency has full legal power and authority to own its property, conduct its business and execute, deliver, and perform its obligations under the Agency Documents and has taken all actions and obtained all approvals required in connection therewith by the Act and any other applicable laws and regulations, and no legislation has been enacted affecting the powers or authority of the Agency to execute and deliver the Agency Documents, affecting the financing of the Project, or affecting the validity thereof or of the Agency Documents, or contesting the existence and powers of the Agency or the appointment of the members and officers of the Agency to their respective offices.

5. Pursuant to the Act, the governing body of the City of Syracuse, New York, for whose benefit the Agency was established, duly filed or caused to be filed within six (6) months after the effective date of Chapter 641 of the Laws of 1979 of the State in the office of the Secretary of State of the State the Certificate of Establishment of the Agency pursuant to Section 926 of the New York General Municipal Law. The Certificate of Establishment of the Agency described in the preceding sentence also named the members and officers of the Agency as appointed by the Mayor of the City of Syracuse. Attached hereto as **Exhibit "B"** are certified copies of said Certificates of Establishment and certified copies of the Certificates of Appointment relating to all of the current members of the Agency, who are:

William M. Ryan	Chairman
C. Catherine Richardson	Vice Chairman
John Gamage	Secretary
Nicholas Ciotti	Treasurer
Donald Schoenwald	

6. The individual named below is a member of the Agency; was and is duly appointed, qualified, and acting as such member; was and is duly elected or appointed, qualified and an acting officer of the Agency; and has been a member of the Agency since at least January 15, 2010:

<u>NAME</u>	<u>SIGNATURE</u>	<u>OFFICE</u>
William M. Ryan		Chairman

7. Attached hereto as **Exhibit "C"** is a true, correct, and complete copy of the by-laws of the Agency, together with all amendments thereto or modifications thereof; and said by-laws as so amended and modified are in full force and effect in accordance with their terms as of the date of this certificate.

8. Attached hereto as **Exhibit "D"** is proof of publication of a notice of the public hearing with respect to the Project (the "**Public Hearing**"), required pursuant to Section 859-a of the Act and held on April 19, 2011, and proof of mailing of notice thereof pursuant to Section 859-a of the Act to the chief executive officers of the affected tax jurisdictions (as defined in Section 854(16) of the Act) on March 29, 2011.

9. Attached hereto as **Exhibit "E"** is proof of mailing of notice to the chief executive officers of the affected tax jurisdictions of the meeting at which the Issuer considered the request of the Company for a schedule of payments in lieu of real property taxes which deviates from the Issuer's Uniform Tax Exemption Policy ("**UTEP**") pursuant to Section 874(4) of the Act.

10. That a resolution authorizing the undertaking of a Project, appointing the Company as Agent of the Agency for the purpose of the acquisition, reconstruction, renovation and equipping of the Project, authorizing the execution and delivery of an agreement between the Agency and the Company (the "**Inducement Resolution**") was adopted by the Agency on April 19, 2011 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the SEQRA Resolution is attached hereto at **Exhibit "F."**

11. That a resolution approving a payment in lieu of tax schedule at the request of James Street Apartments, LLC was adopted by the Agency on April 19, 2011 (the "**PILOT Resolution**") and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the PILOT Resolution is attached hereto at **Exhibit "G."**

12. That a resolution authorizing the execution and delivery of certain documents by the Agency in connection with the Project was adopted by the Agency on April 19, 2011 (the "**Final Approving Resolution**") and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Final Approving Resolution is attached hereto at **Exhibit "H"**.

13. That a resolution approving the Agency's participating in certain financing by the Company in connection with the Company's costs associated with the Project Facility and authorizing the execution of certain documents in connection therewith was adopted July 26,

2011 the "*Financing Resolution*") and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Financing Resolution is attached hereto at **Exhibit "I"**.

14. That a resolution approving the change in amount of financing in connection with the Company's costs associated with the Project Facility was adopted on November 15, 2011 (the "*Resolution*") and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Clarifying PILOT Resolution is attached hereto at **Exhibit "J"**.

15. That a resolution clarifying the Payment in Lieu of Tax Agreement previously approved by the Agency in connection in the Project was adopted on November 15, 2011 (the "*Clarifying PILOT Resolution*") and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Clarifying Resolution is attached hereto at **Exhibit "K"**.

16. The execution, delivery and performance of all Agency Documents, certificates and documents required to be executed, delivered and performed by the Agency in order to carry out, give effect to and consummate the transactions contemplated by the Agency Documents have been duly authorized by all necessary action of the Agency, and the Agency Documents have been duly authorized, executed and delivered. The Agency Documents are in full force and effect on and as of the date hereof, and no authority or proceeding for the execution, delivery or performance of the Agency Documents has been materially amended, repealed, revoked or rescinded; and no event or circumstance has occurred or exists which constitutes, or with the giving of notice or the passage of time would constitute, a default on the part of the Agency under the Agency Documents.

17. The execution, delivery, and performance of the Agency Documents, the consummation of the transactions therein contemplated and compliance with the provisions of each do not and will not (a) violate the Act or the by-laws of the Agency, (b) require consent (which has not heretofore been received) under or result in a breach or default of any credit agreement, purchase agreement, indenture, deed of trust, commitment, guaranty, lease, or other agreement or instrument to which the Agency is a party or by which the Agency may be bound or affected, or (c) conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any government, governmental instrumentality, or court, domestic or foreign, having jurisdiction over the Agency or any of its Property.

18. The Agency has not received written notice that any event of default has occurred and is continuing, or that any event has occurred which with the lapse of time or the giving of notice or both would constitute an event of default, by any party to the Agency Documents.

19. To the best of my knowledge, there is no action, suit, proceeding or investigation at law or in equity, before or by any court, public board or body of the United States of America or the State of New York, pending or, to my knowledge, threatened against or affecting the Agency (or to my knowledge any basis therefor), (a) wherein an unfavorable decision or finding would adversely affect (i) the SEQRA Resolution, the Inducement Resolution, the PILOT Resolution, the Final Approving Resolution, the Company Lease, the Agency Lease, the PILOT Agreement, or the other Agency Documents or (ii) the existence or organization of the Agency, or (iii) restrain or enjoin the financing, renovation or construction of the Project or the

performance by the Agency of the Agency Documents; or (b) in any manner questioning the proceedings or authority of the financing of the Project, or affecting the validity thereof or of the Agency Documents, or contesting the existence and powers of the Agency or the appointment of the directors and officers of the Agency to their respective offices.

20. December 22, 2011 has been duly designated as the date for the Closing.

21. The Agency has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Date.

22. In accordance with the Act, the Agency has determined:

(a) to assist the Company's acquisition, reconstruction, renovation and equipping of the Project Facility;

(b) to grant the Financial Assistance to the Company;

(c) to designate the Company as the Agency's agent for the acquisition and equipping of the Project Facility; and

(d) to assign its interest in the Company Lease and the Agency Lease (except the Unassigned Rights) to the Mortgagee and grant the Mortgagee a security interest in the Agency Lease and the Agency's leasehold interest in the Project Facility.

23. That I did officially cause all certificates necessary for the financing and included in the Official Transcript of Closing, to be executed, as required, in the name of the Agency by the signing of each of such certificates with the signature of the (Vice) Chairman of the Agency.

24. That I did officially cause the following Agency Documents to be executed in the name of the Agency by the signing of each of such Agency Documents with the signature of the William M. Ryan, Chairman of the Agency:

(a) a Company Lease from the Company to the Agency pursuant to which the Company agrees to lease the Land and the Facility to the Agency; and

(b) an Agency Lease from the Agency to the Company pursuant to which the Agency agrees to sublease the Project Facility to the Company.

25. No member, officer or employee of the Agency having power to (i) negotiate, prepare, authorize or approve any of the Agency Documents, (ii) audit bills or claims under any of the Agency Documents, or (iii) appoint an officer or employee who has any of the powers or duties set forth in (i) or (ii):

(a) directly or indirectly owns any stock of the Company;

(b) is a partner, director or employee of the Company;

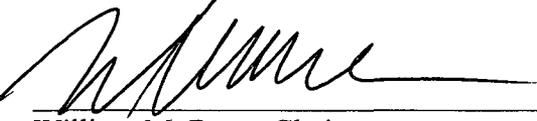
(c) is related to the Company within the meaning of Section 800.3(a) of the New York General Municipal Law.

No member, officer, or employee of the Agency has publicly disclosed, in a writing included as part of the official minutes of the Agency, any Interest (as defined in Section 800.3 of the New York General Municipal Law), direct or indirect, in the Developer.

**(SIGNATURE PAGE TO FOLLOW)**

WITNESS, as of the 22<sup>nd</sup> day of December, 2011.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
\_\_\_\_\_  
William M. Ryan, Chairman

**EXHIBIT "A"**

**CHAPTER 641 OF THE LAWS OF 1979  
OF THE STATE OF NEW YORK**

LAWS OF NEW YORK, 1979

CHAPTER 641

AN ACT to amend the general municipal law, in relation to creating and establishing for the city of Syracuse industrial development agency and, providing for its functions and duties

Became a law July 11, 1979, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2 (b) (2) of the Constitution, by a majority vote, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. The general municipal law is amended by adding a new section nine hundred twenty-six to read as follows:

§ 926. *City of Syracuse industrial development agency. (a) For the benefit of the city of Syracuse and the inhabitants thereof, an industrial development agency, to be known as the CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY, is hereby established for the accomplishment of any or all of the purposes specified in title one of article eighteen-A of this chapter. It shall constitute a body corporate and politic, and be perpetual in duration. It shall consist of five members who shall be appointed by the mayor of the city of Syracuse and its chairman shall be designated by such mayor. It shall have the powers and duties now or hereafter conferred by title one of article eighteen-A of this chapter upon industrial development agencies. It shall organize in a manner prescribed by and be subject to the provisions of title one of article eighteen-A of this chapter. The agency, its members, officers and employees, and its operations and activities shall in all respects be governed by the provisions of title one of article eighteen-A of this chapter.*

*(b) The city shall have the power to make, or contract to make grants or loans, including but not limited to grants or loans of money, to the agency in such amounts, upon such terms and conditions and for such period or periods of time as in the judgment of the city and the agency are necessary or appropriate for the accomplishment of any of the purposes of the agency.*

§ 2. This act shall take effect immediately.

**EXHIBIT "B"**

**AGENCY'S CERTIFICATE OF ESTABLISHMENT  
AND  
CERTIFICATES OF APPOINTMENT OF CURRENT MEMBERS**

INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law, Lee Alexander, Mayor of the City of Syracuse, certifies as follows

1) The name of the industrial development agency herein is the City of Syracuse Industrial Development Agency.

2) Chapter 641 of the Laws of 1979, the special act of the New York State Legislature establishing the City of Syracuse Industrial Development Agency, was adopted by the New York State Legislature on June 16, 1979 and signed by the Governor on July 18 1979.

3) The names of the Chairman and the Members, respectively, of the City of Syracuse Industrial Development Agency and their terms of office are as follows:

(a)	Frank L. Canino	Chairman
	David M. Garber	Member
	David S. Michel	Member
	Erwin G. Schultz	Member
	Irwin L. Davis	Member

(b) The term of office of the Chairman and of the Members of the City of Syracuse Industrial Development Agency is at the pleasure of the Mayor and continues until a successor is appointed and has qualified.

4) The facts establishing the need for the creation of a City of Syracuse Industrial Development Agency are as follows:

Expansion of its industrial-commercial base is essential to the City of Syracuse, especially in a time of mounting economic pressures. To achieve this goal of expansion, the City has designed a comprehensive economic development program, requiring an Industrial Development Agency.

The existing potential for economic development will be augmented by the financial incentives of an Industrial Development Agency. Various City agencies and departments, such as the Department of Community Development and the Office of Federal and State Aid Coordination will interface with the Syracuse Industrial Development Agency to strengthen the business and industrial climate of the community.

Access to the Department of Community Development will make available to the Syracuse Industrial Development Agency an array of staff assistance, technical expertise, and various other development services. The City's Office of Federal and State Aid Coordination will provide assistance to it in locating, analyzing, and obtaining various forms of federal and state assistance and participation.

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 20 1979

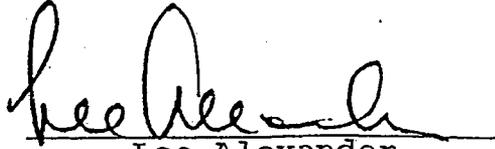
*Carl J. Paterson*

Secretary of State

- 2 -

The Syracuse Industrial Development Agency, in combination with, and utilizing these and other resources, will greatly enhance the City's ability to compete for, and successfully attract the commercial and industrial enterprises necessary for continued economic health and growth.

July 20, 1979

  
Lee Alexander  
Mayor

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 20 1979

  
Secretary of State

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CITY OF SYRACUSE  
DEPARTMENT OF LAW



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DEPARTMENT OF STATE

OFFICE OF THE MAYOR

**Stephanie A. Miner, Mayor**

**CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as a Member and officer of the City of Syracuse Industrial Development Agency:

Mr. William Ryan

- Member/Chairman

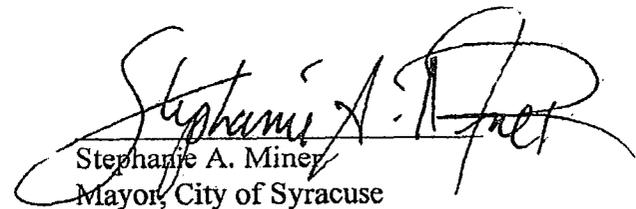
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

Mr. Irwin Davis

-Member/Chairman

No Member or Officer of the City of Syracuse Industrial development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 15, 2010.

  
Stephanie A. Miner  
Mayor, City of Syracuse



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FEB 16 2010

OFFICE OF THE MAYOR

DEPARTMENT OF STATE

Stephanie A. Miner

CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

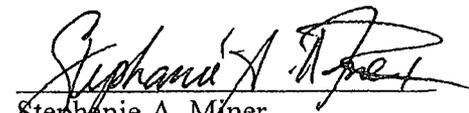
Pursuant to Article 18-A of the General Municipal Law of the State of New York,  
Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of  
the following person as a ~~Member~~ <sup>AN OFFICER</sup> of the City of Syracuse Industrial Development  
Agency:

M. Catherine Richardson

- Member/Vice Chair

No Member or Officer of the City of Syracuse Industrial development Agency shall  
receive any compensation for the discharge of their duties as Member or Officer of the  
Agency, but shall be entitled to necessary expenses incurred in the discharge of their  
duties as such Member or Officer.

The appointment herein set forth shall be effective as of February 12, 2010.

  
Stephanie A. Miner  
Mayor, City of Syracuse



STATE OF NEW YORK  
DEPARTMENT OF STATE  
**FILED**

FEB 16 2010

**OFFICE OF THE MAYOR**

**Stephanie A. Miner**

MISCELLANEOUS  
& STATE RECORDS

**CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

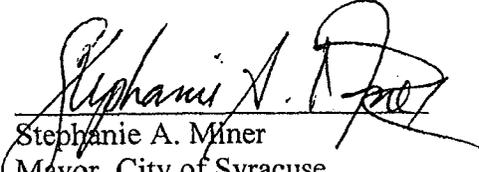
Pursuant to Article 18-A of the General Municipal Law of the State of New York,  
Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of  
the following person as a ~~Member~~ <sup>AN OFFICER</sup> of the City of Syracuse Industrial Development  
Agency:

Nicholas Ciotti

Treasurer

No Member or Officer of the City of Syracuse Industrial development Agency shall  
receive any compensation for the discharge of their duties as Member or Officer of the  
Agency, but shall be entitled to necessary expenses incurred in the discharge of their  
duties as such Member or Officer.

The appointment herein set forth shall be effective as of April 1, 2010.

  
Stephanie A. Miner  
Mayor, City of Syracuse



OFFICE OF THE MAYOR

Stephanie A. Miner, Mayor

CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as a Member of the City of Syracuse Industrial Development Agency:

Mr. Donald Schoenwald

- Member

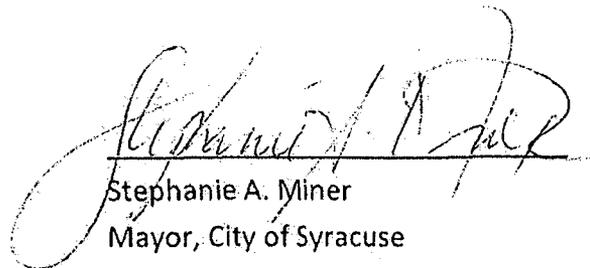
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

Mr. Kenneth Mokrzycki

- Member

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of March 1, 2011.

  
Stephanie A. Miner  
Mayor, City of Syracuse



OFFICE OF THE MAYOR

Stephanie A. Miner, Mayor

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DEPARTMENT OF STATE

CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

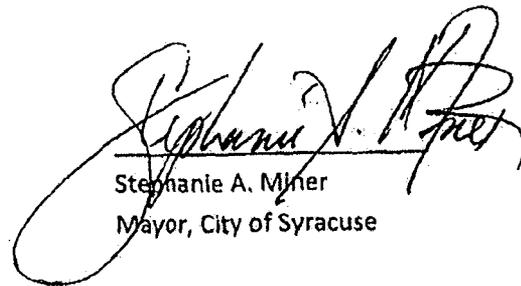
Pursuant to Article 18A of the General Municipal Law of the State of New York, Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as a Member and Officer of the City of Syracuse Industrial Development Agency:

Mr. John Gamage

- Member/Secretary

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of March 8, 2011.



Stephanie A. Miner  
Mayor, City of Syracuse

**EXHIBIT "C"**

**AGENCY'S BY-LAWS**

**BY-LAWS OF  
THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY  
(as amended August 18, 2009)**

**Article I**

**THE AGENCY**

Section 1. Name

The name of the agency shall be "City of Syracuse Industrial Development Agency", and it shall be referred to in these by-laws as the Agency.

Section 2. Seal

The seal of the Agency shall be in such form as may be determined by the members of the Agency.

Section 3. Office

The principal office of the Agency shall be located in the City of Syracuse, New York, County of Onondaga, and State of New York. The Agency may have such other offices at such other places as the members of the Agency may, from time to time, designate by resolution.

**Article II**

**MEMBERS**

Section 1. Members

(a) There shall be five members of the Agency. All references in these by-laws to members shall be references to Members of the Agency. The persons designated in the certificates of appointment filed in the office of the Secretary of State as members of the Agency and their successors in office and such other persons as may, from time to time, be appointed as

Members of the Agency by the Mayor of the City of Syracuse, or by special act of the Legislature, shall constitute all the members.

(b) Members shall hold office at the pleasure of the Mayor and shall continue to hold office until his or her successor is appointed and has qualified. The Mayor may remove any Member at his discretion, with or without cause.

(c) Upon the resignation or removal of a Member, a successor shall be selected by the Mayor.

(d) Members may resign at any time by giving written notice to the Mayor and to the Chairman of the Agency. Unless otherwise specified in the notice the resignation shall take effect upon receipt of the notice by the Chairman or the Mayor. Acceptance of the resignation shall not be necessary to make it effective.

## Section 2. Meeting of the Members

(a) The Annual Meeting of the members shall be held on such date or dates as shall be fixed, from time to time, by the Members of the Agency. The first Annual Meeting of Members shall be held on a date within twelve (12) months after the filing of the Certificate of the Agency with the Secretary of State as required by General Municipal Law §856 (1) (a). Each successive Annual Meeting of Members shall be held on a date not more than twelve (12) months following the preceding Annual Meeting of Members.

(b) Regular meetings of the Agency may be held at such time and place as, from time to time, may be determined by the Members.

(c) Upon the written request of the Mayor, the Chairman or two (2) Members of the Agency, the Chairman of the Agency shall call a special meeting of the Members. Special meetings may be held on such date or dates as may be fixed in the call for such special meetings.

The call for a special meeting may be personally delivered to each Member of the Agency or may be mailed to the business or home address of such Member. A waiver of notice may be signed by any Member failing to receive a proper notice.

Section 3. Procedure at Meetings of Members

(a) The Chairman shall preside over the meetings of the Agency. In the absence of the Chairman, the Vice-Chairman shall preside. In the absence of both the Chairman and Vice-Chairman, any Member directed by the Chairman may preside.

(b) At all meetings of Members, a majority of the Members of the Agency shall constitute a quorum for the purpose of transacting business. If less than a quorum is present for any meeting, the Members then present may adjourn the meeting to such other time or until a quorum is present. Except to the extent provided for by law, all actions shall be by a majority of the votes cast, provided that the majority of the votes cast shall be at least equal to a quorum.

(c) When determined by the Agency that a matter pending before it is confidential in nature, it may, upon motion, establish an executive session and exclude any non-member from such session.

(d) Order of business

At all meetings of the Agency, the following shall be the order of business:

- (1) Roll Call;
- (2) Proof of Notice of Meeting;
- (3) Reading and approval of the minutes of the previous meeting;
- (4) bills and communications;
- (5) Report of the Treasurer;
- (6) Reports of Committees;

- (7) Unfinished business;
- (8) New business;
- (9) Adjournment.

The order of business may be altered or suspended at any meeting by the Members of the Agency.

(e) All resolutions shall be in writing and shall be recorded in the journal of the proceedings of the Agency.

### Article III

#### OFFICERS AND PERSONNEL

##### Section 1. Officers

The officers of the Agency shall be Chairman or Co-Chairman, Vice-Chairman, Secretary and Treasurer and such other offices as may be prescribed, from time to time, by the Agency. The Chairman or Co-Chairman and other officers shall be appointed by the Mayor of the City of Syracuse and may be removed with or without cause at his discretion. Each officer shall be a Member of the Agency during his or her term of office.

##### Section 2. Chairman or Co-Chairmen

The Chairman shall be chief executive officer of the Agency, and shall serve as an ex officio member of all duly constituted committees, shall supervise the general management and the affairs of the Agency, and shall carry out the orders and resolutions of the Agency. Except as otherwise authorized by resolution of the Agency, the Chairman shall execute (manually and by facsimile signature) all agreements, contracts, deeds, bonds, notes or other evidence of indebtedness and any other instruments of the Agency on behalf of the Agency. The Mayor may from time to time appoint two Co-Chairmen in place of the Chairman. During their term of office the Co-

Chairmen shall share equally the duties, rights, powers and responsibilities of the Chairman. The action of either Co-Chairman or execution (manually or by facsimile signature) by either Co-Chairman of any agreement, contract, deed, bond, note or other evidence of indebtedness or any other instrument of the Agency on behalf of the Agency shall have the same force and effect as such action or execution by the Chairman.

Section 3. Vice-Chairman

The Vice-Chairman shall have all the powers and functions of the Chairman or Co-Chairmen in the absence or disability of the Chairman or Co-Chairmen, as the case may be. The Vice-Chairman shall perform such other duties as the Members of the Agency shall prescribe or as delegated by the Chairman or Co-Chairmen.

Section 4. Secretary

The Secretary shall keep the minutes of the Agency, shall have the custody of the seal of the Agency and shall affix and attest the same to documents when duly authorized by the Agency, shall attest to the giving or serving of all notices of the Agency, shall have charge of such books and papers as the Members of the Agency may order, shall attest to such correspondence as may be assigned, and shall perform all the duties incidental to his office.

Section 5. Treasurer

The Treasurer shall have the care and custody of all the funds and securities of the Agency, shall deposit such funds in the name of the Agency, in such bank or trust company as the members of the Agency may elect, shall sign such instrument as may require the Treasurer's signature, but only with the approval of the Chairman or Co-Chairman, as the case may be, shall at all reasonable times exhibit the books and accounts of the Agency to the Mayor or any Member of

the Agency, and at the end of each fiscal year shall present an annual report setting forth in full the financial condition of the Agency.

Section 6. Additional Personnel

The Agency, with the consent of the Mayor, may appoint an Administrative or Executive Director to supervise the administration of the business and affairs of the Agency, subject to the direction of the Agency. The Agency may, from time to time, employ such other personnel as it deems necessary to execute its powers, duties and functions as prescribed by the New York State Industrial Development Agency Act (General Municipal Law, Article 18-A), as amended, and all other laws of the State of New York applicable thereto.

Section 7. Compensation of Chairman, Co-Chairmen, Members, Officers, and Other Personnel

The Chairman, Co-Chairmen, Members and Officers shall receive no compensation for their services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties. The compensation of other personnel, including the Administrative Director, shall be determined by the Members of the Agency.

**Article IV**

**AMENDMENTS**

Section 1. Amendments to By-Laws

These by-laws may be amended or revised, from time to time, by a two-third (2/3) vote of the Agency, but no such amendment or revision shall be adopted unless written notice of the proposed action shall have been given by mail to each Member and the Mayor at least ten (10) days prior to the date of the meeting at which it is proposed that such action be taken; provided, however,

that this provision and other provisions relating to the appointment, renewal and terms of office of Members and officers may be amended only with the prior written approval of the Mayor.

## Article V

### MISCELLANEOUS

#### Section 1. Sureties and Bonds

In case the Agency shall so require, any officer, employee or agent of the Agency shall execute to the Agency a bond in such sum and with such surety or sureties as the Agency may direct, conditioned upon the faithful performance of his or her duties to the Agency and including responsibility for negligence and for the accounting for all property, funds or securities of the Agency which may come into the hands of the officer, employee or agent.

#### Section 2. Indemnification

(a) Upon compliance by a Member or Officer of the Agency (including a former Member or Officer, the estate of a Member or Officer or a judicially appointed personal representative thereof) (referred to in this Section 2 collectively as "Member") with the provisions of subdivision (i) of this Section 2, the Agency shall provide for the defense of the Member in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the Member was acting within the scope of the public employment or duties of such Member. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or at the behest of the Agency.

(b) Subject to the conditions set forth in paragraph (a) of this subdivision, the Member shall be entitled to be represented by private counsel of the Member's choice in any civil action or proceeding whenever the chief legal officer of the Agency or other counsel designated by the

Agency determines that a conflict of interest exists, or whenever a court, upon appropriate motion or otherwise by a special proceeding, determines that a conflict of interest exists and that the Member is entitled to be represented by counsel of the Member's choice, provided, however, that the chief legal officer or other counsel designated by the Agency may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such Members be represented by the same counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the Agency to such private counsel from time to time during the pendency of the civil action or proceeding with the approval of a majority of the Members of the Agency eligible to vote thereon.

(c) Any dispute with respect to representation of multiple Members by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

(d) Where the Member delivers process and a written request for a defense to the Agency under subdivision (i) of this Section 2, the Agency shall take the necessary steps on behalf of the Member to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

(e) The Agency shall indemnify and save harmless its Members in the amount of any judgment obtained against such Members in a State or Federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the Member was acting within the scope of the Member's public employment or duties; provided further that in the case of a settlement, the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by a majority of the Members of the Agency eligible to vote thereon.

(f) Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this Section 2 shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the Member seeking indemnification.

(g) Nothing in this subdivision shall authorize the Agency to indemnify or save harmless any Member with respect to punitive or exemplary damages, fines or penalties; provided, however, that the Agency shall indemnify and save harmless its Members in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that the Member, acting within the scope of the Member's public employment or duties, has, without willfulness or intent on the Member's part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of the State or of the United States.

(h) Upon entry of a final judgment against the Member, or upon the settlement of the claim, the Member shall serve a copy of such judgment or settlement, personally or by certified or registered mail within thirty (30) days of the date of entry or settlement, upon the Chairman and the chief administrative officer of the Agency; and if not inconsistent with the provisions of this Section 2, the amount of such judgment or settlement shall be paid by the Agency.

(i) The duty to defend or indemnify and save harmless prescribed by this Section 2 shall be conditioned upon: (i) delivery by the Member to the Chairman of the Agency and the chief legal officer of the Agency or to its chief administrative officer of a written request to provide for such Member's defense together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten (10) days after the Member is served with such document, and (ii) the full cooperation of the Member in the defense of such action or

proceeding and in defense of any action or proceeding against the Agency based upon the same act or omission, and in the prosecution of any appeal.

(j) The benefits of this Section shall inure only to Members as defined in subdivision (a) of this Section 2 and shall not enlarge or diminish the rights of any other party.

(k) This Section 2 shall not in any way affect the obligation of any claimant to give notice to the Agency under Section 10 of the Court of Claims Act, Section 880 of the General Municipal Law, or any other provision of law.

(l) The Agency is hereby authorized and empowered to purchase insurance from any insurance company created by or under the laws of the State, or authorized by law to transact business in the State, against any liability imposed by the provisions of this Section 2, or to act as a self-insurer with respect thereto. The provisions of this Section 2 shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

(m) All payments made under the terms of this Section 2, whether for insurance or otherwise, shall be deemed to be for a public purpose and shall be audited and paid in the same manner as other public charges.

(n) Except as otherwise specifically provided in this Section 2, the provisions of this Section 2 shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity to liability available to or conferred upon any Member of the Agency by, in accordance with, or by reason of, any other provision of State or Federal statutory or common law. The benefits under this Section 2 shall supplement, and be available in addition to, defense or indemnification protection conferred by any law or enactment. This Section 2 is intended to confer upon Members of the Agency all of the benefits of Section 18 of the Public Officers Law

and to impose upon the Agency liability for costs incurred under the provisions hereof and thereof.

Section 3. Fiscal Year

The fiscal year of the Agency shall be fixed by the Members, subject to the applicable law.

Section 4. Powers of the Agency

The Agency shall have all the powers of an Industrial Development Agency authorized by Article 18-A of the General Municipal Law and shall have the power to do all things necessary or convenient to carry out its purposes and exercise the powers authorized herein.

**EXHIBIT "D"**

**NOTICE OF PUBLIC HEARING WITH EVIDENCE OF PUBLICATION AND COPIES  
OF LETTERS TO AFFECTED TAX JURISDICTIONS PURSUANT TO SECTIONS  
859-a OF THE ACT**

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 19<sup>th</sup> day of April, 2011, at 8:30 o'clock a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter:

James Street Apartments, LLC, a New York limited liability company, or an entity to be formed (the "Company"), has requested that the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of a leasehold interest in an approximate 1.06 acre parcel of improved real property located at 615 James Street (Leavenworth Apartments) and 622 James Street (Kasson Apartments) (the "Land"); (ii) the reconstruction and renovation of: (a) an approximately 46,508 square foot seven (7) story building ("Leavenworth Apartments") for mixed-income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 36,995 square foot, seven (7) story building ("Kasson Apartments" and together with the Leavenworth Apartments the "Apartments") for mixed-income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on the Land and jointly housing approximately 82 units of housing, each Apartment containing laundry and storage facilities together with on-site parking for residents (collectively, the "Facility"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the "Equipment", together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax and sales and use taxation (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company shall be the initial owner or operator of the Project Facility.

The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner or location of the Project Facility and/or the nature of the Project.

A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the office of the Agency located at 233 East Washington Street in Syracuse, New York.

Dated: March 29, 2011

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

# The Post-Standard

## PROOF OF PUBLICATION

State of New York, County of Onondaga ss. Pamela Gallagher, of the City of Syracuse, in said County, being duly sworn, doth depose and says: this person is the Principal Clerk in the office of THE POST-STANDARD, a public newspaper, published in the City of Syracuse, Onondaga County, New York and that the notice, is an accurate and true copy of the ad as printed in said newspaper, was printed and published in the regular edition and issue of said newspaper on the following days, viz.:

Advertiser: HISCOCK & BARCLAY LLP

Reference #: 0000276140

PO #:

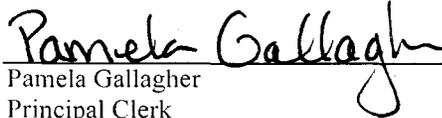
Product: Post-Standard-Full Run

Start Date: 04/01/2011

End Date: 04/01/2011

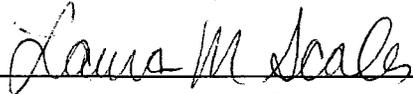
Insertions: 1

Run Dates: 04/01/2011



Pamela Gallagher  
Principal Clerk

Subscribed and Sworn to before me, this 04/01/2011



**LAURA M. SCALES**  
**Notary Public, State of New York**  
**No. 01SC6210783**  
**Qualified In Onondaga County**  
**My Commission Expires: 07/31/13**

NOTARY PUBLIC, ONONDAGA COUNTY, NY Commission Expires

ONE PARK PLACE  
300 SOUTH STATE STREET  
SYRACUSE, NEW YORK 13202  
T 315.425.2700 • F 315.425.2701

SUSAN R. KATZOFF  
PARTNER

DIRECT DIAL 315.425.2880  
DIRECT FAX 315.425.8597  
SKATZOFF@HBLAW.COM

March 29, 2011

**BY HAND DELIVERY and  
CERTIFIED MAIL**

Honorable Stephanie A. Miner  
Mayor, City of Syracuse  
City Hall  
233 East Washington Street  
Syracuse, New York 13202

**BY HAND DELIVERY and  
CERTIFIED MAIL**

Honorable Joanne M. Mahoney  
County Executive, Onondaga County  
John Mulroy Civic Center, 14<sup>th</sup> Floor  
421 Montgomery Street  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency  
James Street Apartments Project

Dear Mayor and County Executive:

Enclosed herewith please find a Notice of Public Hearing in relation to the above-referenced project. The proposed project (the "*Project*") consists of: (A)(i) the acquisition of a leasehold interest in an approximate 1.06 acre parcel of improved real property located at 615 James Street (Leavenworth Apartments) and 622 James Street (Kasson Apartments) (the "*Land*"); (ii) the reconstruction and renovation, including but not limited to the installation of new windows and HVAC systems, of: (a) an approximately 46,508 square foot seven (7) story building ("*Leavenworth Apartments*") for mixed-income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments; and (b) an approximately 36,995 square foot, seven (7) story building ("*Kasson Apartments*" and together with the Leavenworth Apartments the "*Apartments*") for mixed-income family housing, including studio, one-bedroom and two bedroom units, the

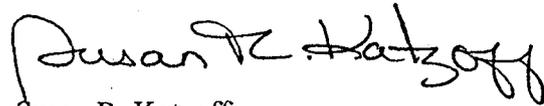
Honorable Stephanie A. Miner  
Honorable Joanne M. Mahoney  
March 29, 2011  
Page 2

Apartments located on the Land and jointly housing approximately 82 units of housing, each Apartment containing laundry and storage facilities together with on-site parking for residents (collectively, the "*Facility*"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "*Equipment*", together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from real property tax and sales and use taxation (collectively, the "*Financial Assistance*"); and (C) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

General Municipal Law Section 859-a requires that notice of the Public Hearing be given to the chief executive officer of each affected tax jurisdiction in which the Project is located.

As stated in the notice, the public hearing is scheduled for **April 19, 2011** at 8:30 a.m. in the Common Council Chambers at City Hall.

Very truly yours,



Susan R. Katzoff

SRK/llm  
Enclosure

cc: William Ryan, City of Syracuse Industrial Development Agency (w/Enclosure)  
Thomas Babilon, Assistant Corporation Counsel, City of Syracuse (w/Enclosure)  
Ben Walsh, City of Syracuse (w/Enclosure)

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 19<sup>th</sup> day of April, 2011, at 8:30 o'clock a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter:

James Street Apartments, LLC, a New York limited liability company, or an entity to be formed (the "Company"), has requested that the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of a leasehold interest in an approximate 1.06 acre parcel of improved real property located at 615 James Street (Leavenworth Apartments) and 622 James Street (Kasson Apartments) (the "Land"); (ii) the reconstruction and renovation of: (a) an approximately 46,508 square foot seven (7) story building ("Leavenworth Apartments") for mixed-income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 36,995 square foot, seven (7) story building ("Kasson Apartments" and together with the Leavenworth Apartments the "Apartments") for mixed-income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on the Land and jointly housing approximately 82 units of housing, each Apartment containing laundry and storage facilities together with on-site parking for residents (collectively, the "Facility"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the "Equipment", together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax and sales and use taxation (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company shall be the initial owner or operator of the Project Facility.

The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner or location of the Project Facility and/or the nature of the Project.

A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the office of the Agency located at 233 East Washington Street in Syracuse, New York.

Dated: March 29, 2011

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

**SENDER**

- Complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hon. Stephanie Miner  
Mayor  
City Hall  
233 E. Washington St.  
Syracuse, NY 13202

2. Article Number

(Transfer from service label)

7006 2150 0001 7745 7882

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1

*M. Miner*  Agent  
 Address

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type

- Certified Mail  Express Mail
- Registered  Return Receipt for Merchandise
- Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hon. Joanne Mahoney  
County Executive  
Civic Center  
421 Montgomery St  
Syracuse, NY 13202

2. Article Number

(Transfer from service label)

PS Form

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

*Joanne Mahoney*  Agent  
 Address

B. Received by (Printed Name) C. Date of Delivery

*Joanne Mahoney* *3/30/11*

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type

- Certified Mail  Express Mail
- Registered  Return Receipt for Merchandise
- Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

95-02-M-15

7006 2150 0001 7745 7899

7006 2150 0001 7745 7882

Sent to  
Street, Apt. No.,  
or PO Box No.  
City, State, ZIP+4

*County Executive*

PS Form 3800, August 2006 See Reverse for Instructions

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

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PS Form 3800, August 2006 See Reverse for Instructions

Sent to  
Street, Apt. No.,  
or PO Box No.  
City, State, ZIP+4

*Mayor*

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

**CERTIFIED MAIL™ RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

**EXHIBIT "E"**

**LETTERS TO TAX JURISDICTIONS  
REGARDING DEVIATION FROM UTEP**

SUSAN R. KATZOFF  
PARTNER

ONE PARK PLACE  
300 SOUTH STATE STREET  
SYRACUSE, NEW YORK 13202  
T 315.425.2700 • F 315.425.2701

DIRECT DIAL 315.425.2880  
DIRECT FAX 315.425.8597  
SKATZOFF@HBLAW.COM

April 12, 2011

**VIA HAND DELIVERY**

Honorable Stephanie A. Miner  
Mayor, City of Syracuse  
City Hall  
233 East Washington Street  
Syracuse, New York 13202

Honorable Joanne M. Mahoney  
County Executive, Onondaga County  
John Mulroy Civic Center, 14<sup>th</sup> Floor  
421 Montgomery Street  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency ("**SIDA**")  
James Street Apartments Project (Kasson and Leavenworth Apartments)

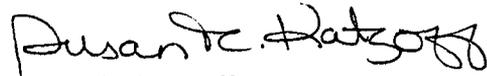
Dear Mayor and County Executive,

We are counsel to the City of Syracuse Industrial Development Agency (the "**Agency**"). On behalf of the Agency we hereby notify you that on April 19, 2011 the Agency will consider whether to approve the request by James Street Apartments, LLC (the "**Company**") for deviation from the Agency's Uniform Tax Exemption Policy with respect to the above-referenced project to be located in the City of Syracuse. Attached as Schedules "A" and "B" respectively are: (i) a description of the proposed deviation and the reasons therefor; and (ii) the proposed PILOT schedule. If approved, the Agency, the City of Syracuse and the Company will enter into a Payment in Lieu of Tax Agreement to evidence the proposed payment in lieu of tax schedule.

The Agency will review and respond to any correspondence received from any affected tax jurisdiction regarding the proposed deviation and allow any representative of an affected tax jurisdiction present at such meeting to address the Agency regarding the proposed deviation.

Should you wish to discuss this matter or the attachments, please feel free to contact me directly at 425-2880.

Very truly yours,

  
Susan R. Katzoff

SRK:llm

Enclosures

cc: Thomas Babilon, Esq. (w/Enclosures)  
Ben Walsh (w/Enclosures)

## Schedule A

James Street Apartments, LLC (the "**Company**") has requested that the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest in an approximate 1.06 acre parcel of improved real property located at 615 James Street (Leavenworth Apartments) and 622 James Street (Kasson Apartments) (the "**Land**"); (ii) the reconstruction and renovation of: (a) an approximately 46,508 square foot seven (7) story building ("**Leavenworth Apartments**") for mixed-income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 36,995 square foot, seven (7) story building ("**Kasson Apartments**" and together with the Leavenworth Apartments the "**Apartments**") for mixed-income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on the Land and jointly housing approximately 82 units of housing, each Apartment containing laundry and storage facilities together with on-site parking for residents (collectively, the "**Facility**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the "**Equipment**", together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax and sales and use taxation (collectively, the "**Financial Assistance**"); and (C) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company has requested that the Agency consider a payment in lieu of tax ("**PILOT**") schedule which deviates from the Agency's Uniform Tax Exemption Policy pursuant to General Municipal Law Section 874(4). The Agency has not yet made a determination with respect to such request.

The requested PILOT schedule, attached as Schedule B hereto, varies from the schedule to which the Project would be subject under the Uniform Tax Exemption Policy of the Agency. The Project Facility would be subject to the Class 3 schedule under the Uniform Tax Exemption Policy which provides for exemption equivalent to that available under Section 485(b) of the Real Property Tax Law based on an exemption term of ten (10) years.

The Company has provided the following as justification for the requested deviation:

Redevelopment of the Project Facility will contribute to the revitalization and stabilization of the neighborhood by reoccupying two significant foreclosed and vacant buildings near St. Joseph's Hospital (the "**Hospital**"). Rehabilitation of the Project Facility will remove blight and support other efforts by the City to promote growth in the area surrounding the Hospital. Furthermore, the Project is in line with the City's need for market rate housing as outlined in its Comprehensive Plan to attract more residents.

The location of the Project Facility makes it an attractive location for young professionals. The Project will take advantage of historic preservation tax credits and result in the two buildings becoming lead and asbestos free and providing very high quality housing near downtown Syracuse. All of these aspects of the redevelopment will result in highly marketable

apartments, particularly with young professionals. Having young professionals live close to downtown is critical to strengthening the core of upstate cities like Syracuse.

The PILOT is critical to the overall feasibility of this redevelopment effort. Without the PILOT, the Project will not be financially viable.

In addition to its physical attributes, the Project Facility will create jobs. During construction the Company will employ approximately 80 construction workers and upon completion the Project will support two full time management staff and two full time maintenance staff.

For the reasons set forth herein, the Company respectfully requests a deviation from the Uniform Tax Exemption Policy in the form submitted to the Agency.

**Schedule B**

**PROPOSED PILOT SCHEDULE**

James Street Apartmets, LLC PILOT Schedule		
Year	Assessment	Payment
1	$\$520,600 \times \text{tax rate}^*$	-
2	$\$520,600 \times \text{tax rate}$	-
3	$\$520,600 \times \text{tax rate}$	-
4	$\$520,600 \times \text{tax rate}$	-
5	$\$520,600 \times \text{tax rate}$	-
6	$\$520,600 \times \text{tax rate}$	-
7	$\$520,600 \times \text{tax rate}$	-
8	$\$520,600 \times \text{tax rate}$	-
9	$[(\text{full assessment} - \$520,600) \times .20] + (\$520,600 \times \text{tax rate})$	-
10	$[(\text{full assessment} - \$520,600) \times .40] + (\$520,600 \times \text{tax rate})$	-
11	$[(\text{full assessment} - \$520,600) \times .60] + (\$520,600 \times \text{tax rate})$	-
12	$[(\text{full assessment} - \$520,600) \times .80] + (\$520,600 \times \text{tax rate})$	-
13	$\$2,310,600 \times \text{tax rate}$	-
14	$\$2,310,600 \times \text{tax rate}$	-
15	$\$2,310,600 \times \text{tax rate}$	-

\*tax rate = Combined Syracuse City, County, School District and Water District Real Property Tax Rate in effect for each year, or portion thereof, covered by the Agreement

**EXHIBIT "F"**

**INDUCEMENT RESOLUTION**

## INDUCEMENT RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on April 19, 2011 at 8:30 o'clock a.m., at the Agency's offices in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Vice Chairperson and, upon the roll being duly called, the following members were:

**PRESENT:** John Gamage, Nicholas Ciotti, M. Catherine Richardson, Esq., Donald Schoenwald, Esq.

**ABSENT:** William Ryan

The following persons were **ALSO PRESENT:** Ben Walsh, Matthew Kerwin, Esq., Thomas Babilon, Esq., Judith DeLaney, Greg Streeter, Richard Sykes, Jr., John Sidd, Esq., Paul Driscoll, Lindsay McCluskey, David Clifford, Andy Bodowes, Emily Knox, Chiland Fralick, Brandon Roth, NBC3.

The following resolution was offered by Donald Schoenwald and seconded by Nicholas Ciotti:

**RESOLUTION UNDERTAKING THE ACQUISITION, RENOVATION, RECONSTRUCTION AND EQUIPPING OF A CERTAIN PROJECT, APPOINTING JAMES STREET APARTMENTS, LLC AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, RENOVATION, RECONSTRUCTION AND EQUIPPING OF THE PROJECT, AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND JAMES STREET APARTMENTS, LLC**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered

under the Act to acquire, lease, and sell real property and grant financial assistance in connection with one or more “projects” (as defined in the Act); and

**WHEREAS**, James Street Apartments, LLC, a New York limited liability company (the “**Company**”), by application dated March 2, 2011 (the “**Application**”), requested the Agency undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of a leasehold interest in an approximate 1.06 acre parcel of improved real property located at 615 James Street (Leavenworth Apartments) and 622 James Street (Kasson Apartments) (the “**Land**”); (ii) the reconstruction and renovation of: (a) an approximately 46,508 square foot seven (7) story building (“**Leavenworth Apartments**”) for mixed-income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 36,995 square foot, seven (7) story building (“**Kasson Apartments**” and together with the Leavenworth Apartments the “**Apartments**”) for mixed-income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on the Land and jointly housing approximately 82 units of housing, each Apartment containing laundry and storage facilities together with on-site parking for residents (collectively, the “**Facility**”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the “**Equipment**”, together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax and sales and use taxation (collectively, the “**Financial Assistance**”); and (C) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, to aid the Agency in determining whether the preliminary agreement of the Agency to undertake the Project may have a significant impact upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form (the “**EAF**”), a copy of which is on file at the office of the Agency; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), the Agency has examined the EAF prepared by the Company in order to classify the Project and has determined that the Project constitutes a “Type II” action as that term is defined under SEQRA, and therefore no further review is required;

**WHEREAS**, as part of the Financial Assistance, the Company requested the Agency consider a payment in lieu of tax (“**PILOT**”) schedule which constitutes a deviation from the Agency’s Uniform Tax Exemption Policy (“**UTEP**”) established pursuant to General Municipal Law Section 874(4). The Agency has not yet resolved to grant the PILOT as part of the requested Financial Assistance; and

**WHEREAS**, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on April 19, 2011 pursuant to Section 859-a of the Act, notice of which was published on April 1, 2011 in the Post-Standard, a newspaper of general circulation in

the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letter dated March 29, 2011; and

**WHEREAS**, the Agency has considered the policy, purposes and requirements of the Act in making its determinations with respect to taking official action regarding the Project;

**WHEREAS**, the Agency has given due consideration to the Application and to representations by the Company that (a) the provision of Financial Assistance (i) will induce the Company to develop and retain the Project Facility in the City of Syracuse, and (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; (b) the Project is located in a “highly distressed area” as defined in Section 854(18) of the Act; and (c) undertaking the Project will preserve or create permanent and temporary private sector jobs in the State;

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

(1) Based upon the representations made by the Company to the Agency, the Agency makes the following findings and determinations:

(A) The Project constitutes a “project” within the meaning of the Act; and

(B) The acquisition of an interest in the Project Facility by the Agency and the designation of the Company as the Agency’s agent for completion of the Project will be an inducement to the Company to renovate, reconstruct, equip and operate the Project Facility in the City of Syracuse, thereby promoting and/or preserving job opportunities, general prosperity and economic welfare of the inhabitants of the City of Syracuse in furtherance of the purposes of the Act; and

(C) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act;

(D) The Project is located in a “highly distressed area”; and

(E) Undertaking the Project will serve the public purposes of the Act by preserving and/or creating permanent private sector jobs in the City of Syracuse and the State.

(2) Subject to the conditions set forth in Section 4.02 of the Agreement (hereinafter defined), the Agency will (i) acquire an interest in the Project Facility pursuant to a lease agreement (the "*Lease*") to be entered into between the Company and the Agency; (ii) lease the Project Facility to the Company pursuant to a Sublease to be entered into between the Agency and the Company; (iii) grant the Financial Assistance, subject to approval of the PILOT; and (iv) execute and deliver all other certificates and documents necessary or appropriate for the grant of the approved Financial Assistance or requested by the Company or its commercial lender(s) in connection with financing for the Project.

(3) The form and substance of the proposed agreement (in the form and on the terms and conditions as presented at this meeting and attached hereto as Exhibit "A") (the "*Agreement*") between the Agency and the Company setting forth the preliminary undertakings of the Agency and the Company with respect to the Project Facility are hereby approved. The Chairman or Vice Chairman of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the Agreement, in substantially the same form as presented at this meeting and attached hereto as Exhibit "A", with changes in terms and form as shall be consistent with this Resolution and as the Chairman or Vice Chairman shall approve. The execution thereof by the Chairman or Vice Chairman shall constitute conclusive evidence of such approval.

(4) Subject to the due execution and delivery by the Company of the Agreement, the Company is appointed the true and lawful agent of the Agency to proceed with the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf. The appointment made by this Section 4 shall not be effective until the Agreement referred to in Section 3 hereof is duly executed and delivered by the Company.

(5) The Secretary of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(6) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
M. Catherine Richardson	X	
Nicholas Ciotti	X	
John Gamage	X	
Donald Schoenwald	X	

The foregoing resolution was thereupon declared duly adopted.

STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ONONDAGA        )

I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on April 19, 2011, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of the Agency this \_\_\_\_ day of \_\_\_\_\_, 2011.

City of Syracuse Industrial Development Agency

  
\_\_\_\_\_  
John Gamage, Secretary

(S E A L)

## EXHIBIT "A"

### AGENCY/COMPANY AGREEMENT

THIS AGREEMENT is between **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the "**Agency**"), with an office at Room 312, City Hall, 233 East Washington Street, Syracuse, New York, and **JAMES STREET APARTMENTS, LLC** (the "**Company**"), with a business office at 183 East Main Street, Suite 600, Rochester, New York 14604.

Article 1. Preliminary Statement. Among the matters of mutual inducement which have resulted in the execution of this agreement are the following:

1.01. The Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, and Chapter 641 of the Laws of 1979 of the State (collectively, the "**Act**") to designate an agent for constructing, reconstructing and equipping "projects" (as defined in the Act).

1.02. The purposes of the Act are to promote, attract, encourage and develop recreation and economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration. The Act vests the Agency with all powers necessary to enable it to accomplish such purposes, including the power to acquire and dispose of interests in real property and to appoint agents for the purpose of completion of projects undertaken by the Agency.

1.03. The Company has requested that the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest in an approximate 1.06 acre parcel of improved real property located at 615 James Street (Leavenworth Apartments) and 622 James Street (Kasson Apartments) (the "**Land**"); (ii) the reconstruction and renovation of: (a) an approximately 46,508 square foot seven (7) story building ("**Leavenworth Apartments**") for mixed-income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 36,995 square foot, seven (7) story building ("**Kasson Apartments**") and together with the Leavenworth Apartments the "**Apartments**") for mixed-income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on the Land and jointly housing approximately 82 units of housing, each Apartment containing laundry and storage facilities together with on-site parking for residents (collectively, the "**Facility**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the "**Equipment**", together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax and sales and use

taxation (collectively, the “*Financial Assistance*”); and (C) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

1.04. The Company hereby represents to the Agency that the designation of the Company as the Agency’s agent for the renovation, construction, reconstruction and equipping of the Project Facility (i) will be an inducement to it to renovate, construct, reconstruct and equip the Project Facility in the City of Syracuse (the “*City*”); (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or of any other proposed occupant of the Project Facility from one area of the State to another or in the abandonment of one or more plants or facilities of the Company or of any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; (iii) the Project is located in a “highly distressed area” as defined in Section 854(18) of the Act; and (iv) undertaking the Project will preserve permanent private sector jobs in the State.

1.05. The Agency has determined that the acquisition of a controlling interest in, and the renovation, reconstruction and equipping of the Project Facility and the subleasing of the same to the Company will promote and further the purposes of the Act.

1.06 On April 19, 2011, the Agency adopted a resolution (the “*Inducement Resolution*”) agreeing, subject to the satisfaction of all conditions precedent set forth in such Resolution, to designate the Company as the Agency’s agent for the acquisition, renovation, construction, reconstruction and equipping of the Project Facility.

1.07. In the Resolution, subject to the execution of this Agreement by the Company, and other conditions set forth in the Resolution, the Agency appointed the Company as its agent for the purposes of renovating, reconstructing and equipping the Project Facility, entering into contracts and doing all things requisite and proper for renovating, constructing, reconstructing and equipping the Project Facility.

Article 2. Undertakings on the Part of the Agency. Based upon the statement, representations and undertakings of the Company and subject to the conditions set forth herein, the Agency agrees as follows:

2.01. The Agency confirms that it has authorized and designated the Company as the Agency’s agent for renovating, constructing, reconstructing and equipping the Project Facility.

2.02. The Agency will adopt such proceedings and authorize the execution of such Agency documents as may be necessary or advisable for (i) acquisition of a controlling interest in the Project Facility, (ii) designating the Company the Agency’s agent for renovation and equipping of the Project Facility, and (iii) the leasing or subleasing of the Project Facility to the Company, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company.

2.03. Nothing contained in this Agreement shall require the Agency to apply its funds to Project costs.

2.04. After satisfying the conditions precedent set forth in Section 4.02 hereof, the Company may proceed with the renovation, reconstruction and equipping of the Project Facility.

2.05. Subject to Section 4.02 hereof, the Company is appointed the true and lawful agent of the Agency (i) for the renovation, reconstruction and equipping of the Project Facility and (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for the reconstruction, renovation and equipping of the Project Facility, all with the same powers and the same validity as if the Agency were acting in its own behalf.

2.06. The Agency will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof. The Agency may in accordance with Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “*SEQRA*”), undertake supplemental review of the Project. Such review to be limited to specific significant adverse environmental impacts not addressed or inadequately addressed in the Agency’s review under SEQRA that arise from changes in the proposed Project, newly discovered information or a change in the circumstances related to the Project.

Article 3. Undertakings on the Part of the Company. Based upon the statements, representations and undertakings of the Agency and subject to the conditions set forth herein the Company agrees as follows:

3.01. (a) The Company shall indemnify and hold harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition of a controlling interest in, and renovation and equipping of the Project Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of the Company acting as agent for the Agency pursuant to this Agreement or otherwise.

(b) The Company shall not permit to stand, and will, at its own expense, take all steps reasonably necessary to remove, any mechanics’ or other liens against the Project Facility for labor or material furnished in connection with the acquisition, construction, reconstruction, renovation and equipping of the Project Facility.

(c) The Company shall indemnify and hold the Agency, its members, officers, employees and agents and anyone for whose acts or omissions the Agency or any one of them may be liable, harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Project Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

(d) The defense and indemnities provided for in this Article 3 shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, facts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

(e) The Company shall provide and carry worker's compensation and disability insurance as required by law and comprehensive liability insurance with such coverages (including without limitation, owner's protective for the benefit of the Agency and contractual coverage covering the indemnities herein provided for), with such limits and which such companies as may be approved by the Agency. Upon the request of the Agency, the Company shall provide certificates of insurance in form satisfactory to the Agency evidencing such insurance.

(f) The Company shall apply and diligently pursue all approvals, permits and consents from the State of New York, the City, the City Planning Commission and any other governmental authority which approvals, permits and consents are required under applicable law for the development, renovation of the Project and any related site improvements. The Company acknowledges and agrees that the Agency's findings and determinations under SEQRA or in the Resolution do not and shall not in and of themselves (except as specifically set forth in SEQRA) satisfy or be deemed to satisfy applicable laws, regulations, rules and procedural requirements applicable to such approvals, permits and consents.

(g) The Company shall complete the Local Access Agreement contained at Appendix I of the City of Syracuse Industrial Development Agency Financial Assistance Application and agrees that to the extent practicable utilize local contractors and suppliers for the renovation, construction, reconstruction and equipping of the Project Facility. For purposes of this Agency Agreement, the term "*Local*" shall mean Onondaga, Oswego, Madison and Oneida Counties. The Company agrees that such Local contractors shall be provided the opportunity to bid on contracts related to the Project Facility.

3.02. The Company agrees that, as agent for the Agency or otherwise, it will comply at the Company's sole cost and expense with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Agency and/or Company with respect to the Project Facility, the acquisition of a controlling interest therein, renovation, construction, reconstruction and equipping thereof, the operation and maintenance of the Project Facility, supplemental review of adverse environmental impacts in accordance with SEQRA and the financing of the Project. Every provision required by law to be inserted herein shall be deemed to be set forth herein as if set forth in full; and upon the request of either party, this Agreement shall be amended to specifically set forth any such provision or provisions.

3.03. The Company agrees that, as agent for the Agency or otherwise, to the extent that

such provisions of law are in fact applicable (without creating an obligation by contract beyond that which is created by statute) it will comply with the requirements of Section 220 of the Labor Law of the State of New York, as amended.

3.04. The Company will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3.05. If it should be determined that any State or local sales or compensatory use taxes are payable with respect to the acquisition, purchase or rental of machinery or equipment, materials or supplies in connection with the Project Facility, or are in any manner otherwise payable directly or indirectly in connection with the Project Facility, the Company shall pay the same and defend and indemnify the Agency from and against any liability, expenses and penalties arising out of, directly or indirectly, the imposition of any such taxes.

#### Article 4. General Provisions.

4.01. This Agreement shall be superseded in its entirety by the Lease Documents (as defined in the Resolution) and other documents executed in connection therewith.

4.02. It is understood and agreed by the Agency and the Company that the execution of the Lease Documents and related Agency documents and grant of Financial Assistance are subject to (i) obtaining all necessary governmental approvals, permits and consents of any and all governmental authorities as are required for development, renovation and construction of the Project and related site improvements; and (ii) payment by the Company of the Agency fee and Agency's counsel fees.

4.03. The Company agrees that it will, within thirty (30) days of a written request for same, regardless of whether or not this matter closes or the Project Facility is completed: (i) reimburse the Agency for all reasonable and necessary expenses, including without limitation the fees and expenses of counsel to the Agency, and (ii) indemnify the Agency from all losses, claims, damages and liabilities, in each case which the Agency may incur as a consequence of executing this Agreement or performing its obligations hereunder.

4.04. If for any reason the Lease Documents are not executed and delivered by the Company and the Agency on or before **April 19, 2012**, the provisions of this Agreement (other than the provisions of Articles 3.01, 3.02, 3.05 and 4.03 above, which shall survive) shall unless extended by agreement of the Agency and the Company, terminate and be of no further force or effect, and following such termination neither party shall have any rights against the other party except:

(a) The Company shall pay the Agency for all expenses incurred by the Agency in connection with the acquisition, construction, reconstruction, renovation and equipping of the Project Facility;

(b) The Company shall assume and be responsible for any contracts for

construction, reconstruction, renovation or purchase of equipment entered into by the Agency at the request of or as agent for the Company in connection with the Project Facility; and.

(c) The Company will pay the out-of-pocket expenses of members of the Agency and counsel for the Agency incurred in connection with the Project Facility and will pay the fees of counsel for the Agency for legal services relating to the Project Facility or the proposed financing thereof.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the \_\_\_\_\_ day of April, 2011.

CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY

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

JAMES STREET APARTMENTS, LLC

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

**EXHIBIT "G"**  
**PILOT RESOLUTION**

## PILOT RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on April 19, 2011, at 8:30 o'clock a.m. at the Agency's offices in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Vice Chairperson and, upon the roll being duly called, the following members were:

**PRESENT:** John Gamage, Nicholas Ciotti, M. Catherine Richardson, Esq., Donald Schoenwald, Esq.

**ABSENT:** William Ryan

The following persons were **ALSO PRESENT:** Ben Walsh, Matthew Kerwin, Esq., Thomas Babilon, Esq., Judith DeLaney, Greg Streeter, Richard Sykes, Jr., John Sidd, Esq., Paul Driscoll, Lindsay McCluskey, David Clifford, Andy Bodowes, Emily Knox, Chailand Fralick, Brandon Roth, NBC3.

The following resolution was offered by John Gamage and seconded by Donald Schoenwald:

### **RESOLUTION APPROVING A PAYMENT IN LIEU OF TAX SCHEDULE AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A CERTAIN PROJECT UNDERTAKEN AT THE REQUEST OF JAMES STREET APARTMENTS, LLC**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease, and sell real property and grant financial assistance in connection with one or more "projects" (as defined in the Act); and

**WHEREAS**, by application dated on or about March 2, 2011 (the "**Application**"), James Street Apartments, LLC, a New York limited liability company (the "**Company**"), requested that the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest in an approximate 1.06 acre parcel of improved real property located at 615 James Street (Leavenworth Apartments) and 622 James Street (Kasson Apartments) (the "**Land**"); (ii) the reconstruction and renovation of: (a) an approximately 46,508 square foot seven (7) story building ("**Leavenworth Apartments**") for mixed-income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 36,995 square foot, seven (7) story building ("**Kasson Apartments**" and together with the Leavenworth Apartments the "**Apartments**") for mixed-income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on the Land and jointly housing approximately 82 units of housing, each Apartment containing laundry and storage facilities together with on-site parking for residents (collectively, the "**Facility**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the "**Equipment**", together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax and sales and use taxation (collectively, the "**Financial Assistance**"); and (C) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "**SEQRA**"), the Agency has examined the Environmental Assessment Form (the "**EAF**") prepared by the Company in order to classify the Project and has determined that the Project constitutes a "Type II" action as that term is defined under SEQRA, and therefore no further review is required;

**WHEREAS**, on April 19, 2011 the Agency adopted a resolution taking official action toward the acquisition, reconstruction, renovation and equipping of the Project (the "**Inducement Resolution**") and;

**WHEREAS**, as part of the Financial Assistance, the Company requested the Agency consider a payment in lieu of tax ("**PILOT**") schedule, as more fully described on **Exhibit "A"** attached hereto, which constitutes a deviation from the Agency's Uniform Tax Exemption Policy ("**UTEP**") established pursuant to General Municipal Law Section 874(4); and

**WHEREAS**, by letters dated April 12, 2011, the Agency gave to the chief executive officers of the affected tax jurisdictions notice pursuant to Section 874 of the Act (the "**Notice**") of this meeting at which the Agency would consider the Company's request for a PILOT schedule which deviates from the UTEP; and

**WHEREAS**, the Agency has given due consideration to the Application and to representations by the Company that the proposed PILOT, as part of the Financial Assistance (i)

will induce the Company to develop the Project Facility in the City of Syracuse, and (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; (iii) undertaking the Project will create permanent private sector jobs in the State;

**NOW, THEREFORE,** be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

(1) Based upon the representations made by the Company to the Agency, and the reasons presented by the Company in support of its request for the PILOT schedule, the Agency hereby approves and the (Vice) Chairman and Secretary, acting individually, are each authorized to execute and deliver a payment in lieu of tax agreement (“*PILOT Agreement*”) providing for the payment schedule attached as **Exhibit “A”** hereto.

(3) The Agency will, subject to, and in accordance with all resolutions adopted by the Agency in conjunction with this Project, execute and deliver a PILOT Agreement in such form and substance as shall be consistent with the resolutions and approved by the Chairman or Vice Chairman of the Agency upon the advice of counsel to the Agency.

(4) The Chairman, Vice Chairman and any Authorized Representative of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this resolution.

(5) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to above shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(6) The Secretary of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(7) The resolution shall take effect immediately, but is subject to execution by the Company of a PILOT Agreement and all other Resolutions and other related documents adopted and/or approved by the Agency and/or as set forth herein.

(8) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
M. Catherine Richardson	X	
Nicholas Ciotti	X	
John Gamage	X	
Donald Schoenwald	X	

The foregoing resolution was thereupon declared duly adopted.

STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ONONDAGA        )

I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on April 19, 2011, with the original thereof on file in my office, and that the same (including any and all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of the Agency this \_\_\_\_ day of \_\_\_\_\_, 2011.

City of Syracuse Industrial Development Agency

  
\_\_\_\_\_  
John Gamage, Secretary

(S E A L)

**EXHIBIT "A"**

**PROPOSED PILOT SCHEDULE**

James Street Apartmets, LLC PILOT Schedule		
Year	Assessment	Payment
1	$\$520,600 \times \text{tax rate}^*$	-
2	$\$520,600 \times \text{tax rate}$	-
3	$\$520,600 \times \text{tax rate}$	-
4	$\$520,600 \times \text{tax rate}$	-
5	$\$520,600 \times \text{tax rate}$	-
6	$\$520,600 \times \text{tax rate}$	-
7	$\$520,600 \times \text{tax rate}$	-
8	$\$520,600 \times \text{tax rate}$	-
9	$[(\text{full assessment} - \$520,600) \times .20] + (\$520,600 \times \text{tax rate})$	-
10	$[(\text{full assessment} - \$520,600) \times .40] + (\$520,600 \times \text{tax rate})$	-
11	$[(\text{full assessment} - \$520,600) \times .60] + (\$520,600 \times \text{tax rate})$	-
12	$[(\text{full assessment} - \$520,600) \times .80] + (\$520,600 \times \text{tax rate})$	-
13	$\$2,310,600 \times \text{tax rate}$	-
14	$\$2,310,600 \times \text{tax rate}$	-
15	$\$2,310,600 \times \text{tax rate}$	-

\*tax rate = Combined Syracuse City, County, School District and Water District Real Property Tax Rate in effect for each year, or portion thereof, covered by the Agreement

**EXHIBIT "H"**

**FINAL APPROVING RESOLUTION**

## FINAL APPROVING RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on April 19, 2011, at 8:30 o'clock a.m. at the Agency's offices in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Vice Chairperson and, upon the roll being duly called, the following members were:

**PRESENT:** John Gamage, Nicholas Ciotti, M. Catherine Richardson, Esq., Donald Schoenwald, Esq.

**ABSENT:** William Ryan

The following persons were **ALSO PRESENT:** Ben Walsh, Matthew Kerwin, Esq., Thomas Babilon, Esq., Judith DeLaney, Greg Streeter, Richard Sykes, Jr., John Sidd, Esq., Paul Driscoll, Lindsay McCluskey, David Clifford, Andy Bodowes, Emily Knox, Chiland Fralick, Brandon Roth, NBC3.

The following resolution was offered by Nicholas Ciotti and seconded by Donald Schoenwald:

### **RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A CERTAIN PROJECT UNDERTAKEN AT THE REQUEST OF JAMES STREET APARTMENTS, LLC**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, James Street Apartments, LLC, a New York limited liability company (the "**Company**"), presented an application (the "**Application**") to the Agency on or about March 2, 2011, a copy of which is on file at the office of the Agency, requesting that the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest in an approximate 1.06 acre parcel of improved real property located at 615 James Street (Leavenworth Apartments) and 622 James Street (Kasson Apartments) (the "**Land**"); (ii) the reconstruction and renovation of: (a) an approximately 46,508 square foot seven (7) story building ("**Leavenworth Apartments**") for mixed-income family housing including studio, one-

bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 36,995 square foot, seven (7) story building (“*Kasson Apartments*” and together with the Leavenworth Apartments the “*Apartments*”) for mixed-income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on the Land and jointly housing approximately 82 units of housing, each Apartment containing laundry and storage facilities together with on-site parking for residents (collectively, the “*Facility*”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the “*Equipment*”, together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax and sales and use taxation (collectively, the “*Financial Assistance*”); and (C) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on April 19, 2011 pursuant to Section 859-a of the Act and Section 147 of the Internal Revenue Code of 1986, as amended (the “*Code*”), notice of which was published on April 1, 2011 in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letter dated March 29, 2011; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “*SEQRA*”), the Agency has examined the Environmental Assessment Form (the “*EAF*”) prepared by the Company in order to classify the Project and has determined that the Project constitutes a “Type II” action as that term is defined under SEQRA, and therefore no further review is required;

**WHEREAS**, as part of the Financial Assistance, the Company requested the Agency consider a payment in lieu of tax (“*PILOT*”) schedule which constitutes a deviation from the Agency’s Uniform Tax Exemption Policy (“*UTEP*”) established pursuant to General Municipal Law Section 874(4); and

**WHEREAS**, by letters dated April 12, 2011, the Agency gave to the chief executive officers of the affected tax jurisdictions notice pursuant to Section 874 of the Act of the meeting (the “*Notice*”) at which the Agency would consider the Company’s request for a PILOT schedule; and

**WHEREAS**, the Agency adopted a resolution on April 19, 2011 (the “*Inducement Resolution*”) entitled

**RESOLUTION UNDERTAKING THE ACQUISITION,  
RENOVATION, RECONSTRUCTION AND EQUIPPING OF  
A CERTAIN PROJECT, APPOINTING JAMES STREET  
APARTMENTS, LLC AS AGENT OF THE AGENCY FOR**

**THE PURPOSE OF THE ACQUISITION, RENOVATION,  
RECONSTRUCTION AND EQUIPPING OF THE  
PROJECT, AND AUTHORIZING THE EXECUTION AND  
DELIVERY OF AN AGREEMENT BETWEEN THE  
AGENCY AND JAMES STREET APARTMENTS, LLC**

which resolution is in full force and effect and has not been amended or modified.

**WHEREAS**, the Agency adopted a resolution on April 19, 2011 (the “*PILOT Resolution*”) entitled:

**RESOLUTION APPROVING A PAYMENT IN LIEU OF  
TAX SCHEDULE AND AUTHORIZING THE EXECUTION  
AND DELIVERY OF CERTAIN DOCUMENTS BY THE  
AGENCY IN CONNECTION WITH A CERTAIN PROJECT  
UNDERTAKEN AT THE REQUEST OF JAMES STREET  
APARTMENTS, LLC**

which resolution is in full force and effect and has not been amended or modified.

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

(1) Based upon the representations made by the Company to the Agency, the Agency hereby ratifies the SEQRA findings, the Inducement Resolution and the PILOT Resolution and makes the following findings and determinations:

(A) The acquisition of a controlling interest in the Project Facility by the Agency and the designation of the Company as the Agency’s agent for completion of the Project will be an inducement to the Company to operate the Project Facility in the City of Syracuse, thus serving the public purposes of Article 18-A of the General Municipal Law of New York State by promoting and preserving the job opportunities, general prosperity and economic welfare of the inhabitants of the City of Syracuse in furtherance of the purposes of the Act; and

(B) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and

(2) The Agency will (A) acquire a controlling interest in the Project Facility, (B) lease the Project Facility from the Company pursuant to a lease agreement between the Agency and the Company and sublease the Project Facility to the Company, pursuant to a sublease agreement, (C) secure the Company’s borrowings with respect to the Project Facility by joining in one or more construction or permanent mortgages on the Project Facility in favor of the Company’s lender(s), and pledging and assigning to such lender(s) certain rights and remedies of the Agency under the

sublease agreement by the execution and delivery of a Pledge and Assignment, and (D) execute and deliver a PILOT Agreement, all in such form and substance as shall be substantially the same as the approved by the Agency for other straight lease transactions and consistent with this resolution.

(3) The Agency's participation in any of the documents referenced herein, or the granting of the approved Financial Assistance, is contingent upon counsel for the Agency's review and the Chairman or Vice Chairman's approval of, all documents requested or required by the Agency in connection with the Project Facility;

(4) The Chairman, Vice Chairman and any Authorized Representative of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified in Section 2 of this resolution and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to in Section 2 of this resolution and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this resolution.

(5) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(6) The Secretary of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(7) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
M. Catherine Richardson	X	
Nicholas Ciotti	X	
John Gamage	X	
Donald Schoenwald	X	

The foregoing resolution was thereupon declared duly adopted.

STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ONONDAGA        )

I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on April 19, 2011, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of the Agency this \_\_\_\_ day of \_\_\_\_\_, 2011.

City of Syracuse Industrial Development Agency

  
\_\_\_\_\_  
John Gamage, Secretary

(S E A L)

**EXHIBIT "I"**  
**FINANCING RESOLUTION**

## AUTHORIZING RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on July 26, 2011 at 8:30 a.m. at the Agency's offices in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and, upon the roll being duly called, the following members were:

**PRESENT:** William Ryan, M. Catherine Richardson, Esq., Nicholas Ciotti, John Gamage, Donald Schoenwald, Esq.

The following persons were **ALSO PRESENT:** Benjamin Walsh, Thomas Babilon, Esq., Judith DeLaney, Irene Goldych, Debra Ramsey-Burns, Susan Katzoff, Esq., Tony Fiorito, Andrew Larew, Courtney Wilson, Donald Taylor, Timothy Lynn, Esq. Charles Sangster, Richard Sykes, Rick Moriarty

The following Resolution was offered by M. Catherine Richardson, Esq. and seconded by Donald Schoenwald, Esq.:

### **RESOLUTION APPROVING THE AGENCY'S PARTICIPATION IN FINANCING BY THE COMPANY IN CONNECTION WITH THE COMPANY'S COSTS ASSOCIATED WITH THE PROJECT FACILITY AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended (the "**Enabling Act**"), together with Section 926 of the General Municipal Law, as amended (said Section and the Enabling Act, collectively referred to as, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research, civic and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease, and sell real property and grant financial assistance in connection with one or more "projects" (as defined in the Act); and

**WHEREAS**, on or about April 19, 2011, the Agency passed a resolution (the “**Inducement Resolution**”) approving the undertaking of a project (the “**Project**”) at the request of James Street Apartments, LLC, a New York limited liability company (the “**Company**”) consisting of: (A)(i) the acquisition of a leasehold interest in an approximate 1.06 acre parcel of improved real property located at 615 James Street (Leavenworth Apartments) and 622 James Street (Kasson Apartments) (the “**Land**”); (ii) the reconstruction and renovation of: (a) an approximately 46,508 square foot seven (7) story building (“**Leavenworth Apartments**”) for mixed-income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 36,995 square foot, seven (7) story building (“**Kasson Apartments**” and together with the Leavenworth Apartments the “**Apartments**”) for mixed-income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on the Land and jointly housing approximately 82 units of housing, each Apartment containing laundry and storage facilities together with on-site parking for residents (collectively, the “**Facility**”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the “**Equipment**”, together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax and sales and use taxation (collectively, the “**Financial Assistance**”); and (C) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Company has now requested that the Agency participate in certain financing on the Project Facility by joining in one or more mortgages and related documents in an aggregate amount not to exceed \$11,650,000 in favor of one or more lenders including NYS Housing Finance Agency (the “**FHA Mortgage**”), the Federal Home Loan Bank (the “**FHLB Mortgage**”) and the City of Syracuse (the “**City HOME Loan Mortgage**” and together with the FHA Mortgage and the FHLB Mortgage collectively the “**Mortgages**”), and grant certain additional financial assistance in the form of mortgage recording tax exemption in an amount not to exceed \$100,000 (the “**Exemptions**” and together with the Mortgages, collectively the “**Additional Financial Assistance**”) on the Project Facility; and

**WHEREAS**, the Agency’s participation in the Mortgages was not originally contemplated at the time the company filed its initial application with the Agency and the extension of the additional financial assistance in the form of mortgage recording tax exemptions is being requested solely with respect to the FHLB Mortgage and the City HOME Loan Mortgage and will not exceed \$100,000.

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency as follows:

- (1) Based upon the representations made by the Company to the Agency, the Agency hereby makes the following findings and determinations:
  - (a) The Agency confirms all prior resolutions adopted in regard to the Project Facility.

(b) The Agency is authorized to execute and deliver all documents necessary to effectuate the Mortgages of the Project Facility as set forth hereinabove including but not limited to the Mortgages, one or more Pledge and Assignment, and a Mortgage Recording Tax Exemption Affidavit(s), *solely* with respect to the FHLB Mortgage and the City HOME Loan Mortgage and such assistance will not exceed an aggregate of \$100,000, and all other necessary documents necessary to effectuate the granting of the Additional Financial Assistance (collectively the “*Financing Documents*”); and the Chairman and/or Vice Chairman of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the Financing Documents upon the advice of counsel to the Agency. The execution thereof by the Chairman or Vice Chairman constitutes conclusive evidence of such approval;

(c) The Company will submit to the Agency the appropriate fee, if any, in exchange for the Agency’s grant of the Additional Financial Assistance for the entire amount of the new Mortgages, as well as any other applicable fees in accordance with the Agency’s fee schedule, and shall remit directly to the Agency’s counsel all reasonable attorneys’ fees and costs associated with this transaction;

(d) Should the Agency’s participation in the Financing Documents be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursement of the Agency’s counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under the Act to participate in the refinance, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise;

(e) The Secretary of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(f) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing Resolution was duly put to vote on a roll call, which resulted as follows:

	AYE	NAY
William Ryan	X	
M. Catherine Richardson	X	
Nicholas Ciotti	X	
John Gamage	X	
Donald Schoenwald	X	

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ONONDAGA        )

I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the "**Agency**") held on July 26, 2011, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting; (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104; (iii) the meeting was in all respects duly held; and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of the Agency this ~~16th~~ day of AUGUST, 2011.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
John Gamage, Secretary

(SEAL)

**EXHIBIT "J"**  
**RESOLUTION**

## AUTHORIZING RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on November 15, 2011 at 8:30 a.m. at the Agency's offices in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and, upon the roll being duly called, the following members were:

**PRESENT:** William Ryan, M. Catherine Richardson, Esq., John Gamage, Donald Schoenwald, Esq.

**ABSENT:** Nicolas Ciotti

The following persons were **ALSO PRESENT:** Benjamin Walsh, Meghan Gaffey, Esq., Judith DeLaney, Susan Katzoff, Esq, Debra Ramsey-Burns, Greg Streeter, Joe Hucko, Steve McKnight, Matt Moore, Merike Trier, Paul Driscoll, Shelly DiBenedetto, Matthew Weger, Sara Wallace, Jim Keans, Craig McDowell, Rick Moriarty, Jeff Kulowkolski, Brad Vivaca

The following Resolution was offered by M. Catherine Richardson and seconded by Donald Schoenwald:

### **RESOLUTION APPROVING A CHANGE IN THE AMOUNT OF FINANCING IN CONNECTION WITH THE COMPANY'S COSTS ASSOCIATED WITH THE PROJECT FACILITY**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "*Agency*") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "*State*"), as amended (the "*Enabling Act*"), together with Section 926 of the General Municipal Law, as amended (said Section and the Enabling Act, collectively referred to as, the "*Act*"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research, civic and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease, and sell real property and grant financial assistance in connection with one or more "projects" (as defined in the Act); and

**WHEREAS**, on or about April 19, 2011, the Agency passed a resolution (the "**Inducement Resolution**:") approving the undertaking of a project (the "**Project**") at the request of James Street Apartments, LLC, a New York limited liability company (the "**Company**") consisting of: (A)(i) the acquisition of a leasehold interest in an approximate 1.06 acre parcel of improved real property located at 615 James Street (Leavenworth Apartments) and 622 James Street (Kasson Apartments) (the "**Land**"); (ii) the reconstruction and renovation of: (a) an approximately 46,508 square foot seven (7) story building ("**Leavenworth Apartments**") for mixed-income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 36,995 square foot, seven (7) story building ("**Kasson Apartments**" and together with the Leavenworth Apartments the "**Apartments**") for mixed-income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on the Land and jointly housing approximately 82 units of housing, each Apartment containing laundry and storage facilities together with on-site parking for residents (collectively, the "**Facility**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the "**Equipment**", together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax and sales and use taxation (collectively, the "**Financial Assistance**"); and (C) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Company thereafter requested that the Agency participate in certain financing on the Project Facility by joining in one or more mortgages and related documents in an aggregate amount not to exceed \$11,650,000 in favor of one or more lenders including NYS Housing Finance Agency (the "**FHA Mortgage**"), the Federal Home Loan Bank (the "**FHLB Mortgage**") and the City of Syracuse (the "**City HOME Loan Mortgage**" and together with the FHA Mortgage and the FHLB Mortgage collectively the "**Mortgages**"), and grant certain additional financial assistance in the form of mortgage recording tax exemption in an amount not to exceed \$100,000 (the "**Exemptions**" and together with the Mortgages, collectively the "**Additional Financial Assistance**") on the Project Facility; and

**WHEREAS**, on July 26, 2011 the Agency authorized the granting of the Additional Financial Assistance ("**Approving Resolution**"); and

**WHEREAS**, the Company now is requesting that the Agency participate in the Mortgages in the new aggregate principal amount not to exceed \$12,000,000; and

**WHEREAS**, the Company has now advised that no mortgage recording tax exemption will be required and none is being requested from the Agency;

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency as follows:

(1) Based upon the representations made by the Company to the Agency, the Agency hereby makes the following findings and determinations:

(a) The Agency confirms all prior resolutions adopted in regard to the Project Facility.

(b) The amount of the Mortgages in the Approving Resolution, and as set forth herein, is hereby increased to an amount not to exceed \$12,000,000;

(c) The Agency shall not provide any exemption from mortgage recording tax with respect to the Mortgages as part of the Financial Assistance;

(d) Should the Agency's participation in the transaction contemplated hereby be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursement of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under the Act to participate in the transaction contemplated hereby, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise;

(e) Except as amended hereby, the Approving Resolution shall remain in full force and effect;

(f) The Secretary of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution;

(g) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours;

The question of the adoption of the foregoing Resolution was duly put to vote on a roll call, which resulted as follows:

	<b>AYE</b>	<b>NAY</b>
William Ryan	X	
M. Catherine Richardson	X	
John Gamage	X	
Donald Schoenwald	X	

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ONONDAGA        )

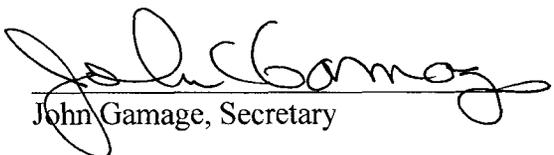
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on November 15, 2011, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting; (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104; (iii) the meeting was in all respects duly held; and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this *5<sup>th</sup>* day of *DECEMBER*, 2011.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
John Gamage, Secretary

(S E A L)

**EXHIBIT "K"**  
**CLARIFYING PILOT RESOLUTION**

## RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on November 15, 2011, at 8:30 o'clock a.m. at the Agency's offices in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and, upon the roll being duly called, the following members were:

**PRESENT:** William Ryan, M. Catherine Richardson, Esq., John Gamage, Donald Schoenwald, Esq.

**ABSENT:** Nicolas Ciotti

The following persons were **ALSO PRESENT:** Benjamin Walsh, Meghan Gaffey, Esq., Judith DeLaney, Susan Katzoff, Esq, Debra Ramsey-Burns, Greg Streeter, Joe Hucko, Steve McKnight, Matt Moore, Merike Trier, Paul Driscoll, Shelly DiBenedetto, Matthew Weger, Sara Wallace, Jim Keans, Craig McDowell, Rick Moriarty, Jeff Kulowkolski, Brad Vivaca

The following resolution was offered by Donald Schoenwald and seconded by M. Catherine Richardson:

### **RESOLUTION CLARIFYING THE PAYMENT IN LIEU OF TAX AGREEMENT PREVIOUSLY APPROVED BY THE AGENCY IN CONNECTION WITH A CERTAIN PROJECT UNDERTAKEN AT THE REQUEST OF JAMES STREET APARTMENTS, LLC**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "*Agency*") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "*State*"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "*Act*") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease, and sell real property and grant financial assistance in connection

with one or more “projects” (as defined in the Act); and

**WHEREAS**, by application dated on or about March 2, 2011 (the “*Application*”), James Street Apartments, LLC, a New York limited liability company (the “*Company*”), requested that the Agency undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of a leasehold interest in an approximate 1.06 acre parcel of improved real property located at 615 James Street (Leavenworth Apartments) and 622 James Street (Kasson Apartments) (the “*Land*”); (ii) the reconstruction and renovation of: (a) an approximately 46,508 square foot seven (7) story building (“*Leavenworth Apartments*”) for mixed-income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 36,995 square foot, seven (7) story building (“*Kasson Apartments*” and together with the Leavenworth Apartments the “*Apartments*”) for mixed-income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on the Land and jointly housing approximately 82 units of housing, each Apartment containing laundry and storage facilities together with on-site parking for residents (collectively, the “*Facility*”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the “*Equipment*”, together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax and sales and use taxation (collectively, the “*Financial Assistance*”); and (C) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “*SEQRA*”), the Agency has examined the Environmental Assessment Form (the “*EAF*”) prepared by the Company in order to classify the Project and has determined that the Project constitutes a “Type II” action as that term is defined under SEQRA, and therefore no further review is required;

**WHEREAS**, on April 19, 2011 the Agency adopted a resolution taking official action toward the acquisition, reconstruction, renovation and equipping of the Project (the “*Inducement Resolution*”) and;

**WHEREAS**, on April 19, 2011 the Agency adopted a resolution authorizing a certain payment in lieu of tax schedule (the “*PILOT Schedule*”) as part of the Financial Assistance being provided to the Project (the “*PILOT Resolution*”); and

**WHEREAS**, the PILOT Resolution has not been amended or modified and is still in full force and effect; and

**WHEREAS**, the Company has requested the Agency clarify the parties’ understanding relative to the terms of the payment in lieu of tax agreement (the “*PILOT Agreement*”) to be executed by the parties in conjunction with the PILOT Schedule;

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

- (1) The Agency hereby ratifies the PILOT Resolution.
- (2) The Agency by this Resolution, clarifies that the PILOT Agreement shall become effective on December 31, 2012, and the Agency will, in accordance with all resolutions adopted by the Agency in conjunction with this Project, execute and deliver a PILOT Agreement in such form and substance as shall be consistent herewith and approved by the Chairman or Vice Chairman of the Agency upon the advice of counsel to the Agency. Notwithstanding anything herein to the contrary, the PILOT Schedule shall remain unchanged.
- (4) The Chairman, Vice Chairman and any Authorized Representative of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this resolution.
- (5) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to above shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.
- (6) The Secretary of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.
- (7) The resolution shall take effect immediately, but is subject to execution by the Company of a PILOT Agreement and all other Resolutions and other related documents adopted and/or approved by the Agency and/or as set forth herein.
- (8) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing Resolution was duly put to vote on a roll call, which resulted as follows:

	<b>AYE</b>	<b>NAY</b>
William Ryan	X	
M. Catherine Richardson	X	
John Gamage	X	
Donald Schoenwald	X	

The foregoing resolution was thereupon declared duly adopted.

STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ONONDAGA        )

I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on November 15, 2011, with the original thereof on file in my office, and that the same (including any and all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 5<sup>TH</sup> day of DECEMBER, 2011.

City of Syracuse Industrial Development Agency

  
John Gamage, Secretary

(SEAL)

**GENERAL CERTIFICATE OF  
JAMES STREET APARTMENTS, LLC**

This certificate is made in connection with the execution by James Street Apartments, LLC, a New York limited liability company (the “**Company**”) of the Company Lease (as hereinafter defined), the Agency Lease (as hereinafter defined) and any other document now or hereafter executed by the Company in connection with the City of Syracuse Industrial Development Agency (the “**Agency**”) agreeing, at the Company’s request, to undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of a leasehold interest in two parcels of improved real property including an approximately .51 acre parcel located at 615 James Street (Leavenworth Parcel) and an approximately .50 acre parcel located at 622 James Street (Kasson Parcel) (collectively, the “**Land**”); (ii) the reconstruction and renovation of: (a) an approximately 51,602 square foot seven (7) story building (“**Leavenworth Apartments**”) for mixed-income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 37,138 square foot, seven (7) story building (“**Kasson Apartments**” and together with the Leavenworth Apartments the “**Apartments**”) for mixed-income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on the Land and jointly housing 83 units of housing, each Apartment containing laundry and storage facilities together with on-site parking for residents (collectively, the “**Facility**”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the “**Equipment**”, together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax and sales and use taxation (collectively, the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, improvement and equipping of the Project Facility; and (D) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company will lease the Project Facility to the Agency pursuant to a Company Lease Agreement dated as of December 22, 2011 (the “**Company Lease**”) and Agency will sublease the Project Facility to the Company, pursuant to a Agency Lease Agreement dated as of December 22, 2011 (the “**Agency Lease**”).

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agency Lease except that, for purposes of this certificate (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this certificate and not as of any future date, and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

The undersigned does hereby certify as follows:

1. Attached hereto as **Exhibit “A”** is a true, correct and complete copy of Company’s Articles of Organization. Such Articles of Organization were in full force and effect at the time the

Company Resolution (as defined herein) was adopted and is in full force and effect on the date hereof.

2. Attached hereto as **Exhibit "B"** is a true, correct and complete copy of the Company's Operating Agreement and such Operating Agreement is in full force and effect on the date hereof.

3. The Company is, and at all times will be, a limited liability company, duly organized, validly existing and in good standing under the laws of New York State and authorized and licensed under the laws of New York State to transact business as a limited liability company for the purpose of owning and operating the Project Facility in New York State. Attached hereto as **Exhibit "C"** is a true and correct copy of a Certificate of Good Standing of the Company issued by the New York State Secretary of State.

4. The Company has full legal right, power and authority to execute and deliver the Company Documents and to consummate the transactions on the part of the Company contemplated by Company Documents. The Company Documents have been duly authorized, executed, and delivered by the Executive Vice President on behalf of the Company and are in full force and effect as of the date hereof. Attached hereto as **Exhibit "D"** is a true, correct and complete copy of the authorizing resolution of the President of the Company (the "**Resolution**") in respect of the execution, delivery and performance of the Company Documents.

5. All consents, approvals, authorizations or orders of, notices to, or filings, registrations or declarations with, any court or governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of the Company or for the execution and delivery by the Company of the Company Documents or the consummation on the part of the Company of the transactions contemplated thereby have been obtained.

6. After performing due diligence, there is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or threatened against or affecting the Company or, to the knowledge of the Company, any basis therefor (i) in any way affecting the organization and existence of the Company, (ii) contesting or materially affecting the validity or enforceability of the Company Documents, (iii) contesting the powers of the Company or its authority with respect to the Company Documents, (iv) contesting the authority of the Company to act on behalf of the Company or the authority of the representatives of the Company to act on behalf of the Company, (v) wherein an unfavorable decision, ruling or finding would have a material adverse effect on (A) the financial condition or operations of the Company, or (B) the consummation on the part of the Company or the Company of the transactions contemplated by any Company Documents.

7. The execution and delivery by the Company on behalf of the Company of the Company Documents and the consummation by the Company of the transactions contemplated thereby are not prohibited by, do not violate any provision of, and will not result in a breach of or default under (i) organizational documents of the Company, (ii) any applicable law, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental body or other requirement to which the Company is subject, or (iii) any contract, agreement, mortgage, lease,

guaranty, commitment or other obligation or instrument to which the Company is a party or by which the Company or its properties is bound.

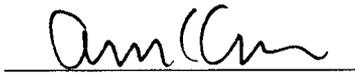
8. The Company understands and agrees that, to the extent practicable, local labor contractors and suppliers will be used for the construction of the Project and local contractors shall be provided the opportunity to bid on contracts placed for bid on and after the date of this Certificate relating to the Project. In furtherance thereof, Appendix I to the Agency's Application entitled "Local Access Agreement" completed and attached to the Company's application filed with the Agency. For purposes of the Local Access Agreement, the term "local" shall be defined to include Onondaga, Oswego, Madison, Cayuga and Oneida Counties.

9. All information concerning the Project Facility and the Company submitted to the Agency by the Company is true and correct in all material respects and does not omit to state a material fact necessary to make the statements therein not misleading.

10. There is no Event of Default or default on the part of the Company under the Company Lease, the Agency Lease, the PILOT Agreement or any other Company Document, and no event has occurred and is continuing which, after notice or passage of time or both, would give rise to a default under any thereof.

11. The Company Lease, the Agency Lease, the PILOT schedule attached to the PILOT Agreement shall not become effective until January 1, 2013, it being agreed that the Project Facility shall remain on the tax rolls until December 31, 2012. The Company further acknowledges and agrees that until such time as the Project Facility is removed from the tax rolls of the City of Syracuse, New York by operation of the filing of the Application for Real Property Tax Exemption (Form RP-412-a), to become effective December 31, 2012, the Company shall pay taxes on the Project Facility as if privately owned, irrespective of the Agency's interest therein.

12. The authorized representatives of the Company who, pursuant to the Resolution, are authorized to execute the Company Documents and the office held by each person are as set forth below. The signature set opposite the name of such officer, if any, is a genuine specimen of such officer's signature:

<u>Name</u>	<u>Signature</u>	<u>Office/Title</u>
Andrew I. Crossed		Executive Vice President

**IN WITNESS WHEREOF**, I have set my hand and signature as officer of the Company as of December 22, 2011.

**JAMES STREET APARTMENTS, LLC**

By: James Street Managing Member, LLC

By: Conifer Realty, LLC

By:   
\_\_\_\_\_  
Andrew I. Crossed  
Executive Vice President

**EXHIBIT "A"**  
**COMPANY'S ARTICLES OF ORGANIZATION**

FILING RECEIPT

ENTITY NAME: JAMES STREET APARTMENTS, LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC)

COUNTY: MONR

FILED:09/13/2010 DURATION:\*\*\*\*\* CASH#:100913000417 FILM #:100913000371

FILER:

EXIST DATE

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CONIFER REALTY, LLC  
183 EAST MAIN STREET  
SUITE 600  
ROCHESTER, NY 14604

09/13/2010

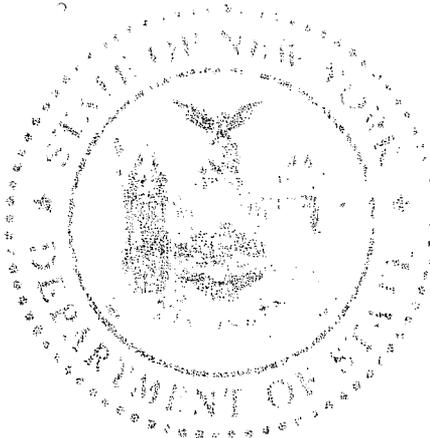
ADDRESS FOR PROCESS:

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THE LLC  
183 EAST MAIN ST., STE. 600  
ROCHESTER, NY 14604

REGISTERED AGENT:

-----



SERVICE COMPANY: \*\* NO SERVICE COMPANY \*\*

SERVICE CODE: 00 \*

FEES	235.00
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FILING	200.00
TAX	0.00
CERT	0.00
COPIES	10.00
HANDLING	25.00

PAYMENTS	235.00
-----	-----
CASH	0.00
CHECK	235.00
CHARGE	0.00
DRAWDOWN	0.00
OPAL	0.00
REFUND	0.00

***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on September 14, 2010.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

100913000371

ARTICLES OF ORGANIZATION

OF

JAMES STREET APARTMENTS, LLC

Under Section 203 of the Limited Liability Company Law of the State of New York

RECEIVED  
2010 SEP 13 PM 12:09

ICC

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED SEP 13 2010

TAXS \_\_\_\_\_

BY: \_\_\_\_\_  
*ja*

Filed By:

Conifer Realty, LLC  
183 East Main Street, Suite 600  
Rochester, New York 14604

2010 SEP 13 PM 1:50

FILED

*ja*

417

ARTICLES OF ORGANIZATION

OF

JAMES STREET APARTMENTS, LLC

Under Section 203 of the New York Limited Liability Company Law

The undersigned, for the purpose of forming a limited liability company pursuant to Section 203 of the New York Limited Liability Company Law, certifies that:

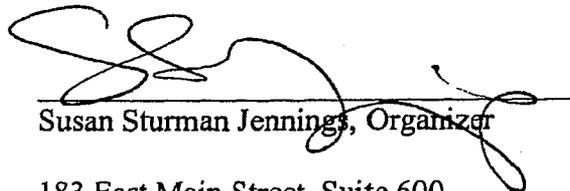
1. The name of the limited liability company is James Street Apartments, LLC (the "Company").

2. The county within the State in which the principal office of the Company is located is Monroe County.

3. The Secretary of State of the State of New York is hereby designated as the agent of the Company upon whom process against it may be served. The post office address within this State to which the Secretary of State shall mail a copy of any process against the Company served upon him or her is 183 East Main Street, Suite 600, Rochester, New York 14604.

4. At any time that the Company shall have more than one member, the Company shall be managed by one or more managers. The operating agreement for the Company shall specify the identity of the managers and may provide for specific classes of managers, their relative rights, powers, preferences and limitations on the authority.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Organization as of the 8<sup>th</sup> day of September, 2010, and does hereby affirm under the penalties of perjury, that the statements contained herein are true.

  
Susan Sturman Jennings, Organizer

183 East Main Street, Suite 600  
Rochester, New York 14604

**EXHIBIT "B"**  
**OPERATING AGREEMENT**

**JAMES STREET APARTMENTS, LLC,  
A NEW YORK LIMITED LIABILITY COMPANY**

**AMENDED AND RESTATED OPERATING AGREEMENT**

As of December 22, 2011

THE INVESTOR MEMBER INTERESTS EVIDENCED BY THIS AMENDED AND RESTATED OPERATING AGREEMENT (THE "AGREEMENT") HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933 (THE "ACT") OR PURSUANT TO APPLICABLE STATE SECURITIES LAWS ("BLUE SKY LAWS"). ACCORDINGLY, THE INVESTOR MEMBER INTERESTS CANNOT BE RESOLD OR TRANSFERRED BY ANY PURCHASER THEREOF WITHOUT REGISTRATION OF THE SAME UNDER THE ACT AND THE BLUE SKY LAWS OF SUCH STATE(S) AS MAY BE APPLICABLE, OR IN A TRANSACTION WHICH IS EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE ACT AND THE BLUE SKY LAWS OR WHICH IS OTHERWISE IN COMPLIANCE THEREWITH. IN ADDITION, THE SALE OR TRANSFER OF SUCH INVESTOR MEMBER INTERESTS IS SUBJECT TO CERTAIN RESTRICTIONS SET FORTH IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE RESTRICTIONS SET FORTH IN ARTICLE 9 HEREOF.

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**JAMES STREET APARTMENTS, LLC,  
A NEW YORK LIMITED LIABILITY COMPANY**

**AMENDED AND RESTATED OPERATING AGREEMENT**

THIS AMENDED AND RESTATED OPERATING AGREEMENT is made and entered into as of December 22, 2011, by and among James Street Managing Member, LLC, a New York limited liability company (the "Managing Member"), Conifer Realty, LLC, a New York limited liability company, the Withdrawing Member (the "Withdrawing Member"), Conifer 2011 Tax Credit Fund, LP, a Delaware limited partnership (the "Investor Member"), and Red Stone Equity Manager, LLC, a Delaware limited liability company (the "Special Member").

WHEREAS, the Withdrawing Member filed Articles of Organization (the "Articles") for the formation of James Street Apartments, LLC (the "Company") pursuant to the terms of the New York Limited Liability Company Act (the "Act"), which Articles was subsequently filed with the Secretary of State of New York (the "State") on September 13, 2010;

WHEREAS, the Withdrawing Member previously executed an Operating Agreement (the "Original Agreement") of the Company;

WHEREAS, the Managing Member, the Special Member and the Investor Member wish to continue the Company pursuant to the Act;

WHEREAS, the Company has been formed to develop, rehabilitate, own, maintain and operate a 83-unit apartment complex, 18 of which units will be rented to low-income families, known as James Street Apartments in Syracuse, New York;

WHEREAS, the parties hereto now desire to enter into this Amended and Restated Operating Agreement to (i) continue the Company under the Act; (ii) withdraw the Withdrawing Member from the Company; (iii) admit the Investor Member and the Special Member to the Company as Members; (iv) admit the Managing Member to the Company as a Managing Member; (v) set forth all of the provisions governing the Company; and (vi) amend and restate the Original Agreement in its entirety.

NOW, THEREFORE, in consideration of the foregoing, of mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereby agree to continue the Company pursuant to the Act, as set forth in this Amended and Restated Operating Agreement, which reads in its entirety as follows:

**ARTICLE 1.  
CONTINUATION OF COMPANY**

1.01 Continuation. The undersigned hereby continue the Company as a limited liability company under the Act.

1.02 Name. The name of the Company is James Street Apartments, LLC.

1.03 Principal Place of Business; Agent for Service of Process.

**Principal Place of Business.** The principal place of business of the Company shall be 183 East Main Street, Suite 600, Rochester, New York 14604. The Company may change the location of its principal place of business to such other place or places within the State as may hereafter be determined by the Managing Member. The Managing Member shall promptly notify all other Members of any change in the principal place of business. The Company may maintain such other offices at such other place or places as the Managing Member may from time to time deem advisable.

**Agent for Service of Process.** The name and address of the agent for service of process is the Secretary of State of the State of New York. The Company may change the agent for service of process to such other agent as may hereafter be determined by the Managing Member. The Managing Member shall promptly notify all other Members of any change in the agent for service of process.

**1.04 Withdrawal of Withdrawing Member and Admission of Investor Member, Special Member and Managing Member.** The Withdrawing Member hereby withdraws as a Member of the Company, and represents and warrants that (a) it has no claims or causes of action against the Company or any asset thereof, (b) it has no interest in the Company or any property or asset thereof, and (c) is not entitled to any fees, distributions, compensation or payments from the Company. The Investor Member and Special Member are hereby admitted to the Company as the sole Investor Members thereof. The Managing Member is hereby admitted to the Company as the sole Managing Member thereof.

**1.05 Term.** The term of the Company commenced as of the date of the filing of the Articles with the Secretary of State of the State, and shall continue in perpetuity, unless the Company is sooner dissolved in accordance with the provisions of this Agreement.

**1.06 Filing of Articles.** Upon the execution of this Amended and Restated Operating Agreement by the parties hereto, the Managing Member shall take all actions necessary to assure the prompt recording of an amendment to the Articles if and as required by the Act, including filing with the Secretary of State of the State. All fees for filing shall be paid out of the Company's assets. The Managing Member shall take all other necessary action required by law to perfect and maintain the Company as a limited liability company under the laws of the State, and, if required, shall register the Company under any assumed or fictitious name statute or similar law in force and effect in the State.

**1.07 Assignment to the Company.** The Managing Member hereby transfers and assigns to the Company all of its right, title and interest in and to the Apartment Complex, including the following:

any and all contracts with architects, contractors and supervising architects with respect to the development of the Apartment Complex;

any and all plans, specifications and working drawings, heretofore prepared or obtained in connection with the Apartment Complex and all governmental approvals obtained, including planning, zoning and building permits;

any and all commitments with respect to the Project Loans and the Tax Credits;

any and all rights under and pursuant to the Project Documents; and

any other work product related to the Apartment Complex.

**ARTICLE 2.**  
**DEFINED TERMS**

In addition to the terms defined in the preamble to this Agreement, the following terms used in this Agreement shall have the meanings specified below:

**"Accountants"** means Salmin, Celona, Wehrle & Flaherty of Rochester, New York or such other firm of independent certified public accountants as may be engaged by the Managing Member, with the Consent of the Special Member, to prepare the Company income tax returns and audited financial statements and provide other services to the Company.

**"Act"** means the Limited Liability Company Act of the State, as may be amended from time to time during the term of the Company.

**"Actual Credits"** means as of any point in time, the total amount of the Tax Credits allocated by the Company to the Investor Member representing in the aggregate ninety-nine and ninety-nine one hundredths percent (99.99%) of the aggregate Tax Credits reported and claimed by the Company and its Members on their respective federal information and income tax returns, and not disallowed by any taxing authority.

**"Actual Historic Tax Credits"** means, for any period of time, the total amount of the Historic Tax Credits allocated by the Company to the Investor Member representing 99.99% of the aggregate Historic Tax Credits reported and claimed by the Company and its Members on their respective federal information and income tax returns for such period of time, and not disallowed by any taxing authority.

**"Actual State Historic Tax Credits"** means, for any period of time, the total amount of the State Historic Tax Credits allocated by the Company to the Investor Member representing 99.99% of the aggregate State Historic Tax Credits reported and claimed by the Company and its Members on their respective New York state information and income tax returns for such period of time, and not disallowed by any taxing authority.

**"Adjusted Capital Account Deficit"** means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant fiscal period after giving effect to the following adjustments: (a) the credit to such Capital Account of any amounts which such Member is obligated to restore under this Company Agreement or is deemed to be obligated to restore pursuant to either (i) the penultimate sentences of Treas. Reg. §1.704-2(g)(1) and Treas. Reg. §1.704-2(i)(5), or (ii) amounts that the Member is treated as obligated to restore under Treas. Reg. §1.704-1(b)(2)(ii)(c); and (b) the debit to such Capital Account of the amounts described in Treas. Reg. §1.704-1(b)(2)(ii)(d)(4), (5) and (6). The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treas. Reg. §1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

**"Affiliate"** of a specified Person means (i) any Person directly or indirectly controlling, controlled by or under common control with the Person specified, (ii) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities or beneficial interests of the Person specified, (iii) any officer, director, partner, trustee or member of the immediate family of the Person specified, (iv) if the Person specified is an officer, director, general partner or trustee, any corporation, partnership or trust for which that Person acts in that capacity, or (v)

any Person who is an officer, director, partner, member, trustee or holder of ten percent (10%) or more of the outstanding voting securities or beneficial interests of any Person described in clauses (i) through (iv). The term "control" (including the term "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Agency" means the New York State Homes and Community Renewal, or any successor thereof, in its capacity as the agency of the State designated to allocate Tax Credits, acting through any authorized representative.

"Agreement" means this Amended and Restated Operating Agreement, as amended from time to time.

"Apartment Complex" means the Land and the 83-unit apartment complex, and other improvements to be rehabilitated, owned and operated thereon by the Company, and leased by the Company from the IDA pursuant to the Lease, to be known as James Street Apartments.

"Applicable Federal Rate" means the long-term applicable Federal Rate (as defined in Section 1274(d) of the Code).

"Architect" means Crawford & Stearns Architects and Preservation Planners, the architect who prepared the Plans and Specifications and who will inspect the progress of rehabilitation of the Apartment Complex.

"Articles" means the Company's Articles of Organization or any other instrument or document which is required under the laws of the State to be signed and sworn to by the Managing Member and filed in the appropriate public offices within the State to perfect or maintain the Company as a limited liability company under the laws of the State, to effect the admission, withdrawal or substitution of any Member of the Company, or to protect the limited liability of the Investor Member under the laws of the State.

"As-Built Plans and Specifications" means the plans and specifications for the Apartment Complex stamped with the seal of the Architect and issued upon Substantial Completion.

"Assumed Investor Member Tax Liability" means for any given year the product of (i) the taxable income of the Investor Member for federal income tax purposes, if any, resulting from allocations made to the Investor Member pursuant to Article 11 but not including any taxable income resulting from a Capital Transaction, times (ii) a percentage equal to the sum of (A) the highest federal corporate tax rate for such year, plus (B) the highest state corporate tax rate for such year for the State.

"Authority" or "Authorities" means any nation or government, any state or other political subdivision thereof, and any entity exercising its executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including but not limited to, any federal, state or municipal department, commission, board, bureau, agency, court, tribunal or instrumentality.

"Bankruptcy" or "Bankrupt" as to any Person means:

(i) The entry of a decree or order for relief by a court having jurisdiction in respect of such Person in an involuntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) for such Person or for any substantial part of his property, or ordering the winding-up or liquidation of his affairs, and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days;

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

(iii) The commencement against such Person of an involuntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy insolvency or similar laws which has not been vacated or discharged within sixty (60) consecutive days;

(iv) The admission by such Person of his or its inability to pay his or its debts as they become due; or

(v) Such Person becoming "insolvent" by the taking of any action or the making of any transfer or otherwise, as insolvency is or may be defined pursuant to the federal bankruptcy laws, the Uniform Fraudulent Conveyances Act, any state or federal act or law, or the ruling of any court.

"Bonds" means, collectively, the Short Term Bonds and the Long Term Bonds.

"Bond Issuer" means NYSHFA in its capacity as issuer of the Bonds.

"Bond Lender" means NYSHFA in its capacity as maker of the Bond Loan.

"Bond Loan" means, collectively, the Short Term Bond Loan and the Long Term Bond Loan.

"Breakeven Operations" means the date upon which the gross operating revenues from the normal operation of the Apartment Complex received on a cash basis (including all public subsidy payments due and payable at such time but not yet received by the Company and not more than 60 days in arrears, but excluding tenant security deposits and insurance proceeds for a period of three (3) consecutive calendar months after Substantial Completion) equals or exceeds all accrued operating costs of the Apartment Complex, including, but not limited to, taxes, assessments, Replacement Reserve deposits and debt service payments and a ratable portion of the annual amount (as reasonably estimated by the Managing Member) of those seasonal and/or periodic expenses (such as water and sewer charges, utilities, maintenance expenses and real estate taxes or service charges in lieu of real estate taxes) which might reasonably be expected to be incurred on an unequal basis during a full annual period of operation, for such period of three (3) consecutive calendar months on an annualized basis (based on projections of the Company), as evidenced by a certification of the Managing

Member with an accompanying unaudited balance sheet of the Company indicating that all trade payables have been satisfied (or with respect to trade payables within sixty (60) days of the date the services were performed or goods were delivered, the trade payables shall not be past due and the Company shall have an adequate cash reserve for the payment of such trade payables), all as shall be subject to the approval of the Special Member. For the purpose of calculating Breakeven Operations only, the following costs shall not be considered operating costs of the Apartment Complex: (i) payments on the Incentive Management Fee; (ii) payments to be made under the Development Agreement; (iii) payments to be made on any Project Loans based on availability of Net Cash Flow; and (iv) payments on any Project Loans that are not yet due and payable.

Such calculation shall be attested to by the Accountants in accordance with standards established by the American Institute of Certified Public Accountants (which calculation shall be subject to the Consent of the Special Member) and which shall be evidenced by a certification of the Managing Member with an accompanying unaudited balance sheet and operating statement of the Company. The Special Member and the Accountants shall be provided with all documents and records which they may reasonably require in order to verify the achievement of Breakeven Operations and shall have the right to examine and copy all books and records of the Company, Managing Member (relating to the Company and/or the Apartment Complex) and Management Agent (relating to the Company and/or the Apartment Complex) in connection therewith.

"Capital Account" means the capital account of a Member as described in Section 11.06.

"Capital Contribution" means the total amount of money or other property contributed or agreed to be contributed, as the context requires, to the Company by each Member pursuant to the terms of this Agreement. Any reference to the Capital Contribution of a Member shall include the Capital Contribution made by a predecessor holder of the Interest of such Member.

"Capital Transaction" means any transaction out of the ordinary course of the Company's business which is capital in nature, including without limitation, the disposition, whether by sale (except when such sale proceeds are to be used pursuant to a plan or budget approved by all of the Members), casualty (where the proceeds are not to be used for reconstruction), condemnation, refinancing or similar event of any part or all of the Apartment Complex.

"Carveouts" means usual and customary recourse liabilities associated with fraud, misrepresentation, misuse of insurance proceeds or other liabilities specified in the Project Loan documents for which the Special Member has provided its Consent.

"Certified Credits" means ninety-nine and ninety-nine one-hundredths percent (99.99%) of the annual Tax Credits that the Accountants certify in writing to the Company that the Company will be able to claim during each full fiscal year during the Credit Period for all buildings in the Apartment Complex assuming full compliance with the rent restrictions and income limitations of Section 42 of the Code. The calculation of the Certified Credits shall be based upon and determined promptly following issuance of the Form(s) 8609 issued by the Agency for all the buildings comprising the Apartment Complex. If there is a delay in issuance of the Form(s) 8609, with Consent of the Special Member, the calculation of the Certified Credits shall initially be based on the cost certification prepared in connection with the application by the Company for Form(s) 8609, provided that such determination shall be subject to further adjustment upon issuance of the Form(s) 8609. Once the Certified Credits are determined, they shall not be adjusted during the term of this Agreement, except if, pursuant to

the previous sentence the Certified Credits are determined based on a cost certification, in which case they may be adjusted following issuance of the Form(s) 8609; provided, however, if with respect to a Tax Credit Recapture Event the Managing Member makes a payment under Section 8.09 (c), then the Certified Credits shall be reduced prospectively by the annual reduction in Tax Credits attributable to such Tax Credit Recapture Event.

**"Certified Historic Tax Credits"** means the total amount of the Historic Tax Credits that the Accountants certify will be allocated to and claimed by the Investor Member representing 99.99% of the aggregate Historic Tax Credits for the Company and its Members. The final amount of Certified Historic Tax Credits shall be determined by the Accountants promptly following the receipt of a final Part 3 Approval issued by the National Park Service based on all information available at such time.

**"Certified State Historic Tax Credits"** means the total amount of the State Historic Tax Credits that the Accountants certify will be allocated to and claimed by the Investor Member representing 99.99% of the aggregate State Historic Tax Credits for the Company and its Members. The final amount of Certified State Historic Tax Credits shall be determined by the Accountants promptly following the receipt of a final State Part 3 Approval issued by the New York State Office of Parks, Recreation and Historic Preservation based on all information available at such time.

**"Code"** means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of succeeding law.

**"Company"** means this James Street Apartments, LLC, a New York limited liability company.

**"Company Management Fee"** means the fee payable by the Company to the Managing Member pursuant to Section 14.04 of this Agreement.

**"Compliance Period"** means the fifteen-year "compliance period" as defined in and determined in accordance with Section 42(i) of the Code.

**"Compliance Termination Sale"** has the meaning set forth in Section 8.03(a).

**"Managing Member"** means James Street Managing Member, LLC, a New York limited liability company.

**"Consent"** means the prior written consent or approval of the Investor Member, Special Member and/or any other Person, as the context may require, to do the act or thing for which the consent is solicited, provided that in such circumstances where the Investor Member's Consent is required hereunder, the Investor Member may designate the Special Member as the party to determine if any Consent is to be given or withheld. Consent shall not be unreasonably withheld or delayed. The Investor Members shall make best efforts to respond to any requests for Consent within 15 business days.

**"Construction Contract"** means the construction contract (and any amendments thereto) for a stipulated sum of \$10,293,356 (including all exhibits and attachments thereto) to be entered into between the Company and the Contractor, pursuant to which the Apartment Complex is to be rehabilitated. Such Construction Contract, and any amendments thereto, shall be subject to the Consent of the Special Member.

**"Construction Inspector" shall mean EMJ Construction Consultants.**

**"Contractor" means Conifer-LeChase Construction, LLC, a New York limited liability company, which is the general construction contractor for the Apartment Complex.**

**"Continued Compliance Sale" has the meaning set forth in Section 8.03(a).**

**"Contribution Certificate" means a certificate in the form attached hereto as Exhibit B to be delivered to the Investor Members concurrently with the making of each Investor Member Capital Contribution (other than the initial Investor Member Capital Contribution).**

**"Counsel" or "Counsel for the Company" means Susan Sturman Jennings, Esq. of Rochester, New York, or such other attorney or law firm upon which the Special Member and the Managing Member shall agree; provided, however, that if any section of this Agreement either (i) designates particular counsel for the purpose described therein, or (ii) provides that counsel for the purpose described therein shall be chosen by another method or by another Person, then such designation or provision shall prevail over this general definition.**

**"Credit Period" means the ten (10) year credit period as to each of the buildings comprising the Apartment Complex, as defined in and determined in accordance with Section 42(f) of the Code.**

**"Debt Service Coverage Ratio" means for the applicable period of calculation, a fraction, the numerator of which is the difference between all cash actually received by the Company on a cash basis from normal operations and all public subsidy payments due and payable at such time but not yet received by the Company and not more than 60 days in arrears less all operational costs of the Apartment Complex determined on an accrual basis (including reserve requirements) and the denominator of which is all debt service on loans that are not payable from Net Cash Flow only, mortgage insurance premium and/or other cash requirements (excluding reserves) imposed by the Project Loan documents properly allocable to a particular period on an annualized basis, as determined by the Managing Member and with the Consent of the Special Member. For purposes hereof, all cash actually received from normal operations shall exclude insurance (other than rental loss insurance proceeds) and condemnation proceeds, loan proceeds, security deposits (except to the extent such deposits are applied against rent or other amounts then payable by a tenant under the applicable lease) and similar items of a nonrecurring nature.**

**"Default Rate" shall mean the greater of (i) 12% per annum or (ii) the Prime Rate, plus four percent (4%).**

**"Developer" means Conifer, LLC, a New York limited liability company.**

**"Development Agreement" means the Development Agreement between the Company and the Developer as of even date herewith relating to the development of the Apartment Complex and providing for the payment of the Development Fee, attached as Exhibit D and made a part hereof.**

**"Development Budget" means the development budget prepared by the Managing Member and approved by the Special Member with respect to the costs and sources of financing for the development and rehabilitation of the Apartment Complex, attached hereto as Exhibit J.**

**"Development Costs"** means all of the following: (i) all direct or indirect costs paid or accrued by the Company related to the acquisition of the Land and the development or construction of the Apartment Complex, including payment of the Development Fee, amounts due under the Construction Contract, any construction cost overruns, the cost of any change orders and all costs necessary to achieve Substantial Completion; (ii) all costs to achieve Initial Closing and Final Closing, and satisfy any escrow deposit requirements which are conditions to the Final Closing, including any amounts necessary for local taxes, utilities, mortgage insurance premiums, casualty and liability insurance premiums, and any applicable loan fees, discounts or other expenses; (iii) for the period prior to Breakeven Operations, all costs, payments and deposits needed to avoid a default under any Project Loan, including without limitation, all required deposits to satisfy any requirements of a Project Lender to keep a Project Loan "in balance"; (iv) the funding of all reserves required to be established on or prior to Final Closing pursuant to Article 7 of this Agreement (including without limitation, the Operating Reserve and the Replacement Reserve) or pursuant to the terms of any Project Loan; (v) all costs and expenses relating to remedying any environmental problem or condition or Hazardous Materials that existed on or prior to Final Closing; and (vi) all Operating Deficits incurred by the Company prior to Breakeven Operations.

**"Development Fee"** means the fee payable by the Company to the Developer pursuant to Section 14.01 of this Agreement and the Development Agreement.

**"Downward Capital Adjustment."** has the meaning set forth in Section 5.03(b)(iv).

**"Economic Risk of Loss"** has the meaning specified in Treas. Reg. §1.752-2.

**"Environmental Consultant"** has the meaning set forth in Section 4.03(d).

**"Environmental Reports"** means, collectively, (i) Phase I Environmental Site Assessment by Quad Three Group, Inc. dated September 27, 2010 and updated November 2, 2011 with respect to 615 James Street, (ii) Pre-Renovation Regulated Building Materials Assessment by LaBella Associates, P.C. dated January 21, 2011 with respect to 615 James Street, (iii) Phase I Environmental Site Assessment by Quad Three Group, Inc. dated September 27, 2010 and updated November 2, 2011 with respect to 622 James Street, (iv) Pre-Renovation Regulated Building Materials Assessment by LaBella Associates, P.C. dated January 21, 2011 with respect to 622 James Street, and (v) FNMA Assessment for Lead-Based Paint, Mold and Radon by LaBella Associates, P.C. dated May 2011.

**"Excess Development Costs"** means all Development Costs in excess of the proceeds of the Project Loans and all Capital Contributions the Investor Member is required to make hereunder.

**"Extended Use Agreement"** means the instrument required pursuant to Section 42(h)(6)(B) of the Code, to be executed by the Company and delivered to the Agency at or subsequent to the Initial Closing, setting forth certain terms and conditions under which the Apartment Complex is to be operated.

**"Final Closing"** means the occurrence of all of the following: (i) Substantial Completion, (ii) if required by the Project Documents, approval by the Project Lenders of Company's certification of actual costs as to the development and rehabilitation of the Apartment Complex, (iii) repayment of the Short Term Bond Loan in full, (iv) disbursement by all Project Lenders of any previously undisbursed Project Loan proceeds, and (v) commencement of amortization as

to all Project Loans (to the extent any Project Loan requires principal amortization) such that the Apartment Complex will have a Debt Service Coverage Ratio of not less than 1.15:1.

"GP Loans" means the loans which may be made by the Managing Member to the Company pursuant to Section 5.09(a) hereof, including any accrued interest thereon. Operating Deficit Loans shall not constitute GP Loans.

"Guarantor" means, on a joint and several basis, the Managing Member, the Developer and Conifer Realty, LLC, which are Affiliates of the Managing Member.

"Guaranty" means the guaranty of the performance of the obligations of the Managing Member under this Agreement and the obligations of the Developer under the Development Agreement for the benefit of the Investor Member and the Special Member given by the Guarantor, which Guaranty is attached hereto as Exhibit C and made a part hereof.

"Hazardous Substances" shall mean and include, without limitation, any hazardous, toxic or dangerous substance, waste or material, specifically including for purposes of this Agreement any petroleum, or crude oil or fraction thereof, friable asbestos or asbestos containing material, polychlorinated biphenyls or urea formaldehyde foam insulation defined as such in, regulated by or for the purpose of, or in violation of any Hazardous Waste Laws.

"Hazardous Waste Laws" shall mean any governmental requirements pertaining to land use, air, soil, subsoil, surface water, groundwater (including the quality of, protection, clean-up, removal, remediation or damage of or to land, air, soil, subsoil, surface water and groundwater), including, without limitation, the following laws as the same may be from time to time amended: the Comprehensive Environmental Response Liability and Compensation Act, 42 U.S.C. § 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Rivers and Harbors Act, 33 U.S.C. § 401 et seq., the Transportation Safety Act of 1974, portions of which are located at 49 U.S.C. § 1801 et seq., the Endangered Species Act, 16 U.S.C. § 1531 et seq., or any so-called "superfund" or "superlien" law, together with any other foreign or domestic laws (federal, state, provincial or local), common law, local rule, regulation (including, without limitation, any future change in judicial or administrative decisions interpreting or applying any of the laws, rules or regulations referred to herein) relating to emissions, discharges, release or threatened releases of any Hazardous Substances into ambient air, land, soil, subsoil, surface water, groundwater, personal property or structures, or otherwise relating to the manufacture, processing distribution, use treatment, storage, disposal, transport, discharge or handling of any Hazardous Substances, now or at any time hereafter in effect.

"HFA Subsidy Loan" means the permanent loan made or to be made to the Company by NYSHFA in the amount of \$850,000.

"Historic Tax Credits" means the tax credit allowable pursuant to Section 47 of the Code for QREs incurred in connection with the "certified rehabilitation" of a "certified historic structure".

"Historic Tax Credit Downward Capital Adjustment" has the meaning set forth in Section 5.03.

**"Historic Tax Credit Late Delivery Adjustment"** has the meaning set forth in Section 5.03.

**"Historic Tax Credit Recapture Event"** means (a) any event that results in the recapture of Historic Tax Credits under the Code or any event that results in the recapture of the State Historic Tax Credits under New York State law, (b) an audit by the Service which results in the assessment of a deficiency by the Service or the New York State Division of Taxation against the Company or the Investor Member with respect to any Tax Credits previously claimed in connection with the Project, unless the Company shall timely file a petition with respect to such deficiency with the United States Tax Court or any other federal court of competent jurisdiction and the collection of such assessment shall be stayed pending the disposition of such petition, (c) a decision by the United States Tax Court or any other federal court of competent jurisdiction, or New York State court upholding the assessment of such deficiency against the Company or the Investor Member with respect to any Tax Credits previously claimed in connection with the Project, unless the Company shall timely appeal such decision and the collection of such assessment shall be stayed pending the disposition of such appeal, or (d) the decision of a federal court or New York state court of competent jurisdiction affirming such decision.

**"Historic Tax Credit Shortfall"** means, collectively, the difference between the Certified Historic Tax Credits and the Actual Historic Tax Credits and the difference between the Certified Historic State Tax Credits and the Actual Historic State Tax Credits. For purposes of determining the amount of the Tax Credit Shortfall, if there is an adjustment to Capital Contributions under Section 5.03 because of a Late Delivery Adjustment and or State Credit Late Delivery Adjustment, the Tax Credit Shortfall for such period of time shall be reduced by the Late Delivery Adjustment and/or the State Credit Late Delivery Adjustment.

**"Historic Tax Credit Upward Capital Adjustment"** has the meaning set forth in Section 5.03.

**"HOME Loan"** means the permanent loan made or to be made to the Company by the City of Syracuse in the amount of \$2,000,000.

**"IDA"** means the City of Syracuse Industrial Development Agency, a New York public benefit corporation.

**"In-Balance"** means, at any time when calculated, when the cumulative amount of the undisbursed Project Loans, and the undisbursed Capital Contributions of the Investor Members required to be paid in through and including Final Closing are sufficient in the Special Member's reasonable judgment to pay all of the following sums: (a) all costs of construction to achieve Substantial Completion; (b) all costs of marketing, ownership, maintenance and leasing of the Apartment Complex units; and (c) all construction period interest and all other sums accruing or payable under the Construction Loan documents.

**"Incentive Management Fee"** means the fee payable by the Company to the Managing Member pursuant to Section 14.02 of this Agreement.

**"Initial Closing"** means the date upon which (i) this Agreement is executed; (ii) the funding of the First Capital Contribution occurs; and (iii) one or more of the Project Loans is closed and the initial disbursement is made thereunder. The Initial Closing is anticipated to occur on or before December 22, 2011.

**"Interest" or "Company Interest"** means the ownership interest of a Member in the Company at any particular time, including the right of such Member to any and all benefits to which such Member may be entitled as provided in this Agreement and in the Act, together with the obligations of such Member to comply with all the terms and provisions of this Agreement and of said Act.

**"IRS"** means the Internal Revenue Service.

**"Land"** means the tracts of land currently owned, or to be purchased by the Company upon which the Apartment Complex will be located, as more particularly described on Exhibit A attached hereto.

**"Late Delivery Capital Adjustment"** has the meaning set forth in Section 5.03(b)(v).

**"Investor Member"** means, Conifer 2011 Tax Credit Fund, LP, a Delaware limited liability company, and any assignee of its interest permitted or consented to hereunder.

**"Investor Members"** means, collectively, the Investor Member and the Special Member.

**"Lease"** means that certain Leaseback Agreement between IDA and the Company of even date herewith, pursuant to which IDA has taken a leasehold interest in the Apartment Complex and has agreed to lease it back to the Company.

**"Liquidator"** means the Managing Member or, if there is none at the time in question, such other Person who may be appointed in accordance with applicable law and who shall be responsible for taking all action necessary or appropriate to wind up the affairs of, and distribute the assets of, the Company upon its dissolution.

**"Loan Agreement"** means any loan agreement and/or similar agreement with respect to the terms and conditions of the making of any of the Project Loans, which will be entered into between the Company and any one of the Project Lenders at or prior to the Final Closing.

**"Long Term Bonds"** means those certain \$4,750,000 Affordable Housing Revenue Bonds (Federal New Issue Bond Program) to be issued by the Issuer on or before the Initial Closing.

**"Long Term Bond Loan"** means that certain permanent loan to be made from the Bond Lender to the Company in the anticipated principal amount of \$4,750,000, which loan shall be funded from the proceeds of the sale of the Long Term Bonds.

**"Losses"** has the meaning set forth in the definition of "Profits" and "Losses."

**"Low-Income Units"** means the units within the Apartment Complex that shall be subject to the rent and income restrictions of Section 42 of the Code and are sufficient for the Company to receive the Projected Credits. It is anticipated that there will be 18 Low-Income Units.

**"Management Agent"** means the management and rental agent for the Apartment Complex designated pursuant to Section 7.01.

**"Management Agreement"** means the agreement between the Company and the Management Agent providing for the marketing and management of the Apartment Complex by the Management Agent.

**"Managing Member"** means the Managing Member and any other Person admitted as a Managing Member pursuant to this Agreement, and their respective successors as any such successor may be admitted pursuant to this Agreement, including those Persons admitted pursuant to the provisions of Sections 6.02 and 6.03.

**"Managing Member's Special Capital Contribution"** has the meaning set forth in Section 5.01(b).

**"Member"** means any Managing Member, Investor Member, or Special Member.

**"Minimum Gain"** means the amount determined by computing with respect to each Nonrecourse Debt the amount of gain, if any, that would be realized by the Company if it disposed of the asset securing such liability (in a taxable transaction) in full satisfaction thereof (and for no other consideration), and by then aggregating the amounts so computed. For purposes of determining the amount of such gain with respect to a liability, the adjusted basis for federal income tax purposes of the asset securing the liability shall be allocated among all the liabilities that the asset secures in the manner set forth in Treas. Reg. §1.704-2(d)(2).

**"Minimum Set-Aside Test"** means the set-aside test selected by the Company pursuant to Section 42(g) of the Code with respect to the percentage of units in its Apartment Complex to be occupied by tenants with incomes equal to no more than a certain percentage of area median income. The Company has selected or will select the 20–50 Set-Aside Test as restricted by Code Section 42(g)(1) to require at least 20% of the units in the Apartment Complex be occupied by households with incomes of 50% or less of area median income, as adjusted for family size, as the Minimum Set-Aside Test.

**"Mortgage"** means any mortgage or deed of trust to be given by the Company in favor of any Project Lender as maker of a Project Loan, constituting a lien on the Apartment Complex and securing a Project Loan.

**"Net Cash Flow"** means the sum of (i) all cash received from rents, lease payments and all other sources, excluding (A) tenant security or other deposits (except to the extent forfeited to the Company), (B) Capital Contributions and interest thereon (other than if used to pay for an item deducted below in determining Net Cash Flow), (C) proceeds from Capital Transactions and (D) interest on reserves not available for distribution, (ii) the net proceeds of any insurance (including rental interruption insurance), other than fire and extended coverage and title insurance, to the extent not used for rebuilding of the Apartment Complex, and (iii) any other funds deemed available for distribution by the Managing Member with the Consent of the Special Member and the Project Lenders, if required, less the sum of (x) all cash expenditures, and all expenses unpaid but properly accrued, which have been incurred in the operation of the Company's business (whether or not such expenditure is deducted, amortized or capitalized for tax purposes), including the management fee to the Management Agent, (y) all payments on account of any loans made to the Company (whether such loan is made by a Member or otherwise), but not including any amounts to be paid pursuant to the Development Agreement or pursuant to any loans made by any Members where repayment of such loans is to be made out of Net Cash Flow, and (z) any cash reserves for, among other purposes, working capital, capital expenditures, repairs, replacements and anticipated expenditures, in such amounts as

may be required by the Project Lenders or the Special Member, or may be determined from time to time by the Managing Member with the Consent of the Special Member and the Project Lenders, if required, to be advisable for the operation of the Company.

**"Net Projected Tax Liabilities"** means, as determined by the Accountants, based on the Company's tax records, and any final adjustments made prior to the availability of proceeds of Capital Transaction(s) for distribution, the cumulative amounts of the respective projected liabilities (collectively, the "Projected Tax Liabilities") of the Managing Member, the Special Member, the Investor Member, and their respective partners and members, if any (collectively, the "Company Taxpayers"), for any and all federal, state and local taxes, including any recapture of prior Tax Credits, to be imposed on the Company Taxpayers by reason of all Capital Transactions of the Company from which the proceeds in question are to be distributed, any and all prior Capital Transactions of the Company (to the extent proceeds from such prior Capital Transactions equal to the Projected Tax Liabilities for such prior transactions were not distributed), and any liquidation of the Company. Such projections of liabilities shall estimate the applicable tax rate or rates for the Managing Member (based on actual or projected taxable income) and shall assume the maximum applicable tax rate or rates for each of the Special Member's and Investor Member's partners or members, if any (without regard to actual taxable income), in effect at the time of each Capital Transaction in all cases without regard to the alternative minimum tax, limitations on the use of business tax credits, or other factors that may affect tax liability in particular cases, and without adjustment for any variance from actual tax liabilities that may later occur.

**"New Allocation"** has the meaning set forth in Section 11.07(m)(ii).

**"Nonrecourse Debt"** means any Company liability that is considered nonrecourse for purposes of Treas. Reg. §1.1001-2 (without regard to whether such liability is a recourse liability under Treas. Reg. §1.752-1(a)(1)).

**"Nonrecourse Deductions"** has the meaning set forth in Treas. Reg. §1.704-2(b)(1).

**"Nonrecourse Liability"** means any Company liability (or portion thereof) for which no Member or Related Person (within the meaning of Treas. Reg. §1.752-4(b)) bears (or is deemed to bear) the Economic Risk of Loss.

**"Note"** means any promissory note given by the Company in favor of a Project Lender evidencing a Project Loan.

**"Notice"** means a writing containing the information required by this Agreement to be communicated to a Member as specified pursuant to Section 16.08.

**"NYSERDA Grant"** means that certain grant to be made to the Company in the amount of \$133,109.

**"NYSHFA"** means the New York State Housing Finance Agency.

**"Operating Deficit"** means the amount by which the gross receipts of the Company from rental payments made by tenants of the Apartment Complex, and all other income and receipts of the Company received by the Company or due and payable and not more than 60 days in arrears (other than tenant security deposits not applied toward tenant rents, insurance proceeds, proceeds of any loans to the Company, Capital Contributions, and investment

earnings not available for distribution on funds on deposit in the Replacement Reserve, and other such reserve or escrow funds or accounts not available for distribution) for a particular period of time, is exceeded by the sum of all the operating expenses, including all required debt service, real estate tax payments, operating, maintenance and utility expenses, fees of the Accountants and property management fees, required deposits into the Replacement Reserve, any fees to the Project Lenders and/or any applicable mortgage insurance premium payments and all other Company obligations or expenditures, and excluding payments for rehabilitation of the Apartment Complex and fees and other expenses and obligations of the Company to be paid from the Capital Contributions of the Investor Member to the Company pursuant to this Agreement during the same period of time.

"Operating Deficit Guaranty Period" shall have the meaning set forth in Section 8.09(b) of this Agreement.

"Operating Deficit Loan" shall have the meaning set forth in Section 8.09(b) of this Agreement.

"Member Nonrecourse Debt" means any Nonrecourse Debt (or portion thereof) for which a Member or Related Person (within the meaning of Treas. Reg. §1.752-4(b)) bears (or is deemed to bear) the Economic Risk of Loss.

"Member Nonrecourse Deductions" has the meaning set forth in Treas. Reg. §1.704-2(i)(2), and the amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt for a fiscal year shall be determined in accordance with the rules of Treas. Reg. §1.704-2(i)(2).

"Part 1 Approval" means (i) the individual listing on the National Register of Historic Places of the Building, or (ii) the determination by the National Park Service pursuant to Part 1 of the Certification Application that the Project is a "certified historic structure" as provided for in Section 47(c)(3)(A)(ii) of the Code.

"Part 2 Approval" means the conditional determination by the National Park Service, pursuant to Part 2 of the Certification Application, that the rehabilitation of the Project described in the Plans and Specifications is consistent with the historic character of the Project or the historic district in which the Project is located, and meets the Secretary's Standards.

"Part 3 Approval" means the determination by the National Park Service, pursuant to Part 3 of the Certification Application, that the completed rehabilitation of the Project is a "certified rehabilitation" of a "certified historic structure" under Section 47 of the Code.

"Payment Date" means the date which is ninety (90) days after the end of the Company's fiscal year with respect to the preceding fiscal year.

"Percentage Interest" means the percentage interest of each Member as set forth in Sections 5.01(a) and 5.02(a).

"Permitted Assignment" shall have the meaning set forth in Section 6.01(a).

"Person" means any individual, partnership, corporation, trust, limited liability company or other entity.

**"PILOT"** means the Payment-In-Lieu-Of-Tax Agreement dated as of December 22, 2011, between the Company, IDA and the City of Syracuse.

**"Plans and Specifications"** means the plans and specifications for the Apartment Complex stamped with the seal of the Architect, which are subject to the Consent of the Special Member, and any changes thereto made in accordance with the terms of this Agreement and the list of drawings compiled in connection with these plans and specifications.

**"Post Closing Due Diligence Checklist"** means that certain list of items attached hereto as Exhibit G to be completed on or before the dates set forth therein.

**"Prime Rate"** means a floating daily variable rate of interest announced from time to time by M&T Bank, or its successor, if applicable (the "Bank"), as its "Prime Rate," without reference to prime interest rates of any other financial institutions. The prime rate may not necessarily be the lowest rate of interest charged by the Bank to any of its customers. Any change in the Prime Rate for purposes of this Agreement shall take effect on the day of the Bank's change in its Prime Rate.

**"Profits" and "Losses"** mean, for each fiscal year of the Company, an amount equal to the Company's taxable income or loss for such period from all sources, determined in accordance with §703(a) of the Code, adjusted in the following manner: (a) the income of the Company that is exempt from federal income tax shall be added to such taxable income or loss; (b) any expenditures of the Company which are not deductible in computing its taxable income and not properly chargeable to capital account under either §705(a)(2)(B) of the Code or the regulations promulgated under §704(b) of the Code shall be subtracted from such taxable income or loss; (c) in the event any Company asset is revalued in accordance with Treas. Reg. §1.704-1(b)(2)(iv)(f), then the amount of any adjustment to the value of such Company asset shall be taken into account as gain or loss from the disposition of such Company asset for purposes of computing Profits or Losses; (d) gain or loss resulting from any disposition of Company asset which has been revalued pursuant to Treas. Reg. §1.704-1(b)(2)(iv)(f) and with respect to which gain or loss is recognized for Federal income tax purposes shall be computed by reference to the adjusted value of such Company asset, notwithstanding that the adjusted tax basis of such Company asset differs from the adjusted value; (e) any depreciation, amortization or other cost recovery deductions taken into account in computing such taxable income or loss shall be recomputed based upon the adjusted value of any Company asset which has been revalued in accordance with Treas. Reg. §1.704-1(b)(2)(iv)(f); and (f) any items of income, gain, loss, deduction or credit which are specially allocated pursuant to Sections 11.07(a), (d) through (j) and (n) and Section 12.02(b) shall not be taken into account in computing Profits or Losses.

**"Project Documents"** means and includes this Agreement (and all exhibits hereto), the Construction Contract, the Plans and Specifications, any permits or licenses which are required for the construction, operation and use of the Apartment Complex (including the tax credit application), the Mortgage(s), Note(s), Loan Agreement(s), Regulatory Agreement, Extended Use Agreement, Management Agreement, Purchase Option, the PILOT, the Lease, and all documents delivered to the National Park Service or the New York State Office of Parks, Recreation and Historic Preservation.

**"Project Lender"** means any lender in its capacity as a lender of one of the Project Loans, or its successors and assigns in such capacity, acting through any authorized representative.

**"Project Loans"** means those loans set forth and described on Exhibit H hereto.

**"Projected Credits"** means \$78,106 for 2013, \$102,248 for years 2014 through 2022, and \$24,142 for 2023, which amounts equal ninety-nine and ninety-nine one-hundredths percent (99.99%) of the Tax Credits that the Managing Member has projected will be available to the Investor Member.

**"Projected Historic Tax Credits"** means, the total amount of the Historic Tax Credits that the Managing Member has projected will be available to the Investor Member representing 99.99% of the aggregate Historic Tax Credits for the Company and its Members.

**"Projected State Historic Tax Credits"** means, the total amount of the State Historic Tax Credits that the Managing Member has projected will be available to the Investor Member representing 99.99% of the aggregate State Historic Tax Credits for the Company and its Members.

**"Projections"** means the construction, development and financing budget for the construction, development and financing of the Apartment Complex, including without limitation the construction or rehabilitation of all improvements, the furnishing of all personalty in connection therewith, and the operation of the Apartment Complex prior to Substantial Completion, which Projections are attached hereto as Exhibit I, and any amendments thereto made with the Consent of the Special Member. The Projections shall also include (i) a calculation of the Projected Credits for the Apartment Complex indicating the assumptions regarding basis which underlie such calculation, (ii) a capital account and minimum gain analysis, (iii) an operations budget, (iv) a debt/value analysis, and (v) such other items as may be requested by the Investor Member or Special Member.

**"Purchase Option"** means that certain Purchase Option and Right of First Refusal Agreement by and among the Company and the Managing Member attached hereto as Exhibit O.

**"QREs"** means "qualified rehabilitation expenditures" as such term is defined in Section 47(c)(2) of the Code.

**"Qualified Contract"** has the meaning set forth in Section 42(h)(6)(F) of the Code.

**"Qualified Occupancy"** means the achievement of occupancy of 100% of the Low-Income Units in the Apartment Complex by Qualified Tenants.

**"Qualified Tenants"** shall mean tenants under executed leases of at least six months who at the time of their initial occupancy of the Apartment Complex satisfy the (i) Rent Restriction Test and (ii) Minimum Set-Aside Test.

**"Recapture Amount"** has the meaning set forth in Section 11.02(c).

**"Regulatory Agreement"** means, to the extent applicable, and collectively, any regulatory agreements and/or any declaration of covenants and restrictions to be entered into between the Company and any Project Lender or any applicable government agency at or after the Initial Closing setting forth certain terms and conditions under which the Apartment Complex is to be operated.

**"Rent Restriction Test"** means the test pursuant to Section 42(g) of the Code whereby the gross rent charged to tenants of the Low-Income Units in the Apartment Complex cannot exceed thirty percent (30%) of the imputed income limitation of the applicable units.

**"Replacement Reserve"** means the cash funded reserve for replacements required pursuant to Section 7.06.

**"Secretary"** means the Secretary of the U.S. Department of the Interior or any authorized representative thereof, including the National Park Service.

**"Secretary's Standards"** means the standards for rehabilitation set forth in Title 36 of the Code of Federal Regulations, Part 67.7, or any successor provisions, as amended from time to time.

**"Short Term Bonds"** means those certain \$8,775,000 Affordable Housing Revenue Bonds (Federal New Issue Bond Program) to be issued by the Issuer on or before the Initial Closing.

**"Short Term Bond Loan"** means that certain construction loan to be made from the Bond Lender to the Company in the anticipated principal amount of \$8,775,000, which loan shall be funded from the proceeds of the sale of the Short Term Bonds.

**"Special Additional Capital Contribution"** means the Special Additional Capital Contributions of the Investor Member under Section 5.02(c).

**"Special Member"** means Red Stone Equity Manager, LLC, a Delaware limited liability company, or its assignee and any Person who becomes a Special Member as provided herein, in its capacity as a Special Member of the Company.

**"Stabilized Operations"** means the date upon which the Apartment Complex achieves a Debt Service Coverage Ratio of 1.15:1 for three (3) consecutive months.

**"State"** means the State of New York.

**"State Historic Tax Credit Downward Capital Adjustment"** has the meaning set forth in Section 5.03.

**"State Historic Tax Credit Late Delivery Adjustment"** has the meaning set forth in Section 5.03.

**"State Historic Tax Credit Upward Capital Adjustment"** has the meaning set forth in Section 5.03.

**"State Historic Tax Credits"** means the New York State Historic Tax Credits pursuant to Section 1115(y) of the New York State Tax Law.

**"State Designation"** means, with respect to the Apartment Complex, the allocation by the Agency of Tax Credits, as evidenced by the receipt by the Company of a written determination required to be received from the Agency under Sections 42(m)(1)(D) and (m)(2)(D) of the Code.

**"State Part 3 Approval"** means the determination by the New York State Office of Parks, Recreation and Historic Preservation, pursuant to Part 3 of the Rehabilitation Tax Credit Application, that the completed rehabilitation of the Project is a "certified rehabilitation" of a "certified historic structure" under Section 1115(y) of the New York State Tax Law.

**"Substantial Completion"** means the date that the Company receives (i) an architect's certificate of substantial completion (using AIA Form G704) from the Architect, (ii) all necessary permanent certificates of occupancy (or certificates of occupancy which contain conditions or qualifications which are Consented to by the Special Member) from the applicable governmental jurisdiction(s) or authority(ies) for one hundred percent (100%) of the apartment units in the Apartment Complex, (iii) letter from Architect or Contractor, as appropriate, that all "punchlist" items have been completed by the Contractor, and (iv) to the extent applicable, a letter from the environmental consultant that any actions recommended to be taken which were contained in any environmental assessment reports prepared in conjunction with the development of the Apartment Complex have been appropriately completed in a manner that fully complies with such recommendations and all laws, regulations, ordinances, orders or decrees pertaining to environmental matters. Substantial Completion shall not be deemed to have occurred if on such date any liens or other encumbrances as to title to the Land and the Apartment Complex exist, other than those securing such Project Loan and/or those Consented to by the Special Member, and/or those liens that are insured or bonded over to the reasonable satisfaction of the Special Member.

**"Substitute Investor Member"** means any Person admitted to the Company as a Investor Member pursuant to Section 9.02.

**"Surplus Cash"** means any Net Cash Flow which, pursuant to the Project Documents or rules or regulations of the Agency, is permitted to be distributed to the Members.

**"Tax Credits"** means the low-income housing tax credits allowed for low-income housing projects pursuant to Section 42 of the Code.

**"Tax Credit Compliance Guaranty"** has the meaning set forth in Section 8.09(c).

**"Tax Credit Recapture Event"** means (a) the filing of a tax return or an amended return by the Company evidencing a reduction in the qualified basis of the Apartment Complex or an event described in Section 42(j) of the Code causing a recapture of Tax Credits previously allocated to the Investor Member, (b) a reduction in the qualified basis or applicable percentage with respect to the Apartment Complex following an audit by the Internal Revenue Service which results in the assessment of a deficiency by the Internal Revenue Service against the Company or the Investor Member with respect to any Tax Credits previously claimed in connection with the Apartment Complex, unless the Company shall timely file a petition with respect to such deficiency with the United States Tax Court or any other federal court of competent jurisdiction and the collection of such assessment shall be stayed pending the disposition of such petition, (c) a decision by the United States Tax Court or any other federal court of competent jurisdiction upholding the assessment of such deficiency against the Company or the Investor Member with respect to any Tax Credits previously claimed in connection with the Apartment Complex, unless the Company shall timely appeal such decision and the collection of such assessment shall be stayed pending the disposition of such appeal, (d) the decision of a federal court of competent jurisdiction affirming such decision, or (e) any other event causing a recapture of a Tax Credits under applicable law.

**"Tax Credit Shortfall"** means, as to any period of time, the difference between the Certified Credit for such period of time and the Actual Credits for such period of time. For purposes of determining the amount of the Tax Credit Shortfall for a particular period of time, if there is an adjustment to Capital Contributions under Section 5.03 because of a Late Delivery Capital Adjustment, the Tax Credit Shortfall for such period of time shall be reduced by the Late Delivery Capital Adjustment.

**"Timing Shortfall"** has the meaning set forth in Section 5.03(a)(ii).

**"Title Company"** means Fidelity National Title Insurance Company or such other title company designated by the Managing Member and acceptable to the Special Member.

**"Title Policy"** has the meaning set forth in Section 5.02(b)(i)(A).

**"Title Policy Date Down"** means a date down certificate or endorsement to the Title Policy to be delivered concurrently with the making of each Investor Member Capital Contribution (other than the initial Investor Member Capital Contribution), in form and substance acceptable to the Investor Member, insuring the Company's ownership of the Apartment Complex, showing that the Apartment Complex is subject to no mortgage, deed of trust, lien, encumbrance, easement, covenant, restriction or charge other than the exceptions set forth on the Title Policy (except as shall be acceptable to the Investor Member), evidencing the fact that all real property taxes and assessments for the Apartment Complex due and payable through the date of endorsement have been timely and fully paid and containing such endorsements as the Investor Member may reasonably require.

**"20-50 Set-Aside Test"** means the Minimum Set-Aside Test whereby at least 20% of the units in the Apartment Complex must be occupied by individuals with incomes of 50% or less of area median income, as adjusted for family size.

**"Unpaid Tax Credit Shortfall"** means the outstanding amount of any Tax Credit Shortfall and any unpaid amount due to the Investor Member as a result of a Tax Credit Recapture Event for all the fiscal years of the Company, reduced by any amounts distributed to the Investor Member pursuant to Sections 8.09(c), 11.03 (b)(ii) and 11.04(c)(i) of this Agreement. The Unpaid Tax Credit Shortfall shall bear interest at the greater of the Prime Rate plus two percent (2%) determined as of the date of the Investor Member's Third Capital Contribution or twelve percent (12%).

**"Upward Capital Adjustment"** has the meaning set forth in Section 5.03(a)(i).

### **ARTICLE 3. PURPOSE AND BUSINESS OF THE COMPANY**

**3.01 Purpose of the Company.** The Company has been organized exclusively to acquire a beneficial ownership interest in the Land and to acquire the Apartment Complex, and to develop, finance, rehabilitate, own, maintain, operate and sell or otherwise dispose of the Apartment Complex, in order to obtain for the Members long-term appreciation, cash income, and tax benefits consisting of Tax Credits and tax losses.

**3.02 Authority of the Company.** In order to carry out its purpose, the Company is empowered and authorized to do any and all acts and things necessary, appropriate, proper,

advisable, incidental to or convenient for the furtherance and accomplishment of its purpose, and for the protection and benefit of the Company, including but not limited to the following:

acquire a fee ownership interest in the Land, acquire the Apartment Complex and lease the Land to IDA and lease it back from the IDA pursuant to the Lease;

rehabilitate, operate, maintain, improve, buy, own, sell, convey, assign, mortgage, rent or lease any real estate and any personal property necessary to the operation of the Apartment Complex;

enter into any kind of activity, and perform and carry out contracts of any kind necessary to, in connection with, or incidental to, the accomplishment of the purposes of the Company;

borrow money and issue evidences of indebtedness in furtherance of the Company business and secure any such indebtedness by mortgage, pledge, or other lien; provided, however, that the Project Loans, and any evidences of indebtedness thereof and any documents amending, modifying or replacing any of such loans shall have the legal effect that at and after Final Closing the Company and the Members shall have no personal liability for the repayment of the principal of or payment of interest on any Project Loan, and that the sole recourse of any Project Lender (other than Carveouts), with respect to the principal thereof and interest thereon, shall be to the property securing such Project Loan;

maintain and operate the Apartment Complex, and entering into any agreement for the management of the Apartment Complex during its rent-up and after its rent-up period;

subject to the approval of the Agency and/or the Project Lenders, if required, and to other limitations expressly set forth elsewhere in this Agreement, negotiate for and conclude agreements for the sale, exchange, lease or other disposition of all or substantially all of the property of the Company, or for the refinancing of any mortgage loan on the property of the Company;

enter into the Project Documents, including Loan Agreement, the Regulatory Agreement and the Extended Use Agreement, providing for regulations with respect to rents, profits, dividends and the disposition of property;

rent dwelling units in the Apartment Complex from time to time, in accordance with the provisions of the Code applicable to Tax Credits and in accordance with applicable federal, state and local regulations, collecting the rents therefrom, paying the expenses incurred in connection with the Apartment Complex, and distributing the net proceeds to the Members, subject to any requirements which may be imposed by the Extended Use Agreement, the Regulatory Agreement and/or the other Project Documents; and

do any and all other acts and things necessary or proper in furtherance of the Company business.

ARTICLE 4.  
REPRESENTATIONS, WARRANTIES AND COVENANTS

**4.01 Representations, Warranties and Covenants Relating to the Apartment Complex and the Company.** Each Managing Member, as to itself only, hereby represents, warrants and covenants, to the Company and to the Members that:

**Construction of Apartment Complex.** The rehabilitation and development of the Apartment Complex shall be undertaken and shall be completed in a timely, good and workmanlike manner, free from liens and defects, in accordance with (i) all applicable requirements of the Project Loans and the Project Documents, (ii) all applicable requirements of all appropriate governmental entities, and (iii) the Plans and Specifications of the Apartment Complex that have been or shall be hereafter approved by the Special Member and, if required, the Project Lenders and any applicable governmental entities, as such Plans and Specifications may be changed from time to time with the Consent of the Special Member as required pursuant to Section 8.02 hereof and the Project Lenders, if required, and any applicable Authorities, if such approval shall be required; it shall promptly provide copies of all change orders to the Special Member.

**Zoning and Related Matters.** At the date hereof, at the Initial Closing and at the time of commencement of the rehabilitation of the Apartment Complex and thereafter continuously, the Land is and will be properly zoned for the Apartment Complex, all consents, permissions and licenses required by all applicable Authorities have been obtained, and the Apartment Complex conforms and will conform to all applicable federal, state and local land use, zoning, environmental and other governmental laws and regulations.

**Public Utilities.** All appropriate roads, public utilities, including, without limitation, sanitary and storm sewers, cable television, telephone, water, gas and electricity, are currently available and will be operating properly and in sufficient capacity for all units in the Apartment Complex at the time of Substantial Completion.

**Title Insurance.** An owner's title insurance policy issued by the Title Company, in an amount equal to the total development costs for the Apartment Complex, in favor of the Company, will be issued at or prior to the Initial Closing subject only to such easements, covenants, restrictions and such other standard exceptions as are normally included in owner's title insurance policies and which are Consented to by the Special Member and with such endorsements to such policy as the Special Member may request and with date down endorsements (as more fully described in and delivered at the times set forth in Section 5.02(b) and Article 9 of this Agreement). Good and marketable fee simple title to the Land will be held by the Company and the Company will have a valid and enforceable leasehold estate to the Land pursuant to the Lease. The Managing Member has not made any misrepresentation or failed to make any disclosure that will or could result in the Company lacking title insurance coverage based on imputation of knowledge of the Managing Member to the Company.

**Non-Recourse Loans.** At and after the Final Closing, there shall be no direct or indirect personal liability of the Company, any of the Members, or any Affiliates of the Company or Members for the repayment of the principal of or payment of interest on any Project Loan, and the sole recourse of any Project Lender under any Project Loan with respect to the principal thereof and interest thereon shall be to the property securing the indebtedness, except for any liability of the Managing Member with respect to Carveouts.

**No Defaults.** The Managing Member is not aware of (i) any default or any circumstances which, with the giving of notice or the passage of time, would constitute a default, under any agreement, contract, lease, Project Loan, Project Document, or other commitment, or

(ii) of any claim, demand, litigation, proceedings or governmental investigation pending or, to the knowledge of the Managing Member, threatened against the Managing Member, the Apartment Complex or the Company, or related to the business or assets of the Managing Member, the Apartment Complex or Company, which claim, demand, litigation, proceeding or governmental investigation could result in any judgment, order, decree, or settlement which would materially and adversely affect the business or assets of the Managing Member, the Apartment Complex or the Company.

**No Violation.** The execution and delivery of the Project Documents, the incurrence of the obligations set forth in any of the Project Documents, and the consummation of the transactions contemplated by any of the Project Documents do not violate any provision of law, any order, judgment or decree of any court binding on the Company or the Managing Member or any Affiliate(s) thereof, any provision of any indenture, agreement, or other instrument to which the Company or the Managing Member is a party or by which the Company, Managing Member or the Apartment Complex is affected, and are not in conflict with, and will not result in a breach of or constitute a default under any such indenture, agreement, or other instrument or result in creating or imposing any lien, charge, or encumbrance of any nature whatsoever upon the Apartment Complex.

**Construction Contract.** The Construction Contract has been entered into between the Company and the Contractor (a true and correct copy of which, including all exhibits, has been provided to the Special Member); no other consideration or fee shall be paid to the Contractor in its capacity as the Contractor for the Apartment Complex other than the amounts set forth in the Construction Contract or as evidenced by change orders approved by the Project Lenders and as otherwise disclosed in writing to and Consented to by the Special Member; and all change orders to date have been paid in full. In addition, no consideration or fee shall be paid to the Developer or Managing Member by the Contractor.

**Intentionally Omitted.**

**Insurance.** The Managing Member shall cause the Company to obtain and maintain insurance in accordance with the requirements of Exhibit K attached hereto.

**No Undisclosed Financial Responsibilities.** Neither the Company, nor the Managing Member, either individually or on behalf of the Company, has incurred any financial responsibility with respect to the Apartment Complex prior to the date of execution of this Agreement, other than (i) that disclosed to the Investor Member in writing prior to the date of this Agreement, or (ii) obligations which will be fully satisfied at or prior to the Initial Closing. As of the date hereof and hereafter continuously, unless the Special Member otherwise Consents or unless otherwise specifically provided for herein, the only indebtedness of the Company with respect to the Apartment Complex are the Project Loans. Without limiting the generality of the foregoing, neither the Managing Member, any of its Affiliates, nor the Company, has entered, or shall enter, into any agreement or contract for any loans (other than the Project Loans) or for the payment of any Project Loan discounts, additional interest, yield maintenance or other interest charges or financing fees, or any agreement providing for the guarantee of payment of any such interest charges or financing fees relating to any Project Loan. The financial statements and other financial data delivered to the Investor Member in connection with the Apartment Complex and Managing Member, Developer and Guarantors are true, complete and accurate in all material respects. No material adverse change has occurred in any such entity's financial position since the date of the financial statements and financial data last delivered to the Investor Member.

**Valid Company; Power of Authority.** The Company is and will continue to be a valid limited liability company, duly organized under the laws of the State, and shall have and shall continue to have full power and authority to acquire the Land and to develop, rehabilitate, operate and maintain the Apartment Complex in accordance with the terms of this Agreement, and shall have taken and shall continue to take all action under the laws of the State and any other applicable jurisdiction that is necessary to protect the limited liability of the Investor Members and to enable the Company to engage in its business.

**Restrictions on Sale or Refinancing.** No restrictions on the sale or refinancing of the Apartment Complex, other than restrictions that may be set forth in the Project Documents, exist as of the date hereof, and no such restrictions shall, at any time while the Investor Member is a Investor Member, be placed upon the sale or refinancing of the Apartment Complex.

**Projected Credits; Projections.** The Projected Credits are \$1,022,478. The Projected Credits are based upon the Managing Member's representation that 22% of the residential units in the Apartment Complex will be occupied by Qualified Tenants. The Projected Historic Tax Credits are \$2,809,418 for 2013 and the Projected State Historic Tax Credits are \$2,809,418 for 2013. The Managing Member further represents that there is and at all times shall continue to be sufficient eligible basis (as defined in Section 42(d) of the Code) to provide the full amount of the Projected Credits. The Projections attached hereto as Exhibit I are true, complete and accurate in all material respects. Without limiting the foregoing, (i) the Projections accurately allocate the Development Costs between non-depreciable and depreciable costs, and (b) no portion of the Incentive Management Fee or Development Fee is allocable to the organization of the Company, to the sale of any interests in the Company, or to any permanent financing arrangements.

**Compliance with Agreements.** The Managing Member, either individually or on behalf of the Company, has fully complied with all applicable provisions and requirements of any and all contracts, options and other agreements with respect to the purchase of the Land and the development, financing and operation of the Apartment Complex; it shall take, and/or cause the Company to take, all actions as shall be necessary to achieve and maintain continued compliance with the provisions, and fulfill all applicable requirements, of such agreements.

**Sources In-Balance.** The Managing Member shall keep all sources of funding In Balance and has adequate sources of funds to timely cause Final Closing of the Apartment Complex and satisfaction of all other obligations of the Company and Managing Member under this Agreement.

**Compliance with Agency Requirement.** The Managing Member shall at no time develop the Apartment Complex or manage the Company in a manner which is not consistent with any representations made by the Managing Member to the Agency in connection with the Tax Credits, except with the prior approval of the Agency and Consent of the Special Member.

**Intentionally Omitted.**

**State Designation.** By no later than Initial Closing, the Company will receive valid State Designation with respect to the Apartment Complex in the amount of not less than \$1,022,580 for the Apartment Complex's ten-year Credit Period.

**Applicable Income and Rent Restrictions.** The Apartment Complex is being developed in a manner which satisfies, and shall continue to satisfy, all restrictions, including

tenant income and rent restrictions, applicable to projects generating Tax Credits under Section 42 of the Code. The Company will comply with the so-called "20-50 Set-Aside Test" of Code Section 42(g)(1)(B), so that at least 20% of the units in the Apartment Complex will be occupied by individuals with incomes of 50% or less of area median income, as adjusted for family size; the Apartment Complex is not subject to any other rental restrictions under the Project Documents except to the extent that more than 50% of the residential units in the Apartment Complex will be rent and income restricted in order to generate the full amount of the Projected Credits.

**Term of Extended Use Agreement.** The term of the Extended Use Agreement will not exceed 40 years, and neither the Extended Use Agreement nor any other document, instrument or agreement to which the Company is a party shall restrict, limit or waive the right of the Company to cause a termination of the Extended Use Agreement prior to the end of such 40-year term in accordance with Code Section 42(h)(6)(E)(i)(II).

**Title to Apartment Complex: Taxes and Assessments.** The IDA has and shall have at all times good and marketable leasehold title to the Apartment Complex and the Company shall have at all times good and marketable fee and leasehold title to the Apartment Complex, subject only to permitted exceptions thereto to which the Special Member has given its Consent. All real estate taxes, assessments, water and sewer charges and other municipal charges, to the extent due and owing, have been paid in full on the Apartment Complex.

**Compliance with Federal Fair Housing Act.** At all times during the term of this Agreement, the Company shall comply with the provisions of the Federal Fair Housing Act, as amended.

**Taxpayer Certifications.** On behalf of the Company, the Managing Member will cause to be filed any and all certifications and other documents on a timely basis with the IRS, the Agency and all other Authorities, as have been and may be required to support the full amount of Projected Credits.

**Taxation and Limited Liability.** No event has occurred that has caused, and the Managing Member will not act in any manner that will cause (i) the Company to be treated for federal income tax purposes as an "association" taxable as a corporation, rather than as a Company; or (ii) the Investor Member or the Special Member to be liable for the Company's obligations in excess of their Capital Contributions.

**No Tax-Exempt Use Property.** No portion of the Apartment Complex is or will be treated as "tax-exempt use property" as defined in Section 168(h) of the Code. In the event the Managing Member or any member or Member of the Managing Member is controlled by a tax-exempt entity, such entity will make the election permitted under Section 168(h)(6)(F) of the Code. No portion of the Apartment Complex is or will be leased to tax-exempt entities.

**No Abusive Tax Shelter.** The Managing Member has not received notice from the IRS that it has considered the Managing Member to be involved in any abusive tax shelter and is not aware of any facts, which if known to the IRS, would cause such notice to be issued.

**Required Consents.** The Company has obtained all consents required for the admission of the Investor Member and Special Member to the Company, including but not limited to, the consent of the holder(s) of the Project Loans, if necessary, and any required consents of applicable Authorities.

**Bankruptcy.** No Bankruptcy, including, without limitation, attachments, execution proceedings, assignments for the benefit of creditors, insolvency, reorganization or other proceedings is pending or threatened against the Company or the Managing Member. The Managing Member will not permit such a Bankruptcy to occur.

**Governmental Actions.** To the best of the Managing Member's knowledge, there is no official action of any Authority, pending or threatened, which in any way would (i) have a material adverse effect on the Company, the Apartment Complex, the Investor Member, or the Tax Credits; (ii) involve any intended public improvements which improvements may result in any charge in excess of \$10,000 being levied against the Land; or (iii) result in any special assessment, being levied against or assessed upon the Land or the Apartment Complex. There is no existing, proposed or contemplated, plan to widen, modify or realign any street or highway contiguous to the Land. The Managing Member will promptly notify the Investor Member of any such official actions or plans, if and as they arise.

**Moratoria; Assessments; Dedications.** There is no reassessment (except for real estate property taxes), reclassification, rezoning, proceeding, ordinance or regulation (including amendments and modifications to any of the foregoing) pending or proposed to be imposed, by any Authority or any public or private utility having jurisdiction over the Land which would have a material adverse effect upon the use or occupancy of the Apartment Complex. No special assessments have been levied against the Apartment Complex or by an Authority upon the commencement or completion of any construction, alteration or rehabilitation on or of the Apartment Complex or any portion thereof. The Managing Member will promptly notify the Investor Member of any such actions, if and as they arise. Except as previously disclosed in writing to and approved by the Special Member, the completion of the improvements, construction, alteration or rehabilitation on or to the Apartment Complex or any portion thereof will not require the dedication of any portion of the Apartment Complex by any Authority.

**No Defects, Compliance.** Upon completion of the rehabilitation of the Apartment Complex, there will be no material physical or mechanical defects or deficiencies in the condition of the Apartment Complex, including, but not limited to, the roofs, exterior walls or structural components of the Apartment Complex and the heating, air conditioning, plumbing, ventilating, elevator, utility, sprinkler and other mechanical and electrical systems, apparatuses and appliances located in, or about, the Land which would materially and adversely affect the Apartment Complex or any portion thereof. The Apartment Complex is free from infestation by termites or other pests, insects, animals or other vermin and the Managing Member will keep and maintain the Apartment Complex in such condition. The Apartment Complex conforms (or will timely conform) to all governmental regulations, including, without limitation, all zoning, building, health, fire and environmental rules, regulations ordinances or requirements or environmental laws, regulations or procedures applicable to the Apartment Complex where the failure to conform would result in a material adverse effect. The Managing Member shall not cause or permit to occur any circumstances that would (i) give rise to a "flag" affecting the Investor Member or its Affiliates under HUD's previous participation certification system, the effect of which would be to adversely impact the ability of the Investor Member or its Affiliates from participation in HUD loan or subsidy programs; or (ii) result in a determination by HUD that the Apartment Complex has failed to comply with HUD's minimum standards for physical condition.

**No Defective Soils Conditions.** To the best of the Managing Member's knowledge after due inquiry, there are no defects or conditions of the soil that would have a material adverse effect upon the use, occupancy and operation of the Apartment Complex. The

soil condition of the Land is such that it will support all of the improvements to be located thereon for its foreseeable life, without the need for unusual or new subsurface excavations, fill, footings, caissons or other installations. The improvements on the Land, as built, will be or are constructed in a manner compatible with the soil condition at the time of construction and all necessary excavations, fills, footings, caissons and other installations were then, have since been and will be provided.

Rights of First Refusal; Options. Except as contemplated by the Purchase Option, neither the Managing Member nor the Company has entered into (nor will enter into) any contracts for the sale of the Apartment Complex, the Tax Credits with respect thereto, or any interest in the Apartment Complex or Company other than in contemplation of this Agreement, nor do there exist any rights of first refusal or options to purchase the Apartment Complex, the Tax Credits with respect thereto, or any Interest in the Company.

Securities Law Compliance. To the best of its knowledge, the Managing Member has or will have timely complied or caused the timely compliance with all applicable Federal and state securities laws in connection with the offer and sale of the Interest in the Company to the Investor Member.

Truth and Completeness of Representations and Disclosures. No representation, warranty or statement of the Managing Member in this Agreement or in any document, certificate or schedule furnished or to be furnished to the Investor Member pursuant hereto contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein not misleading.

Bonds. The Managing Member, with the advice and Consent of the Special Member, shall take such actions as may be necessary (after giving effect to applicable provisions of the Development Agreement) to assure that the percentage of the aggregate basis of the Land and buildings (including site improvements) financed with an obligation the interest on which is exempt from tax under Section 103 of the Code and which is within the State of New York volume cap shall be not less than 50% as of Substantial Completion and to assure that at least 50% of the acquisition cost and 50% of the rehabilitation costs are financed with the proceeds of the Bonds. The interest paid on the Bonds is excludable by the recipient thereof from Federal income taxation, and the Managing Member has done and performed, or caused to be done and performed, all acts and things necessary or desirable to assure that such interest is exempt; and neither the Managing Member nor any other party has permitted at any time or times any of the proceeds of the Bonds or any other funds to be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause any Bonds to be an arbitrage bond as defined in Section 148(a) of the Code.

#### INTENTIONALLY OMITTED

Tax Abatement. The Managing Member will timely file with the county assessor, or any other governmental unit with jurisdiction and authority, on an annual basis or such other periodic basis as required by law and the PILOT, a claim for exemption from property taxation for the Apartment Complex, and shall take all necessary legal actions, including prosecution of all appeals, to secure the property tax exemption.

Reasonableness of Fees. Any fees paid by the Company to the Managing Member constitute reasonable compensation in light of the services performed.

**Qualified Rehabilitation Expenditures.** The QREs incurred during the twenty-four (24)-month period ending on the date the Apartment Complex is placed in service, exceed, or will exceed the greater of (i) \$5,000 or (ii) the adjusted basis (within the meaning of Section 47(c)(1)(C)(i) of the Code) of the Apartment Complex and its structural components. Furthermore, substantially all of the expenditures included in the calculation of QREs shown in the Projections for the Apartment Complex are or will be properly chargeable to a capital account for real property (or an addition or improvement thereto) for which depreciation is allowable under Section 168 of the Code.

**Historic Designation.** The Apartment Complex is listed in the National Register of Historic Places maintained by the Department of Interior pursuant to the National Historic Preservation Act of 1966 or is located in a registered historic district listed on the National Register, and the Secretary has determined the Building is significant to such district.

**Part 2 Approval.** The National Park Service has conditionally approved the Company's plans for rehabilitation of the Apartment Complex and issued a Part 2 Approval with respect to the Apartment Complex. All rehabilitation incurred to date has been completed in compliance with such Part 2 Approval(s).

**Rehabilitation of the Apartment Complex.** The rehabilitation expenditures that form the basis for the Historic Tax Credits do not or will not include (i) any expenditure with respect which a method other than the straight-line method of depreciation over a recovery period determined under Section 168(c) or (g) of the Code (as modified by Section 251(d)(4) of the Tax Reform Act of 1986) will be used, (ii) the cost of acquiring the Apartment Complex, or (iii) the cost of any enlargement of the Apartment Complex, excluding any increase in floor space resulting solely from interior remodeling.

**Survival of Representations and Warranties.** All of the representations, warranties and covenants contained herein shall be deemed to be re-made as of the date of each Capital Contribution made by the Investor Member and shall survive the date of Final Closing and the funding date of each such Capital Contribution. The Managing Member shall indemnify and hold harmless the Investor Member against a breach of any of the foregoing representations, warranties and covenants and any damage, loss or claim caused thereby, including reasonable attorneys' fees and costs and expenses of litigation and collection, excepting any damages or losses resulting from the gross negligence or willful misconduct of the Investor Member or the Special Member.

**4.02 Duties and Obligations Relating to the Apartment Complex and the Company.** The Managing Member shall have the following duties and obligations with respect to the Apartment Complex and the Company:

**Qualifying for Tax Credits.** The Managing Member shall ensure that all requirements shall be met which are necessary to obtain or achieve (i) compliance with the Minimum Set-Aside Test, the Rent Restriction Test, and any other requirements necessary for the Apartment Complex to initially qualify, and to continue to qualify, for Tax Credits, including all applicable requirements set forth in the Regulatory Agreement and the Extended Use Agreement, (ii) issuance of IRS Form(s) 8609, (iii) issuance of all necessary permanent, unconditional certificates of occupancy, including all governmental approvals required to permit occupancy of all of the apartment units in the Apartment Complex, (iv) Initial Closing and Final Closing, and (v) compliance with all material provisions of the Project Documents.

**Tax Treatment of Company.** While conducting the business of the Company, the Managing Member shall not act in any manner which it knows or should have known after due inquiry will (i) cause the termination of the Company for federal income tax purposes without the Consent of the Special Member or (ii) cause the Company to be treated for federal income tax purposes as an association taxable as a corporation. The Apartment Complex shall be managed upon Substantial Completion so that (i) the Apartment Complex may be depreciated as residential rental property under Section 168(c) of the Code, and (ii) the rental of all units in the Apartment Complex comply with the tenant income limitations and other restrictions under the Rent Regulation Test and as set forth in the Regulatory Agreement and the Extended Use Agreement.

**Good Faith of Managing Member.** The Managing Member shall exercise good faith in all activities relating to the conduct of the business of the Company, including the development, operation and maintenance of the Apartment Complex, and the Managing Member shall take no action with respect to the business and property of the Company which is not reasonably related to the achievement of the purpose of the Company as set forth in Section 3.01.

**No Security Interests or Encumbrances.** The Managing Member shall ensure that all of (i) the fixtures, maintenance supplies, tools, equipment and the like now and to be owned by the Company or to be appurtenant to, or to be used in the operation of the Apartment Complex, as well as (ii) the rents, revenues and profits earned from the operation of the Apartment Complex, will be free and clear of all security interests and encumbrances except for the Project Loans, the Mortgages, and any additional security agreements executed in connection therewith.

**Basis Adjustments.** The Managing Member will execute on behalf of the Company all documents necessary pursuant to Sections 732, 743 and 754 of the Code to elect to adjust the basis of the Company's property upon the request of the Investor Member, if, in the sole opinion of the Investor Member, such election would be advantageous to the Investor Member.

**Payment of Development Fee.** The Managing Member guarantees payment by the Company of the Development Fee as provided in Section 5.01(b).

**Tax Returns and Financial Statements.** The Managing Member shall, during and after the period in which it is a Member, provide the Company with such information and sign such documents as are necessary for the Company to make timely, accurate and complete submissions of federal and state income tax returns and shall provide the Special Member with the opportunity to review and Consent to drafts of all such returns at least twenty (20) days prior to their filing date, and will incorporate the changes of the Special Member. In addition, the Managing Member shall provide the Special Member with the opportunity to have not less than twenty (20) days to review drafts of audited financial statements prior to their finalization and will incorporate the changes of the Special Member.

**Compliance with Governmental and Contractual Obligations.** The Managing Member shall comply and the Managing Member shall cause the Company to comply with the provisions of all applicable governmental and contractual obligations.

**Tax Elections.** The Managing Member has made (if applicable) and shall make such elections, or refrain from making such elections, with respect to the Tax Credits, that the

Special Member reasonably determines are in the Investor Member's best interest. At the direction of the Special Member, the Managing Member shall elect to defer the commencement of the Credit Period for all or any portion of the Tax Credits allowable to the Members under Section 42(g) of the Code, to the extent that any such deferral may be in the best economic interest of the Investor Member. In such event, the calculations to be made pursuant to Section 5.03 shall be made as if there was no deferral in the commencement of the Credit Period. The Managing Member shall cause the Company to report to the Investor Member all reportable transactions under Section 6111 and 6112 of the Code and Treasury Regulation 1.6011-1 in which the Company is engaged. The Managing Member shall make all necessary elections in order to claim the bonus depreciation available to the Company pursuant to the Tax Relief, Unemployment Insurance Reauthorization and Jobs Creation Act of 2010.

**Fines and Penalties.** The Managing Member shall be responsible for the payment of any fines or penalties imposed by the Agency or any Project Lender pursuant to the Project Documents and any documents executed in connection with obtaining Tax Credits (other than with respect to payments of principal or interest under any Project Loan) resulting from the gross negligence or willful misconduct of the Managing Member.

**Notification of Default or Service Proceedings.** In addition to any requirements set forth in Article 13 hereof, the Managing Member shall immediately notify the Investor Member of any written or oral notice of (i) any default or failure of compliance with respect to any of the Project Loans, Project Documents or any other financial, contractual or governmental obligation of the Company or the Managing Member, or (ii) any IRS proceeding regarding the Apartment Complex or the Company.

**Payment of Taxes.** The Managing Member will cause the Company to pay on or before the date when the same would become delinquent, any and all real estate and ad valorem taxes, personal property taxes, assessments, water rates, sewer rents, fines, impositions and any other charges now or hereafter levied against the Apartment Complex, whether foreseen or unforeseen, ordinary or extraordinary; and also any and all license fees or similar charges which may be imposed by any Authority with respect to the Apartment Complex for the use and occupancy of the Apartment Complex, use of walks, chutes, areas and other space beyond the lot line of the Apartment Complex and on or abutting the public sidewalks and/or highways in front or adjoining the Apartment Complex or pursuant to any applicable law for the use of any furnaces, compactors, incinerators, parking areas or for other matters covered by any such laws; and also any and all corporate, franchise, withholding, income, profits and gross receipts, and other taxes due by the Company; in each case together with any penalties and interest on any of the foregoing, and in default thereof.

**Payment of Utility Charges.** The Managing Member will cause the Company to pay promptly, when and as due, all charges for utilities, whether public or private, and will not suffer or permit any construction or mechanics, laborers, material statutory or other liens to be created or to remain outstanding upon any part of the Apartment Complex, and if any such lien is created, will cause the Company to discharge the same of record by payment or bonding within forty-five (45) days after the filing thereof.

**Construction Monitoring; Notification of Construction Delays.** If at any time during the rehabilitation of the Apartment Complex, (i) rehabilitation stops or is suspended for a period of ten (10) consecutive days, or (ii) rehabilitation has been delayed so that in the reasonable determination of the Managing Member (A) Substantial Completion may not be achieved by the date set forth in the Construction Contract, or (B) the Projected Credits for any

year during the Credit Period may not be achieved, the Managing Member shall immediately send Notice of such occurrence, together with an explanation of the circumstances surrounding such occurrence, to the Investor Member. The Company shall be solely responsible for the payment of the costs and expenses incurred by the Construction Inspector.

**Compliance Issues.** The Apartment Complex shall at all times comply with the applicable requirements of the Americans with Disabilities Act of 1990, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, as now existing or hereafter amended or adopted, the Fair Housing Act of 1988, as amended, the Fair Housing Act Design Manual implemented in connection therewith as now existing or hereafter amended or adopted, any other federal and state and local laws and ordinances related to disabled access, and all statutes, rules, regulations, and orders of governmental bodies and regulatory agencies or orders or decrees of any court adopted or enacted with respect thereto (collectively, "Access Laws"). The Special Member may also require a certificate of compliance with the Access Laws from an architect, engineer, or other third party acceptable to the Special Member. Notwithstanding any provisions set forth herein or in any other document, the Managing Member shall not alter or permit any tenant or other person to alter the Apartment Complex in any manner which would increase the Managing Member's responsibilities for compliance with the Access Laws without the prior written Consent of the Special Member. In connection with any such Consent, the Special Member may require a certificate of compliance with the Access Laws from an architect, engineer, or other person acceptable to the Special Member.

#### **INTENTIONALLY OMITTED**

#### **4.03 Environmental Matters.**

The Managing Member represents and warrants that, except as disclosed in the Environmental Reports (i) it has no knowledge of any deposit, storage, disposal, burial, discharge, spillage, uncontrolled loss, seepage or filtration of any Hazardous Substances at, upon, under or within the Land or any contiguous real estate and (ii) it has not caused or permitted to occur, and it shall not permit to exist, any condition which may cause a discharge of any Hazardous Substances at, upon, under or within the Land or from the Land onto any contiguous real estate.

The Managing Member further represents and warrants that (i) neither it nor, to the best of its knowledge, any other party has been, is or will be involved in operations at the Land, which operations could lead to (A) a determination of liability under the Hazardous Waste Laws as to the Company or (B) the creation of a lien on the Land under the Hazardous Waste Laws or under any similar laws or regulations; and (ii) the Managing Member has not permitted, and will use best efforts not to permit, any tenant or occupant of the Apartment Complex to engage in any activity that could impose liability under the Hazardous Waste Laws on such tenant or occupant, on the Land or on any other owner of the Apartment Complex.

The Managing Member shall comply strictly and in all respects with all material requirements of the Hazardous Waste Laws and related regulations and with all similar laws and regulations.

The Managing Member acknowledges that, on behalf of the Investor Member, the Investor Member will retain an environmental consultant (the "Environmental Consultant") to review and give recommendations related to environmental reports that are provided to the Investor Member by the Managing Member (including, but not limited to, Phase I and Phase II

environmental assessments, wetlands reports, lead, mold and asbestos reports, abatement reports and other environmental reports required by the Environmental Consultant, to the reasonable satisfaction of the Environmental Consultant) for the Land, or the construction and rehabilitation of existing buildings, if the reports indicate the possible presence of hazardous materials on or near the Apartment Complex or if such reports appear incomplete or inadequate for purposes of making such a determination.

The Managing Member shall at all times indemnify and hold harmless the Company, the Investor Member and the Special Member against and from any and all claims, suits, actions, debts, damages, costs, charges, losses, obligations, judgments and expenses, of any nature whatsoever, suffered or incurred by the Company or the Investor Member, under or on account of the Hazardous Waste Laws or any similar laws or regulations, including the assertion of any lien thereunder.

**4.04 Representations, Warranties and Covenants Relating to the Managing Member.** The Managing Member hereby represents, warrants and covenants to the Company and the Members:

**Due Authorizations, Execution and Delivery.** The execution and delivery of this Agreement by each Managing Member and the performance by each Managing Member of the transactions contemplated hereby have been duly authorized by all requisite corporate, limited liability company, Company or trust actions or proceedings. Each Managing Member is duly organized, validly existing and in good standing under the laws of the state of its formation with power to enter into this Agreement and to consummate the transactions contemplated hereby.

**Pre-Development Activities.** The Managing Member shall be specifically and solely responsible for the following duties:

Analyzing the Qualified Allocation Plan ("QAP") for targeted areas within a state.

Identifying potential land sites.

Analyzing the demographics of potential sites.

Analyzing a site's economy and forecast future growth potential.

Determining the site's zoning status and possible rezoning actions.

Contacting local government officials concerning access to utilities, public transportation, impact fees and local ordinances.

Performing environmental tests on selected sites.

Negotiating the purchase of the land upon which the Apartment Complex is located and its related financing.

Performing any other duties or activities relating to the acquisition of the land upon which the Apartment Complex is located.

The Managing Member shall not assign any of the foregoing duties to the Developer.

**Single Purpose Entity; Managing Member Status.** The Managing Member shall engage in no other business or activity other than that of being the Managing Member of the Company. The Managing Member was formed exclusively for the purpose of acting as the Managing Member of the Company and has never engaged in any other activity, business or endeavor. As of the date of this Agreement, the Managing Member has no liabilities or indebtedness other than its liability for the debts of the Company, and the Managing Member shall not incur any indebtedness other than its liability for the debts of the Company. If the Managing Member determines it needs additional funds for any purpose, it shall obtain such funds solely from capital contributions from its owners or members. The Managing Member has observed and shall continue to observe all necessary or appropriate organizational formalities in the conduct of its business. The Managing Member shall keep its books and records separate and distinct from those of its shareholders, members and/or other of its Affiliates, and shall maintain the Company accounts in financial institutions, whose accounts are federally insured, segregated from any other accounts and funds of the Managing Member or any of its owners, members and/or other of its Affiliates. The Managing Member shall clearly identify itself as a legal entity separate and distinct from its shareholders, members and/or other of its Affiliates in all dealings with other Persons. If there is a change in federal income tax laws whereby the Managing Member is required to maintain a specific level of net worth to support a determination that the Company will be taxed as a Company and not as a corporation, the Managing Member shall obtain an opinion of an independent qualified tax counsel that it has met such new requirements. Furthermore, the Managing Member shall, thereafter through the term of the Company, maintain a net worth in such amount that in the opinion of such tax counsel the Company will be taxed as a Company and not as a corporation.

**Ownership of Managing Member.** Conifer Realty, LLC, a New York limited liability company, owns and shall continue to own during the term of this Agreement, one hundred percent of all classes of interest in the Managing Member.

ARTICLE 5.  
MEMBERS, COMPANY INTERESTS  
AND OBLIGATIONS OF THE COMPANY

5.01 **Managing Member Capital Contributions and Company Interests.**

**Managing Member.** The Managing Member, its principal address or place of business, its Capital Contribution and its Percentage Interest are as follows:

<b>Managing Member</b>	<b>Capital Contribution</b>	<b>Percentage Interest</b>
James Street Managing Member, LLC c/o Conifer Realty LLC 183 East Main Street Suite 600 Rochester, New York 14604	\$100	0.009%

**Managing Member's Special Capital Contribution.** In the event that the Company has not timely paid all or part of the amounts due under the Development Agreement, the Managing Member shall contribute to the Company an amount equal to any such remaining payments (the "Managing Member's Special Capital Contribution") and the Company shall thereupon make a payment in an equal amount to pay off all amounts due under the Development Agreement by the final date by which all amounts must be paid thereunder.

**5.02 Investor Members.**

The Investor Member and the Special Member, respectively, their principal office and place of business, their Capital Contributions and their Percentage Interests are as follows:

<b>Investor Member</b>	<b>Capital Contribution</b>	<b>Percentage Interest</b>
Conifer 2011 Tax Credit Fund, LP 200 Public Square, Suite 1550 Cleveland, OH 44114	Capital Contribution is as set forth in Section 5.02(b)	99.99%
 <b>Special Member</b>		
Red Stone Equity Manager, LLC 200 Public Square, Suite 1550 Cleveland, OH 44114	\$10.00	0.001%

**Investor Member Capital Contributions.** Subject to the provisions of this Agreement, including, without limitation, the provisions of Sections 5.03 and 5.06, the Investor Member shall be obligated to make Capital Contributions to the Company in the aggregate amount of \$6,309,249 in installments as outlined below. The Investor Member shall use best efforts to fund each Capital Contribution within 15 business days of receiving evidence that all conditions necessary for such installment have been met.

**First Capital Contribution.** The amount of the first Capital Contribution shall be \$630,925 (the "First Capital Contribution"). After satisfaction of all of the conditions set forth below, and review and approval of the items described below, the Investor Member shall make the First Capital Contribution:

**Title Policy.** The Title Company shall have issued an ALTA-form policy of owner's title insurance (the "Title Policy") in an amount equal to the acquisition and development cost of the Apartment Complex, showing the Company as owner of fee simple title to the Apartment Complex and the Company as owner of the leasehold interest in the Apartment Complex, and subject to only such exceptions as are acceptable to the Investor Member, and containing extended coverage and such endorsements as the Investor Member may require, including, without limitation, access, blanket easement (CLTA 103.1 or its equivalent) (if applicable), contiguity (if the Land is comprised of adjoining lots), fairway, non-imputation, (protecting the Investor Member against the knowledge of all other Members, including any withdrawing Members), owner's comprehensive (with minerals if applicable) protecting the existing improvements or, if the Apartment Complex has yet to be constructed, protecting the planned improvements as shown on specified plans (ALTA Form 9.1 or 9.2 or an

equivalent), separate tax lot, subdivision (if applicable), survey and zoning 3.1 with parking;

**Environmental Matters.** The Investor Member shall have received an environmental phase I site assessment report upon which it can rely (as confirmed in writing by the Person preparing such report) prepared in accordance with American Society for Testing Materials (ASTM) Standard E-1527-05 requirements for Phase I environmental site assessments (and phase II report, if recommended by the terms of the phase I or if requested by the Investor Member) dated within six months of the date of the making of the First Capital Contribution satisfactory to the Investor Member from an environmental consultant satisfactory to the Investor Member confirming no recognized environmental conditions exist at or in close proximity to the Land except as set forth in the Environmental Reports;

**Legal Opinion.** The Investor Member shall have received a legal opinion of the Counsel to the Company, the Managing Member, the Guarantor and the Developer, which opinion shall explicitly state that counsel to the Investor Member may explicitly rely upon it, and which shall be in form and substance acceptable to the Investor Member;

**Survey.** The Investor Member shall have received an approved ALTA/ACSM survey of the Land in a form reasonably satisfactory to the Investor Member;

**Permits and Licenses.** The Investor Member shall have received a copy of any permits and licenses required for the construction of the Apartment Complex issued by the applicable governmental authorities for the Apartment Complex;

**Issuance of Bonds.** The Bonds shall have been issued and all cost of issuance associated with the Bonds shall have been paid in full;

**State Designation.** The Company shall have received State Designation in form and substance satisfactory to the Investor Member.

**Part 1 Approval and Part 2 Approval.** The Company shall have received Part 1 Approval and Part 2 Approval.

**Bond Loan.** The Bond Loan shall have closed and funded such amounts as are required by the applicable Project Documents as of the date of the Initial Closing.

**Disbursement of Loan.** The HFA Subsidy Loan and the HOME Loan shall have each closed and funded such amounts as are required by the applicable Project Documents as of the date of the Initial Closing;

**Other Documentation.** The Investor Member shall have received such other documentation as it may reasonably request to satisfy the following due diligence requirements: (i) those documents listed on the Investor Member's closing checklist, a copy of which has been previously delivered to the Managing Member, and (ii) such additional items reasonably requested by the Investor Member to otherwise

verify the accuracy of the representations and warranties and compliance with the covenants, duties and obligations set forth in Article 4.

The proceeds of the First Capital Contribution shall first be used to pay the costs associated with the acquisition of the Apartment Complex, the issuance of the Bonds, construction costs, and the closing of the Project Loans as the Special Member may approve.

**Second Capital Contribution.** The amount of the second Capital Contribution shall be \$630,925 (the "Second Capital Contribution"). After satisfaction of all of the conditions set forth below, and review and approval by the Investor Member of the items described below, the Investor Member shall make the Second Capital Contribution to the Company:

**First Capital Contribution Conditions.** All conditions to funding the Investor Member's First Capital Contribution have been satisfied;

**Title Policy Date Down.** The Investor Member shall have received a Title Policy Date Down;

**Contribution Certificate.** The Investor Member shall received a Contribution Certificate;

**50% Completion.** The Investor Member shall have received a certificate from the Architect and the Construction Inspector stating that the rehabilitation of the Apartment Complex is at least 50% complete;

**Insurance Certificates.** The Investor Member shall have received current certificates of insurance evidencing the insurance coverages required to be maintained by the Company as required hereunder;

**Tax Returns.** The Investor Member shall have received a copy of the Company's Federal tax return for the most recent reporting period, if required by the IRS;

**Date Certain.** July 1, 2012;

**Post Closing Due Diligence Checklist.** The Investor Member shall have received and approved any item set forth on the Post Closing Due Diligence Checklist which are then due to the Investor Member pursuant to the terms of the Post Closing Due Diligence Checklist; and

**Other Documents.** The Investor Member shall have received such other documents as the Investor Member reasonably determines are reasonably necessary to clarify any matter disclosed by the documents described above or to verify the accuracy of any representation, warranty or covenant set forth herein.

**Third Capital Contribution.** The amount of the third Capital Contribution shall be \$630,925 (the "Third Capital Contribution"). After satisfaction of all of the conditions set forth below, and review and approval by the Investor Member of the items described below, the Investor Member shall make the Third Capital Contribution to the Company

**Second Capital Contribution Conditions.** All conditions to funding the Investor Member's Second Capital Contribution have been satisfied;

**Title Policy Date Down.** The Investor Member shall have received a Title Policy Date Down;

**Contribution Certificate.** The Investor Member shall received a Contribution Certificate;

**75% Completion.** The Investor Member shall have received a certificate from the Architect and the Construction Inspector stating that the rehabilitation of the Apartment Complex is at least 75% complete;

**Date Certain.** October 1, 2012;

**Post Closing Due Diligence Checklist.** The Investor Member shall have received and approved any item set forth on the Post Closing Due Diligence Checklist which are then due to the Investor Member pursuant to the terms of the Post Closing Due Diligence Checklist; and

**Other Documents.** The Investor Member shall have received such other documents as the Investor Member reasonably determines are reasonably necessary to clarify any matter disclosed by the documents described above or to verify the accuracy of any representation, warranty or covenant set forth herein.

**Fourth Capital Contribution.** The amount of the fourth Capital Contribution shall be \$630,925 (the "Fourth Capital Contribution"). After satisfaction of all of the conditions set forth below, and review and approval by the Investor Member of the items described below, the Investor Member shall make the Fourth Capital Contribution to the Company

**Third Capital Contribution Conditions.** All conditions to funding the Investor Member's Third Capital Contribution have been satisfied;

**Title Policy Date Down.** The Investor Member shall have received a Title Policy Date Down;

**Contribution Certificate.** The Investor Member shall received a Contribution Certificate;

**Substantial Completion.** Substantial Completion of the Apartment Complex shall have occurred;

**Evidence of Part 2 Compliance.** The Investor Member shall have received a certification from the Architect, in form and substance acceptable the Investor Member, stating that the Apartment Complex has been rehabilitated in a manner consisted with the Part 2 Approval, including all tenant improvements (to the extent such costs are included in the QREs used to calculate the Historic Tax Credits) and construction change orders.

**Preliminary Cost Calculation.** Receipt of a preliminary calculation of costs includible of Eligible Basis (as defined in Code Section 42(d)) for the Apartment Complex prepared by Conifer, and approved by the Special Member as to form and substance, which approval shall not be unreasonably withheld;

**Final Certificates of Occupancy.** To the extent applicable, the Investor Member shall have received copies of final and unconditional certificates of occupancy or the equivalent, issued by the appropriate governmental authorities for the Apartment Complex in its entirety;

**Date Certain.** February 1, 2013;

**Post Closing Due Diligence Checklist.** The Investor Member shall have received and approved any item set forth on the Post Closing Due Diligence Checklist which are then due to the Investor Member pursuant to the terms of the Post Closing Due Diligence Checklist; and

**Other Documents.** The Investor Member shall have received such other documents as the Investor Member reasonably determines are reasonably necessary to clarify any matter disclosed by the documents described above or to verify the accuracy of any representation, warranty or covenant set forth herein.

**Fifth Capital Contribution.** The amount of the fifth Capital Contribution shall be \$3,154,624 (the "Fifth Capital Contribution"). After satisfaction of all of the conditions set forth below, and review and approval by the Investor Member of the items described below, the Investor Member shall make the Fifth Capital Contribution to the Company

**Fourth Capital Contribution Conditions.** All conditions to funding the Investor Member's Fourth Capital Contribution have been satisfied;

**Title Policy Date Down.** The Investor Member shall have received a Title Policy Date Down;

**Contribution Certificate.** The Investor Member shall received a Contribution Certificate;

**Part 3 Approval and State Part 3 Approval.** The Company shall have received Part 3 Approval and State Part 3 Approval.

**Final Construction Documentation.** The Investor Member shall have received and approved all of the following: (i) an architect's certificate of substantial completion in the form reasonably requested by the Investor Member, (ii) the Construction Inspector shall have delivered its final report, and (iii) a final sworn statement or affidavit of final construction cost executed by the Managing Member;

**Final Cost Certification.** Receipt of an audited cost certification of Eligible Basis (as defined in Code Section 42(d)) for the Apartment Complex prepared by the Accountants, and approved by the Special Member as to form and substance;

**Occupancy Requirements.** Achievement of Qualified Occupancy and ninety-five~~three~~ percent (95~~3~~%) physical occupancy of the residential units in the

Apartment Complex and the Managing Member, if requested by the Investor Member, shall demonstrate such occupancy by submitting to the Investor Member certified rent rolls and tenant qualification forms that confirm that Qualified Tenants qualify under Section 42 of the Code;

**Final Closing.** Achievement of Final Closing, which may occur contemporaneously with payment of the Fifth Capital Contribution, provided that the Investor Member has received fifteen (15) days' prior written notice of the date of Final Closing;

**Evidence of Minimum Set-Aside.** The Investor Member shall have received all current rent rolls and first year tenant files demonstrating that the Minimum Set-Aside Test has been achieved;

**Date Certain.** October 1, 2013;

**Post Closing Due Diligence Checklist.** The Investor Member shall have received and approved any item set forth on the Post Closing Due Diligence Checklist which are then due to the Investor Member pursuant to the terms of the Post Closing Due Diligence Checklist; and

**Other Documents.** The Investor Member shall have received such other documents as the Investor Member reasonably determines are reasonably necessary to clarify any matter disclosed by the documents described above or to verify the accuracy of any representation, warranty or covenant set forth herein.

**Sixth Capital Contribution.** The amount of the sixth Capital Contribution shall be \$630,925 (the "Sixth Capital Contribution" or the "Final Capital Contribution"). After satisfaction of all of the conditions set forth below, and review and approval by the Investor Member of the items described below, the Investor Member shall make the Sixth Capital Contribution:

**Fifth Capital Contribution Conditions.** All conditions to funding the Investor Member's Fifth Capital Contribution have been satisfied. The making of the Sixth Capital Contribution may occur simultaneously with the making of the Fifth Capital Contribution;

**Title Policy Date Down.** The Investor Member shall have received a Title Policy Date Down dated no earlier than 15 days prior to the making of the Sixth Capital Contribution;

**Contribution Certificate.** The Investor Member shall received a Contribution Certificate;

**Form 8609.** Receipt of the Form(s) 8609 for the entire Apartment Complex executed by the Agency;

**Debt Service Coverage.** Operation of the Apartment Complex shall have resulted in a Debt Service Coverage Ratio of not less than 1.15 for three consecutive months (with two of such months occurring after Substantial Completion);

**Extended Use Agreement.** Receipt by the Investor Member of a copy of an as-recorded Extended Use Agreement;

**UCC Release.** If applicable, the Investor Member shall have received evidence satisfactory to the Investor Member of the UCC Release (as set forth in Section 5.10 hereof)

**Post Closing Due Diligence Checklist.** The Investor Member shall have received and approved any item set forth on the Post Closing Due Diligence Checklist which are then due to the Investor Member pursuant to the terms of the Post Closing Due Diligence Checklist; and

**Other Documents.** The Investor Member shall have received such other documents as the Investor Member reasonably determines are reasonably necessary to clarify any matter disclosed by the documents described above or to verify the accuracy of any representation, warranty or covenant set forth herein.

**Investor Member's Special Additional Capital Contributions; Investor Member Advances.** If, in any fiscal year of the Company, the Investor Member's Capital Account balance may be reduced to or below zero, the Investor Member may, in its sole and absolute discretion, make a special additional capital contribution to the Company, in an amount reasonably required to avoid the reduction of the Investor Member's Capital Account balance to or below zero (the "Special Additional Capital Contribution"). If the Investor Member makes a Special Additional Capital Contribution to the Company pursuant to this paragraph, such funds shall be deposited in a separate Company reserve account, withdrawals from which shall require the Consent of the Special Member. All interest earned on such account shall be payable to such Investor Member, and an amount of income equal to the amount of such interest shall be specifically allocated to such Investor Member. The Investor Member shall receive a guaranteed payment pursuant to Section 5.07 for the use of its Special Additional Capital Contribution. Whenever the Investor Member makes a Special Additional Capital Contribution to the Company pursuant to this paragraph, the Managing Member shall have the option, in its sole and absolute discretion, to make Special Additional Capital Contributions to the Company, up to the same amount and on the same terms in the aggregate as the Special Additional Capital Contribution made by the Investor Member at that time. The Investor Member (or an Affiliate of the Investor Member), in the Investor Member's sole and absolute discretion, may loan funds to the Company to meet the needs of the Company, in the event the Investor Member determines in good faith that such funds are not otherwise available to the Company when needed. Such advances ("Investor Member Advances") shall bear interest at the Prime Rate plus 2%, per annum. Investor Member advances shall be paid as provided in Section 11.03 and 11.04.

**5.03 Adjustments to Capital Contributions of Investor Member; Managing Member Payments.** Following determination of Certified Credits, the Accountants shall calculate the Downward Capital Adjustment, Late Delivery Capital Adjustment, and/or Upward Capital Adjustment, as defined below. Such calculation of the Certified Credits and any adjuster(s) shall be subject to the review and approval of the Special Member.

The following definitions shall apply for purposes of determining adjustments to Capital Contributions:

**8609 Downward and Upward Capital Adjustment.** The Accountants shall determine the Certified Credits for the Apartment Complex. If the aggregate Tax Credits reflected in the Certified Credits are less than the aggregate Tax Credits reflected in the Projected Credits, then the Capital Contribution of the Investor Member to the Company shall be reduced by an amount equal to such difference multiplied by 95% (the "Downward Capital Adjustment"). If the aggregate Tax Credits reflected in the Certified Credits are greater than the aggregate Tax Credits reflected in the Projected Credits, then the Capital Contribution of the Investor Member shall be increased by an amount equal to such excess multiplied by 95% (the "Upward Capital Adjustment").

**Lease-Up Adjuster.** In addition to any other adjustment in Capital Contribution or payment required by Section 5.03(a)(i), in the event that the Actual Credits with respect to the Tax Credits for 2013 are less than the Tax Credits reflected in the Projected Credits for such year (in each case, a "Timing Shortfall"), then the Capital Contribution of the Investor Member to the Company shall be reduced by an amount (the "Late Delivery Capital Adjustment") equal to ~~95% of the sum of the Timing Shortfalls~~ **70% of the sum of the Timing Shortfalls.** In the event the Actual Credits with respect to the Tax Credits for 2013 are more than the Tax Credits reflected in the Projected Credits for such year (in each case, a "Timing Increase"), the Capital Contribution of the Investor Member to the Company shall be increased by an amount (the "Early Delivery Capital Adjustment") equal to 50% of such excess. Any Early Delivery Capital Adjustment shall be applied as follows: (A) first, to pay any unpaid Development Costs, (B) second, to prepay Development Fee, and (C) the balance distributed as Net Cash Flow. If any building in the Apartment Complex does not achieve Qualified Occupancy by the end of the first year of the Credit Period for such building, then the Late Delivery Capital Adjustment shall be the sum of (i) the amount determined under the first sentence of this subsection and (ii) the positive difference, if any, between the Projected Credits and the Actual Credits projected to be available in years 2013 through 2023, as calculated by the Investor Member at the end of the first year of the Credit Period.

**Coordination between Late Delivery Capital Adjustment, Downward Capital Adjustment, Early Delivery Capital Adjustment and Upward Capital Adjustment.** This Section 5.03(a)(iii) is intended to describe the coordination between (A) the Late Delivery Capital Adjustment and a Downward Capital Adjustment or Upward Capital Adjustment, and (B) the Early Delivery Capital Adjustment, the Downward Capital Adjustment or Upward Capital Adjustment. The parties intend that the Downward Capital Adjustment or Upward Capital Adjustment be determined first, based on any change between Projected Credits and Certified Credits, and that the Late Delivery Capital Adjustment or Early Delivery Capital Adjustment then be determined taking into account such change. Thus, for the purpose of determining any Late Delivery Capital Adjustment attributable to the Tax Credits where there is a decrease or increase in such Tax Credits taken into account under Section 5.03(b), the Projected Credits for the applicable year used in determining the Timing Shortfall or Timing Increase shall be the amount of the Tax Credits reflected in the Certified Credits that is allocable to such year assuming the same lease-up schedule as assumed in determining the Projected Credits. By way of illustration: Assuming the Projected Credits show Tax Credits of \$6 for the first year, and \$10 per year for years 2 through 10, then if the Certified Credits show Tax Credits of \$9 per year: (x) there will be a Downward Capital Adjustment based on a reduction of \$10 (\$1 per year), and (y) the Timing Shortfall will be determined based on a Projected Credit of \$5.40 (6/10 times \$9), instead of \$6, for the first year.

**Historic Tax Credit Downward and Upward Capital Adjustment.** The Accountants shall determine the Certified Historic Tax Credits for the Apartment Complex. If the

aggregate Historic Tax Credits reflected in the Certified Historic Tax Credits are less than the aggregate Historic Tax Credits reflected in the Projected Historic Tax Credits, then the Capital Contribution of the Investor Member to the Company shall be reduced by an amount equal to such difference multiplied by 95% (the "Historic Tax Credit Downward Capital Adjustment"). If the aggregate Historic Tax Credits reflected in the Certified Historic Tax Credits are greater than the aggregate Historic Tax Credits reflected in the Projected Historic Tax Credits, then the Capital Contribution of the Investor Member shall be increased by an amount equal to such excess multiplied by 95% (the "Historic Tax Credit Upward Capital Adjustment").

**State Historic Tax Credit Downward and Upward Capital Adjustment.**

The Accountants shall determine the Certified State Historic Tax Credits for the Apartment Complex. If the aggregate State Historic Tax Credits reflected in the Certified State Historic Tax Credits are less than the aggregate State Historic Tax Credits reflected in the Projected State Historic Tax Credits, then the Capital Contribution of the Investor Member to the Company shall be reduced by an amount equal to such difference multiplied by 60% (the "State Historic Tax Credit Downward Capital Adjustment"). If the aggregate State Historic Tax Credits reflected in the Certified State Historic Tax Credits are greater than the aggregate State Historic Tax Credits reflected in the Projected State Historic Tax Credits, then the Capital Contribution of the Investor Member shall be increased by an amount equal to such excess multiplied by 60% (the "State Historic Tax Credit Upward Capital Adjustment").

**Delay in Historic Tax Credits.** In addition to any other adjustment in Capital Contribution or payment required by Section 5.03(a)(iv), in the event that the Actual Historic Tax Credits with respect to the Historic Tax Credits for 2013 are less than the Historic Tax Credits reflected in the Projected Historic Tax Credits for such year, then the Capital Contribution of the Investor Member to the Company shall be reduced by an amount (the "Historic Tax Credit Late Delivery Adjustment") equal to 1% of the Projected Historic Tax Credits for each month of delay or such other amount as necessary to maintain the yield to the Investor Member.

**Delay in State Historic Tax Credits.** In addition to any other adjustment in Capital Contribution or payment required by Section 5.03(a)(v), in the event that the Actual State Historic Tax Credits with respect to the State Historic Tax Credits for 2013 are less than the State Historic Tax Credits reflected in the Projected State Historic Tax Credits for such year, then the Capital Contribution of the Investor Member to the Company shall be reduced by an amount (the "State Historic Tax Credit Late Delivery Adjustment") equal to 1% of the Projected State Historic Tax Credits for each month of delay or such other amount as necessary to maintain the yield to the Investor Member.

**Adjustments to Capital Contributions.**

(i) If there is a Downward Capital Adjustment, Late Delivery Capital Adjustment, Historic Tax Credit Downward Capital Adjustment, Historic Tax Credit Late Delivery Adjustment, State Historic Tax Credit Downward Capital Adjustment and/or State Historic Tax Credit Late Delivery Adjustment (a "Negative Adjustment"), then the Capital Contributions of the Investor Member shall be immediately reduced by such amounts. The Negative Adjustment shall first reduce the Fourth Capital Contribution (if it has not previously been funded), and then to the extent necessary, the Fifth Capital Contribution and then to the extent necessary, the Sixth Capital Contribution. If the total amount of the Negative Adjustment exceeds the total of all unfunded Capital Contributions (prior to the reduction under this provision), then the Managing Member shall make a payment to the Company equal to the amount of such excess,

and the Company shall immediately distribute such amount to the Investor Member as a return of its Capital Contributions. Such payment by the Managing Member shall constitute a non-reimbursable funding by it of Excess Development Costs and shall not give rise to any right as a loan or Capital Contribution or result in any increase in the Capital Account of the Managing Member. Such payment shall be made within 10 days following a demand therefor from the Investor Member, failing which interest shall accrue at the greater of the Prime Rate plus two percent (2%) determined as of the date of the Investor Member's Fourth Capital Contribution or twelve percent (12%).

(ii) If there is an Upward Capital Adjustment, Historic Credit Upward Capital Adjustment and/or State Historic Upward Capital Adjustment (a "Positive Adjustment"), then the Capital Contribution of the Investor Member shall be increased by the Positive Adjustment, but in no event shall the additional Capital Contribution by the Investor Member, inclusive of any Early Delivery Capital Adjustment, be greater than \$630,925. The additional Investor Member Capital Contribution shall increase the Final Capital Contribution. The Company shall use the increase in the Final Capital Contribution (i) first, to pay any unpaid Development Costs and (ii) second, to pay the Development Fee.

Any amounts determined pursuant to Section 5.03(b)(i) and Section 5.03(b)(ii) above shall offset one another in the event that there is a positive amount determined pursuant to both Sections.

**5.04 Deposit of Capital Contributions.** The cash portion of the Capital Contributions of each Member shall be deposited at the Managing Member's discretion in a checking, savings and/or money market or similar account to be established and maintained in the name of the Company or invested in government securities or certificates of deposit issued by any bank. Thereafter, such amounts shall be utilized for the conduct of the Company business pursuant to the terms of this Agreement.

**5.05 Return of Capital Contribution.** Except as provided in this Agreement, no Member shall be entitled to demand or receive the return of its Capital Contribution.

**5.06 Withholding of Capital Contribution Upon Default.**

**Conditions Giving Rise to Withholding.** In the event that (a) the Managing Member, or any successor Managing Member shall not have complied with any material provisions under this Agreement, or (b) the Guarantor shall have failed to perform any of its obligations under the Guaranty, or (c) any Project Lender shall have declared the Company to be in default under any Project Loan, or (d) foreclosure proceedings shall have been commenced against the Apartment Complex, then the Company and the Managing Member shall be in default of this Agreement, and the Investor Member, at its sole election, may cause the withholding of payment of any Capital Contribution otherwise payable to the Company, and the Managing Member shall make no further payment to the Developer prior to maturity pursuant to the Development Agreement without the Consent of the Special Member.

**Release to Company Following Cure.** All amounts so withheld by the Investor Member under this Section 5.06 shall be promptly released to the Company only after the Managing Member or the Company has cured the default justifying the withholding, as demonstrated by evidence reasonably acceptable to the Investor Member. The Investor Member shall use best efforts to release such funds within 15 business days.

**5.07 Guaranteed Payments.** No later than ninety (90) days after the end of the Company's fiscal year, any Member who has made a Special Additional Capital Contribution pursuant to Section 5.02(c) shall receive, as a guaranteed payment for the use of its capital, an amount equal to the annual interest earned by the Company, if any, on such Special Additional Capital Contribution. The Company shall invest any amounts contributed pursuant to Section 5.02(c) as reasonably directed by the contributing Member. Any guaranteed payment due to a Member shall be deemed an expense of the Company for purposes of determining Net Cash Flow. Any guaranteed payment which is not paid when due shall remain a liability of the Company and shall bear interest as set forth above.

**5.08 Repurchase Obligation.**

**Conditions for Repurchase.** If (i) the entire Apartment Complex is not placed in service by December 31, 2013 (or such later date as may be Consented to by the Special Member); (ii) the IRS Form(s) 8609 (is) (are) not issued by the Agency so as to allow the Credit Period to commence as of December 31, 2013; (iii) Final Closing has not occurred by December 31, 2013 (or such later date as may be Consented to by the Special Member); (iv) the Company fails to meet the Minimum Set-Aside Test and the Rent Restriction Test by the close of the first year of the Credit Period or at any time thereafter; (v) less than fifty-one percent (51%) of the aggregate cost basis of the construction and the basis of the Land on which the construction is located, as such terms are defined in Code Section 42(h)(4)(B), is financed by an obligation described in Code Section 42(h)(4)(A); (vi) Breakeven Operations has not occurred within 18 months following Substantial Completion; (vii) at any time before Breakeven Operations (1) an action is commenced and successfully prosecuted to foreclose, abandon or permanently enjoin construction of the Apartment Complex; or (2) it is determined that the Apartment Complex will qualify for less than 70% of the Projected Tax Credits, 70% of the Projected Historic Tax Credits or 70% of the State Historic Tax Credits; or (viii) an Extended Use Agreement is not in effect before the end of the first year of the Credit Period, then the Managing Member shall, within fifteen (15) days of the occurrence thereof, send to the Investor Member Notice of such event and of its obligation to purchase the Interest of the Investor Member hereunder and return to the Investor Member its Capital Contributions in the event the Investor Member, in its sole discretion, requires in a Notice to the Managing Member such purchase of the Interest of the Investor Member.

Thereafter, the Managing Member, within thirty (30) days of the mailing date of Notice by the Investor Member of such election, shall acquire the entire Interest of the Investor Member in the Company by making payment to the Investor Member, in cash, of an amount equal to the sum of (i) 110% of its Capital Contributions, and (ii) interest on such amount at the Default Rate accruing from the date or dates of the Investor Member's Capital Contributions, but in no event higher than the highest rate permitted by applicable law

Upon receipt by the Investor Member of any such payment of its Capital Contributions, the Interest of the Investor Member and all further obligations of the Investor Member hereunder shall terminate, and, to the extent that the Investor Member has acted in accordance with the terms of this Agreement, the Managing Member shall indemnify and hold harmless the Investor Member from any losses, damages, and/or liabilities, to or as a result of claims of Persons other than Members or Affiliates thereof, to which the Investor Member (as a result of its respective participation hereunder) may be subject.

**5.09 GP Loans.**

**GP Loans.** The Managing Member shall have the right, but not the obligation, after funding all other obligations under this Agreement, including, without limitation, its obligation to fund Excess Development Costs under its Construction Completion Guaranty under Section 8.09(a) or Operating Deficits under its Operating Deficit Guaranty under Section 8.09(b) hereof, to make GP Loans pursuant to this Section 5.09(a) to fund Operating Deficits of the Company or to fund other reasonable and necessary obligations of the Company. GP Loans shall be on the following terms: (i) interest shall accrue on the GP Loans at an annual interest rate of up eight percent (8.0%) at the discretion of the Managing Member, compounded annually; and (ii) GP Loans shall be repayable solely as set forth in Sections 11.03, 11.04 and 12.02 of this Agreement.

**Documentation of GP Loans.** At the request of a Member, which request may be made quarterly, any GP Loan shall be evidenced by a non-negotiable promissory note or notes reflecting any such GP Loans made during the preceding calendar quarter. GP Loans shall be unsecured loans by such Member. GP Loans shall not be considered Capital Contributions and shall not increase such Member's Capital Account.

**Usury Savings Clause.** Notwithstanding anything to the contrary herein or in any note evidencing a GP Loan, in no event shall interest accrue on any GP Loan at a rate in excess of the highest rate permitted by applicable law, and if such designated interest rate should be in excess of such interest rate, the interest rate designated hereunder shall be reduced to the maximum rate of interest permitted by such law.

#### 5.10 Default by Investor Member.

In the event that the Investor Member shall fail to pay any Capital Contribution which shall become due to the Company and such failure shall continue for 21 days (or such additional time as may be provided pursuant to Section 5.10 (b) below) following the receipt of written notice of such failure by the Investor Member (the "Cure Period"), then the Investor Member shall be in default hereunder (a "Default") and the Company shall be entitled to exercise all remedies at law and in equity, including without limitation exercise of its rights as a secured creditor and its right to dispose of the Investor Member's Interest as referred to below. Interest on any amounts in default shall accrue from and after the Default at 10% per annum.

In the event the Investor Member shall dispute the claim by the Managing Members that a particular Capital Contribution is currently due and payable, it may send notice to such effect to the Managing Member stating the basis for its dispute. The Cure Period referred to in subparagraph (a) above shall be suspended by the sending of such notice and (i) shall recommence at the point of suspension (i.e., beginning with the number of days elapsed when such suspension occurred), provided that the remainder of the Cure Period shall never be less than seven days, or upon issuance of a final judgment (with all rights of appeal expired) of a court as provided in Section 16.02 to the effect that such Capital Contribution has become due to the Company, or (ii) shall begin anew (i.e., a new 21-day Cure Period shall begin to run) upon receipt by the Investor Member of a true and correct notice from the Managing Member to the effect that the Managing Member has eliminated the cause for the dispute without material harm or loss to the Company or the Investor Member and that the Capital Contribution in question is now due and payable. Notwithstanding the foregoing, interest shall accrue pursuant to subparagraph (a) above in the event that the Managing Member prevails against the Investor Member in a dispute as to whether a particular Capital Contribution is currently due and payable.

The Investor Member hereby grants a separate security interest to the Company in the Interest of the Investor Member hereunder to secure the obligation of the Investor Member to pay all Capital Contributions to the Company in accordance with this Agreement. In the event of a Default, the Company may, but shall not be required to, realize upon the Interest of the defaulting Investor Member by disposing such Interest at public or private sale, at which the Company, any Member, or any third party may bid. The Investor Member agrees that it shall be deemed commercially reasonable for the Managing Member to set criteria for admission of successful bidders to the Company, including the financial responsibility of the bidders and the ability of the bidders to meet the remaining obligations of the defaulting Investor Member under this Agreement.

This Section 5.10 shall be void and of no further force or effect from and after the date upon which the Company receives the Final Capital Contribution of the Investor Member. It shall be a condition to the funding of the Final Capital Contribution that the Managing Member prepare and file a release of such statement ("UCC Release") simultaneously with the funding of the Final Capital Contribution.

## ARTICLE 6. CHANGES IN MANAGING MEMBERS

### 6.01 Withdrawal of the Managing Member.

The Managing Member may withdraw from the Company or sell, transfer or assign its Interest as Managing Member only with the prior Consent of the Special Member, and of the Agency and the Project Lenders, if required, and only after being given written approval by the necessary parties as provided in Section 6.02, and by the Agency and the Project Lenders, if required, of the Managing Member(s) to be substituted for it or to receive all or part of its Interest as Managing Member (a "Permitted Assignment").

In the event that a Managing Member withdraws from the Company or sells, transfers or assigns its entire Interest pursuant to Section 6.01(a), it shall be and shall remain liable for all obligations and liabilities incurred by it as Managing Member before such withdrawal, sale, transfer or assignment shall have become effective, but shall be free of any obligation or liability incurred on account of the activities of the Company from and after the time such withdrawal, sale, transfer or assignment shall have become effective. Notwithstanding anything to the contrary set forth herein, in the event of a Permitted Assignment, any and all obligations and liabilities of a withdrawing Managing Member pursuant to any Guaranty shall remain in full force and effect and shall apply to any and all past or future obligations as may be guaranteed pursuant to the applicable Guaranty.

6.02 Admission of a Successor or Additional Managing Member. A Person shall be admitted as a Managing Member of the Company only if the following terms and conditions are satisfied:

the admission of such Person shall have been Consented to by the Managing Member and the Special Member, and consented to by the Agency and the Project Lenders, if required;

the successor or additional Person shall have accepted and agreed to be bound by (i) all the terms and provisions of this Agreement by executing a counterpart thereof, (ii) all the terms and provisions of the Loan Agreement and the Project Documents by executing

counterparts thereof or an assumption agreement, if requested by the Project Lenders, and (iii) all the terms and provisions of such other documents or instruments as may be required or appropriate in order to effect the admission of such Person as a Managing Member, and a certificate of amendment to the Articles evidencing the admission of such Person as a Managing Member shall have been filed, and all other actions required by Section 1.06 in connection with such admission shall have been performed;

if the successor or additional Person is a corporation, it shall have provided the Company with evidence satisfactory to counsel for the Company of its authority to become a Managing Member, to do business in the State and to be bound by the terms and provisions of this Agreement; and

Counsel for the Company shall have rendered an opinion that the admission of the successor or additional Managing Member is in conformity with the Act and that none of the actions taken in connection with the admission of the successor or additional Managing Member will cause the termination or dissolution of the Company or will cause it to be classified other than as a Company for federal income tax purposes.

The Managing Member shall pay only third-party, out of pocket expenses, including reasonable legal fees, incurred by the Company and the Investor Member in connection with such transfer.

**6.03 Effect of Bankruptcy, Death, Withdrawal, Dissolution or Incompetence of a Managing Member.**

Subject to the provisions of Section 6.05 of this Agreement, in the event of the Bankruptcy of a Managing Member or the withdrawal, death or dissolution of a Managing Member, or an adjudication that a Managing Member is incompetent (which term shall include, but not be limited to, insanity) the business of the Company shall be continued by the other Managing Member(s); provided, however, that if the withdrawn, Bankrupt, deceased, dissolved or incompetent Managing Member is then the sole Managing Member, or if such Managing Member withdraws from the Company in contravention of the provisions of Section 6.01(a) of this Agreement, then the Company shall be terminated, unless within ninety (90) days after receiving Notice of such Bankruptcy, withdrawal, death, dissolution or adjudication of incompetence or breach of Section 6.01(a), the Investor Member elects to designate the Special Member or such other entity as the Investor Member may desire as a successor Managing Member and continue the Company upon the conversion of such Special Member to the Managing Member of the Company.

Subject to the provisions of Section 6.05 of this Agreement, upon the Bankruptcy, death, dissolution or adjudication of incompetence of a Managing Member or breach of Section 6.01(a), such Managing Member shall upon such election immediately cease to be a Managing Member and its Interest shall without further action be converted to a Investor Member Interest; provided, however, that, if such Bankrupt, dissolved, incompetent, deceased or defaulted Managing Member is the sole remaining Managing Member, such Managing Member shall cease to be a Managing Member only upon the expiration of ninety (90) days after Notice to the Investor Member of the Bankruptcy, death, dissolution, declaration of incompetence or default of such Managing Member; and provided further that, if such Bankrupt, dissolved, incompetent, deceased or defaulted Managing Member is the sole remaining Managing Member, the converted Company Interest of such replaced Managing Member shall be ratably reduced to the

extent necessary to insure that the substitute Managing Member(s) holds a .009% Percentage Interest (as set forth in Section 5.01).

Except as set forth above, such conversion of a Managing Member Interest to a Investor Member Interest shall not affect any rights, obligations or liabilities (including without limitation, any of the Managing Member's obligations under Section 8.09 herein) of the Bankrupt, deceased, dissolved, removed, incompetent or defaulted Managing Member existing prior to the Bankruptcy, death, dissolution, removal, incompetence or default of such person as a Managing Member (whether or not such rights, obligations or liabilities were known or had matured).

If, at the time of the withdrawal, Bankruptcy, death, dissolution, adjudication of incompetence or default under Section 6.01(a) of a Managing Member, the Bankrupt, withdrawn, deceased, dissolved, incompetent or defaulted Managing Member was not the sole Managing Member of the Company, the remaining Managing Member or Managing Members shall immediately (i) give Notice to the Investor Members of such Bankruptcy, death, dissolution, adjudication of incompetence or default, and (ii) make such amendments to this Agreement and execute and file such amendments or documents or other instruments as are necessary to reflect the conversion of the Interest of the Bankrupt, deceased, dissolved, incompetent or defaulted Managing Member and his having ceased to be a Managing Member. The remaining Managing Member or Managing Members are hereby granted an irrevocable power of attorney, coupled with an interest, to execute any or all documents on behalf of the Members and the Company and to file such documents as may be required to effectuate the provisions of this Section 6.03.

**6.04 Restrictions on Transfer of Managing Member's Interests.** This is an agreement under which applicable law excuses the Investor Member from accepting performance from any Managing Member which is a debtor in a case under the Bankruptcy Code, 11 U.S.C. § 101 et seq., from a trustee of any such debtor and from the assignee of any such debtor or trustee. The Investor Member has entered into this Agreement with the Managing Member in reliance upon the unique knowledge, experience and expertise of the Managing Member, and its officers in the planning and implementation of the acquisition of the Apartment Complex and in the area of affordable housing and development in general. The foregoing restriction on transfer is based in part on the above factors. The Managing Member expressly agrees that the Investor Member shall not be required to accept performance under this Agreement from any person other than the Managing Member, including, without limitation, any trustee of the Managing Member appointed under the Bankruptcy Code, 11 U.S.C. § 101 et seq., and any assignee of any such trustee.

**6.05 Removal of the Managing Member.**

**Conditions for Removal.** The Special Member, so long as it is a Member, shall have the right to remove the Managing Member:

for any (x) fraud, or (y) gross negligence, intentional misconduct or breach of fiduciary duty, with respect to any material matter, in the discharge of its duties and obligations as Managing Member (provided that such violation under clause (y) above results in, or is likely to result in, a material detriment to the Company or the Investor Member or an impairment of the Apartment Complex or assets of the Company), or

upon the occurrence of any of the following:

the Managing Member or the Company shall have violated any material provisions of the Regulatory Agreement, the Extended Use Agreement and/or the Loan Agreement, or any material provisions of any other Project Document or other document required in connection with any Project Loan or any material provisions of a Project Lender and/or Agency requirements applicable to the Apartment Complex, which violation has not been explicitly waived in writing by the applicable Project Lender or the Agency, as applicable;

the Managing Member or the Company shall have (i) violated any material provision of this Agreement, including, without limitation, any of its guarantees or payment obligations under Sections 5.03, 5.08 and/or 8.09, (ii) violated any material provision of applicable law, or (iii) breached any representation and warranty contained in Article 4 in any material respect;

the Managing Member fails to timely and promptly discharge the Management Agent if at any time cause for such removal exists and the Investor Member or Special Member have requested such removal;

any default by the Guarantor under the Guaranty;

the amount of Actual Credits for any year are, or are projected by the Accountants to be, less than eighty-five percent (85%) of the Projected Credits for that year; or less than eighty-five percent (85%) of Certified Credits if Certified Credits have been determined and adjustments to the Capital Contribution of the Investor Member have been made as may be required under Section 5.03; or

the Managing Member shall fail to obtain the dismissal of any case commenced against the Managing Member (i) for the appointment of a trustee for the Managing Member, or any of its property, or (ii) in Bankruptcy.

**Procedure for Removal.** The Special Member shall give Notice to all Members and to the Project Lenders of its determination that the Managing Member shall be removed (the "Defaulting Managing Member"). The Defaulting Managing Member shall have thirty (30) days after receipt of such Notice to cure any default or other reason for such removal, in which event it shall remain as Managing Member; provided, however, that no Notice shall be required with respect to a default set forth in paragraphs a(i)(x) or a(ii)(E) above. If, at the end of thirty (30) days, the Defaulting Managing Member has not cured any default or other reason for such removal, it shall cease to be a Managing Member and the powers and authorities conferred on it as Managing Member under this Agreement shall cease and the Interests of such Managing Member shall be transferred to the Special Member or its designee which, without further action, shall become the Managing Member; in such event, upon becoming the Managing Member, such designee shall be bound by all applicable terms and conditions of this Agreement and of the Project Documents. Notwithstanding the foregoing, if at any time there is more than one Managing Member, only the Managing Member which is in default may be removed and replaced in accordance with the provisions of this Section 6.05.

**Managing Member Obligations and Liability Following Removal.** In the event that the Defaulting Managing Member is removed pursuant to the terms of this Agreement, it shall be and shall remain liable for all obligations and liabilities incurred by it as Managing Member of the Company before such removal shall become effective, including but not limited to the obligations and liabilities of the Defaulting Managing Member with respect to its obligations set

forth in Sections 4.03, 5.03, 5.08 and 8.09 of this Agreement; provided, however, that if amounts otherwise payable to the Defaulting Managing Member as fees or other payments are applied to meet the obligations of the Defaulting Managing Member as stated in Sections 4.03, 5.03, 5.08 and 8.09 of this Agreement, such application shall serve to reduce any such liabilities of the Defaulting Managing Member or any successor, except for any liability incurred as the result of its negligence, misconduct, fraud or breach of its fiduciary duties as Managing Member of the Company. If the Defaulting Managing Member is removed as Member of the Company as aforesaid, the Defaulting Managing Member shall not be entitled to payment of any further installments of the Incentive Management Fee, or other fees or payments which otherwise would have been due and payable under this Agreement, with the exception of the fee to be paid to the Management Agent provided that the Management Agent is an Affiliate of the Managing Member, GP Loans and earned Development Fee.

Power of Attorney. The Special Member hereby is granted an irrevocable power of attorney, coupled with an interest, to execute any and all documents on behalf of the Members and the Company as shall be legally necessary and sufficient to effect all of the foregoing provisions of this Section 6.05. The election by the Special Member to remove the Managing Member under this Section shall not limit or restrict the availability and use of any other remedy which the Investor Member or any other Member might have with respect to the Managing Member in connection with its undertakings and responsibilities under this Agreement.

**ARTICLE 7.**  
**MANAGEMENT AND OPERATION OF APARTMENT COMPLEX;**  
**RESERVE REQUIREMENTS**

7.01 Selection of Management Agent. The Company shall engage such person, firm or company as the Managing Member may select, and as the Special Member may approve, which approval shall not be unreasonably withheld to manage the operation of the Apartment Complex during the rent up period and following Final Closing. Such Management Agent shall possess all required and applicable certifications and licenses issued through the State or through a reputable property management educational organization (such as a Certified Property Manager designation through the Institute of Real Estate Management) as well as any additional certifications or licenses which are required to manage Tax Credit properties. The Management Agent shall perform its obligations in accordance with all laws, procedures and regulations governing property managers within the State. The Management Agent shall be paid a management fee subject to the approval of the Agency and/or the Project Lenders, if required, and the Special Member, but in no event will the annual management fee be greater than six percent (6%) of the annual gross revenues of the Apartment Complex. The contract between the Company and the Management Agent and the management plan for the Apartment Complex shall be in the form set forth in Exhibit N, with such changes acceptable to the Agency and/or the Project Lenders, if required, and reasonably acceptable to the Special Member; such contract shall have an initial term of one (1) year and shall be renewable annually thereafter and, shall provide, among other things, (i) for termination by the Managing Member at the direction of the Special Member in the event that the Special Member determines that grounds for removal of the Management Agent exist under Section 7.02; (ii) for payment of a management fee in an amount not to exceed the respective percentages set forth above; (iii) that it shall be cancelable upon thirty (30) days' prior notice from the Company. Further, if the Management Agent is an Affiliate of the Managing Member, (i) the Management Agent will accrue the management fee until all other operating expenses are paid and (ii) the Management Agent will accrue the management fee if at any time the Managing Member has failed to provide

the reports set forth in Section 13.04 in a timely manner. Conifer Management, LLC is approved by the parties hereto as the initial Management Agent.

**7.02 Removal of the Management Agent.** The Managing Member:

may, upon receiving any required approval of the Agency and Project Lenders, if required, and the Special Member, dismiss the Management Agent as the entity responsible for the Apartment Complex under the terms of the contract between the Company and the Management Agent,

shall, at the request of the Special Member, remove the Management Agent if the Management Agent is declared Bankrupt, is dissolved, or makes an assignment for the benefit of its creditors, or for any intentional misconduct by the Management Agent in the discharge of its duties and obligations as Management Agent (subject to the fulfillment and expiration of any notice and/or opportunity to cure provisions of the Management Agreement), including, without limitation, for any action or failure to take any action which:

violates in any material respect any provision of the Management Agreement entered into with the Company and approved by the Project Lenders, if required, and/or any material provision of the Project Documents and/or the Loan Documents applicable to the Apartment Complex, or the Project Lenders' approved management plan for the Apartment Complex, which default shall not have been cured within thirty (30) days after receipt of Notice to cure such default; or

causes the Apartment Complex to be operated in a manner which if continued would give rise to an event which would cause or would likely cause a recapture of Tax Credit; and

shall include in any Management Agreement with an Affiliate of the Managing Member, a provision that the Special Member shall have the right to terminate the Management Agreement in the event the Managing Member is removed pursuant to the terms of this Agreement.

**7.03 Replacement of the Management Agent.** Upon the removal of the Management Agent as the entity responsible for the management of the Apartment Complex, a substitute Management Agent which is not an Affiliate of the Managing Member shall be named by the Managing Member, subject to the approval of the Project Lenders, if required, and the approval of the Special Member.

**7.04 Loans to the Company.** The Company is authorized to receive Operating Deficit Loans and GP Loans on the terms set forth in this Agreement. In addition, if (a) additional funds are required by the Company for any purpose relating to the business of the Company or for any of its obligations, expenses, costs or expenditures, and (b) the Company has not received an Operating Deficit Loan, or GP Loan to pay such amounts, then the Company may borrow such funds as are needed from a Person or organization, other than a Member or an Affiliate of a Member, in accordance with the terms of this Section 7.04, for such period of time and on such terms as the Managing Member and the Investor Member may agree; provided, however, that no such additional loans shall be secured by any mortgage or other encumbrance on the property of the Company without the prior Consent of the Special Member except that such Consent shall not be required in the case of the hypothecation of person property purchased by the Company and not included in the security agreements executed by the Company at the time

of Initial Closing. Nothing in this Section 7.04 shall modify or affect the obligation of the Managing Member to make Operating Deficit Loans and to perform its obligations when and as required by this Agreement.

7.05 Operating and Capital Budgets. Not less than sixty (60) days prior to the commencement of each fiscal year, the Managing Member shall submit to the Special Member for its review and approval (which approval shall not be unreasonably withheld), detailed proposed operating and capital budgets for the Apartment Complex and the Company for the next fiscal year (the "Annual Budget"). Such budgets shall specifically list all budgeted expenses in all major categories including, but not limited to, administration, operation, repairs and maintenance, utilities, taxes, insurance, interest, debt service with respect to the Project Loans, capital improvements, and all budgeted expenses which are to be paid to the Managing Member or its Affiliates. The Special Member shall submit its response to such proposed budgets to the Managing Member within forty-five (45) days (or such shorter period of time as may be requested by any Project Lender, but in no event less than thirty (30) days) after its receipt of such proposed budgets; such response shall either evidence its approval of the proposed budgets or shall contain specific comments and recommendations with respect thereto. If no such response is submitted to the Managing Member within such period, the Special Member will be deemed to have approved such budgets.

7.06 Replacement Reserve. The Managing Member shall cause the Company to establish and maintain a segregated reserve account (the "Replacement Reserve") to provide for working capital needs, improvements and replacements relating to the Apartment Complex. The Managing Member shall cause the Company to annually deposit \$250 per unit ~~(which amount shall increase by three percent (3%) per annum)~~ from the Company's gross operating revenues into the Replacement Reserve or such greater amount specified by the project lenders. The Managing Member shall be entitled to withdraw funds from the Replacement Reserve and shall provide Notice to the Special Member of such withdrawal forthwith.

## ARTICLE 8. RIGHTS, OBLIGATIONS AND POWERS OF THE MANAGING MEMBER

8.01 Management of the Company. Except as otherwise set forth in this Agreement, the Managing Member, within the authority granted to it under this Agreement, shall have full, complete and exclusive discretion to manage and control the business of the Company for the purposes stated in Article 3, shall make all decisions affecting the business of the Company and shall manage and control the affairs of the Company to the best of its ability and use its best efforts to carry out the purpose of the Company. In so doing, the Managing Member shall take all actions necessary or appropriate to protect the interests of the Investor Members and of the Company. The Managing Member shall devote such time as is necessary to the affairs of the Company.

Except as otherwise set forth in this Agreement and subject to the applicable Project Lender and/or Agency rules and regulations and the provisions of the Project Documents, the Managing Member (acting for and on behalf of the Company), in extension and not in limitation of the rights and powers given by law or by the other provisions of this Agreement, shall, in its sole discretion, have the full and entire right, power and authority in the management of the Company business to do any and all acts and things necessary, proper, convenient or advisable to effectuate the purpose of the Company. In furtherance and not in limitation of the foregoing provisions, the Managing Member is specifically authorized and

empowered to execute and deliver, on behalf of the Company, the Loan Agreements, the Regulatory Agreement, the Extended Use Agreement, the Notes, the Mortgages, and the other Project Documents, and to execute any and all other instruments and documents, and amendments thereto provided the Special Member shall be provided with the opportunity to review and Consent to any such documents prior to their execution by the Managing Member, as shall be required in connection with the Project Loans, including, but not limited to, executing any mortgage, note, contract, building loan agreement, bank resolution and signature card, release, discharge, or any other document or instrument in any way related thereto or necessary or appropriate in connection therewith. Copies of all applications for advances of proceeds of the Project Loans shall be provided to the Investor Member prior to the disbursement of any funds pursuant thereto and shall be subject to the Consent of the Special Member; and provided further that any such applications which provide for the disbursement of funds of the Company in lieu of or in addition to the proceeds of the Project Loans shall be subject to the Consent of the Special Member. All decisions made for and on behalf of the Company by the Managing Member shall be binding upon the Company. No Person dealing with the Managing Member shall be required to determine its authority to make any undertaking on behalf of the Company, nor to determine any facts or circumstances bearing upon the existence of such authority.

**8.02 Limitations Upon the Authority of the Managing Member.**

The Managing Member shall not have any authority to:

- perform any act in violation of any applicable law or regulation thereunder;
- perform any act in violation of the provision of any Project Document;
- do any act required to be approved or ratified in writing by the Investor Members under the Act unless the right to do so is expressly otherwise given in this Agreement;
- knowingly rent apartments in the Apartment Complex such that the Apartment Complex would not meet the requirements of the Rent Restriction Test or Minimum Set-Aside Test;
- borrow from the Company or commingle Company funds with funds of any other Person; or
- execute or deliver any general assignment for the benefit of creditors or file a petition or acquiesce in the filing of a petition for Bankruptcy.

The Managing Member shall not, without the Consent of the Special Member have any authority to:

- sell or otherwise dispose of, at any time, all or substantially all of the assets of the Company;
- amend the terms of any Project Loan or any Project Document (for purposes of this Section 8.02(b)(ii) Consent shall be in the sole and absolute discretion of the Special Member);

borrow in excess of \$10,000.00 in the aggregate at any one time outstanding on the general credit of the Company, except GP Loans and Operating Deficit Loans, and except as and to the extent provided for in an approved budget pursuant to Section 7.05;

agree to any change order for the Construction Contract (a) in excess of \$50,000, for any one line item or change orders in excess of \$100,000 in the aggregate, (b) which diminishes the quality of the construction or materials used in the Apartment Complex (regardless of the dollar amount involved), or (c) that would result in any of the following: (i) a change in the number of units comprising the Apartment Complex, (ii) a change in the number of bedrooms in any unit comprising the Apartment Complex, (iii) a change in the number or location of parking spaces for the Apartment Complex, or (iv) a deviation from the agreements, representations or obligations of the Company as described in the Company's Housing Tax Credit application;

following Final Closing, construct any new or replacement capital improvements on the Apartment Complex which substantially alter the Apartment Complex or its use or which are at a cost in excess of \$10,000.00 in a single Company fiscal year, or rebuild the Apartment Complex with the use of insurance proceeds, except (a) replacements and remodeling in the ordinary course of business or under emergency conditions, or (b) reconstruction paid for from insurance proceeds, or (c) as and to the extent provided for in an approved budget pursuant to Section 7.05;

acquire any real property in addition to the Apartment Complex other than easements reasonable and necessary for the operation of the Apartment Complex;

refinance any Project Loan;

confess a judgment against the Company in excess of \$25,000, or commence or settle, or acquiesce in the commencement or settlement of any legal actions, arbitration, or other like proceedings involving the Company or the Managing Member, other than any matters covered by insurance policies held by the Company or the Managing Member;

admit any Person as a Managing Member or a Investor Member, or withdraw as Managing Member;

do any act in contravention of this Agreement or any other agreement to which the Company is a party;

execute or deliver any assignment for the benefit of the creditors of the Company;

transfer or hypothecate the Managing Member's interest as a Managing Member in the Company, including its interest in Company allocations or distributions, except as otherwise provided in this Agreement and in the Project Documents;

dissolve the Company or take any action which would result in dissolution;

refinance, prepay or materially modify the terms of any mortgage or long-term liability of the Company, or sell, grant an option to acquire (except for the Purchase

Option), exchange, mortgage, encumber, pledge or otherwise transfer all or any portion of any interest in the Company or the Company's interest in the Apartment Complex, or borrow funds or participate in a merger or consolidation with any other entity;

change the nature of the business of the Company, or do any act which would make it impossible to carry on the ordinary business of the Company;

materially change any accounting method or practice of the Company;

file a voluntary petition for bankruptcy of the Company;

make any expenditure or incur any liability on behalf of the Company in excess of \$10,000 which is not identified in any budget Consented to by the Special Member, except with respect to emergency repairs necessary to protect the safety and comfort of the tenants or the structural integrity of the Apartment Complex, provided, however, that if any such expenditure is made, the Managing Member shall immediately notify the Investor Member of said expenditure along with a detailed explanation of the circumstances necessitating the expenditure;

possess Company property or assign rights in specific property for other than a business purpose of the Company;

take any action which would cause the termination of the Company for federal income tax purposes under Code Section 708;

make, amend or revoke any tax election required of or permitted to be made by the Company under the Code or Regulations, including, without limitation, any election under Section 42 (including an election to treat any year other than 2013 as the first year of the Credit Period (as defined in Code Section 42(f) for the Apartment Complex) or Section 754 of the Code;

enter into any agreement or take any action without the prior Consent of the Special Member or Investor Member with respect to any matters for which the prior Consent of the Special Member or Investor Member is a prerequisite;

approve any increase in fees to the Managing Member or any Affiliate of the Managing Member;

enter into any cost-sharing, shared use or reciprocal easement agreements relating to the Apartment Complex or the Land;

change in ownership, control or management of the Managing Member;

or

allow this Agreement to be amended.

### 8.03 Sale of Apartment Complex.

Investor Member Request for Sale. Notwithstanding the foregoing Section 8.02, and subject to all Agency regulations then in effect and the receipt of all required approvals and consents of the Project Lenders, and subject further to the extended use requirements

applicable pursuant to Section 42(h)(6) of the Code and the Purchase Option, at any time after the fourteenth (14th) anniversary of the first day of the first taxable year of the applicable Tax Credit compliance period the Investor Member may request that the Company sell the Apartment Complex subject to the Extended Use Agreement (a "Continued Compliance Sale").

**Continued Compliance Sale.** After receipt of a request for a Continued Compliance Sale, the Managing Member shall use its best efforts to find a third party purchaser for the Apartment Complex and to cause the Company to consummate a sale of the Apartment Complex subject to the Extended Use Agreement and on terms Consented to by the Investor Member. If such efforts are not successful on terms reasonably satisfactory to the Investor Member within four (4) months, the Investor Member shall have the right thereafter to locate a purchaser for the Apartment Complex. If the Investor Member locates such a purchaser, the Managing Member shall be given a right of first refusal to purchase the Apartment Complex on the same terms and conditions as would be applicable to such purchaser. If such right of first refusal is not exercised by the Managing Member within thirty (30) days, then the Managing Member shall be obligated to Consent to the sale to such purchaser so long as the purchase price and other terms offered by such purchaser are at least as favorable to the Company as the best offer, if any, located by the Confer Managing Member.

**Investor Member Put.** At all times after the end of the Compliance Period, the Investor Member, shall have the right, in its sole and absolute discretion, to put its entire Interest to the Managing Member (or its designee) for a price equal to the sum of the following: (i) \$100.00 and (ii) all amounts due and owing to the Investor Member under this Agreement. Such transfer shall be made pursuant to an assignment and assumption agreement reasonably acceptable to the parties.

**8.04 Delegation of Authority.** The Managing Member may delegate all or any of its powers, rights and obligations hereunder, and may appoint, employ, contract or otherwise deal with any Person for the transaction of the business of the Company, which Person may, under supervision of the Managing Member, perform any acts or services for the Company as the Managing Member may approve, but in no event shall such delegation of duties relieve the Managing Member of its obligations hereunder, including its fiduciary obligations to the other Members.

**8.05 Managing Member or Affiliates Dealing with Company.** The Managing Member or any Affiliates thereof shall have the right to contract or otherwise deal with the Company for the sale of goods or services to the Company in addition to those set forth herein, if (a) compensation paid or promised for such goods or services is reasonable (i.e., at fair market value) and is paid only for goods or services actually furnished to the Company, (b) the goods or services to be furnished shall be reasonable for and necessary to the Company, (c) the fees, terms and conditions of such transaction are at least as favorable to the Company as would be obtainable in an arm's-length transaction, (d) no agent, attorney, accountant or other independent consultant or contractor who also is employed on a full-time basis by the Managing Member or any Affiliate shall be compensated by the Company for his services. Any contract covering such transactions shall be in writing and shall be terminable without penalty on sixty (60) days' Notice. Any payment made to the Managing Member or any Affiliate for such goods or services shall be fully disclosed to all Investor Members in the reports required under Section 13.04. Neither the Managing Member nor any Affiliate shall, by the making of lump sum payments to any other Person for disbursement by such other Person, circumvent the provisions of this Section 8.05.

**8.06 Other Activities.** Except as limited in Section 8.05, Affiliates of the Managing Member may engage in or possess interests in other business ventures of every kind and description for their own account, including, without limitation, serving as Managing Member of other partnerships which own, either directly or through interests in other partnerships, government assisted housing developments similar to the Apartment Complex. Neither the Company nor any of the Members shall have any rights by virtue of this Agreement in or to such other business ventures or to the income or profits derived therefrom.

**8.07 Liability for Acts and Omissions.** No Managing Member or Affiliate thereof shall be liable, responsible or accountable in damages or otherwise to any of the Members for any act or omission performed or omitted by it in good faith on behalf of the Company and in a manner reasonably believed by it to be within the scope of the authority granted to it by this Agreement and in the best interest of the Company, provided that the protection afforded the Managing Member pursuant to this Section 8.07 shall not apply in the case of negligence, misconduct, fraud or any breach of fiduciary duty as Managing Member or its officers, directors, agents or employees with respect to such acts or omissions. Any loss or damage incurred by any Managing Member or Affiliate thereof by reason of any act or omission performed or omitted by it or any of them in good faith on behalf of the Company and in a manner reasonably believed by it to be within the scope of the authority granted by this Agreement and in the best interests of the Company (but not, in any event, any loss or damage incurred by the Managing Member or Affiliate thereof by reason of negligence, misconduct or fraud of the Managing Member or Affiliate thereof, or any breach of fiduciary duty as Managing Member, with respect to such acts or omissions) shall be paid from Company assets to the extent available (but the Investor Members shall not have any personal liability to the Managing Member or Affiliate(s) thereof under any circumstances on account of any such loss or damage incurred by the Managing Member or Affiliate(s) thereof or on account of the payment thereof).

**8.08 Indemnification of Investor Member and the Company.** The Managing Member and the Company shall, jointly and severally, indemnify, defend, and save harmless the Investor Member from and against any claim, loss, expense, action or damage, including without limitation, reasonable costs and expenses of litigation and appeal (and the reasonable fees and expenses of counsel) asserted against the Investor Member based on any act, omission, malfeasance or nonfeasance of the Company or the Managing Member, including without limitation any claim that the Investor Member is liable for any indebtedness of the Company and excluding only liability directly caused by the Investor Member's gross negligence or willful misconduct. In addition, the Managing Member and the Company shall, jointly and severally, indemnify, defend, save and hold harmless the Investor Member, and its representatives, from and against any and all costs, losses, liabilities, damages, lawsuits, proceedings (whether formal or informal), investigations, judgments, orders, settlements, recoveries, obligations, deficiencies, claims and expenses (whether or not arising out of third party claims), including, without limitation, interest, penalties, attorneys' fees and all amounts paid in investigation, or settlement of any of the foregoing, incurred in connection with or arising out of or resulting from the operations of the Managing Member, the Company or the Apartment Complex prior to the date of this Agreement.

**8.09 Construction of the Apartment Complex, Construction Cost Overruns, Operating Deficits; Other Managing Member Guarantees.**

**Construction Completion Guaranty.**

The Company has entered into the Construction Contract. The Managing Member shall guaranty to the Company and the Investor Members that the Company shall be:

achieving completion of rehabilitation of the Apartment Complex on a timely basis in a good and workmanlike manner without construction defects in accordance with the Plans and Specifications for the Apartment Complex, the terms of this Agreement, the Project Documents and all applicable federal, state and local governmental requirements, including, without limitation, all local building and zoning laws, codes, ordinances, rules, regulations and orders;

meeting all requirements for obtaining all necessary unconditional certificates of occupancy for all the apartment units in the Apartment Complex, if applicable;

fulfilling all actions required of the Company to assure that the Apartment Complex satisfies the Minimum Set-Aside Test and the Rent Restriction Test;

causing the funding of the Project Loans by the respective Project Lenders;

paying for all operating costs of the Apartment Complex prior to Stabilized Operations; and

achieving Final Closing.

The Managing Member hereby is obligated to pay all Excess Development Costs; the Company shall have no obligation to pay any Excess Development Costs. Any amounts paid by the Managing Member pursuant to this clause (ii) shall not be repaid by the Company, nor shall such amounts be considered or treated as Capital Contributions of the Managing Member to the Company.

In the event that the Managing Member shall fail to pay any such Excess Development Costs as required in this Section 8.09(a), then, the total of any remaining unpaid installments of the Development Fee due pursuant to Section 14.01 shall be suspended by the Company until such obligations are met by the Managing Member.

Any suspension of funds otherwise payable pursuant to Section 14.01 and/or the Development Agreement as aforesaid shall not constitute reductions in amounts owed pursuant to Section 14.01 and/or the Development Agreement, and the Managing Member shall have the obligation to make a Capital Contribution pursuant to Section 5.01(b) sufficient to make such installment payments as they become due under the Development Agreement.

Operating Deficit Guaranty. In the event that, at any time during the period beginning upon the date that Stabilized Operations is achieved and for five years thereafter, provided, however, that such period shall be extended until the Apartment Complex has achieved Breakeven Operations for the last consecutive six months of such period (the "Operating Deficit Guaranty Period"), an Operating Deficit shall exist, the Managing Member shall provide such funds to the Company as shall be necessary to pay such Operating Deficit(s); provided, however, that the Managing Member shall not be obligated to provide such funds to the extent that the provision of such funds, if considered an Operating Deficit Loan as

hereinafter defined, would cause the aggregate unpaid balance of all Operating Deficit Loans to exceed \$405,000. Funds provided after the achievement of Stabilized Operations shall be in the form of a loan to the Company (the "Operating Deficit Loan(s)"). Any Operating Deficit Loan shall be on the following terms: (i) it shall be unsecured; (ii) it shall bear interest at a rate of 8.0% per annum; (iii) it shall be repayable solely from Net Cash Flow and proceeds of a Capital Transaction at the time and in the amounts set forth in Sections 11.03(b), 11.04 and 12.02(a) of this Agreement; and (iv) shall be fully subordinated to payment of Project Loans, GP Loans, indebtedness of the Company to all Persons other than Members. In the event that the Managing Member shall fail to make any such Operating Deficit Loan as aforesaid, the Company shall suspend amounts otherwise payable as installments of the Development Fee pursuant to Section 14.01 of this Agreement until such obligation to fund the Operating Deficit Loan is met by the Managing Member. Any amounts of the Development Fee so suspended shall not constitute reductions of amounts owed pursuant to Section 14.01 and the Development Agreement, and the Managing Member shall have the obligation to make a Capital Contribution pursuant to Section 5.01(b) sufficient to make such installment payments as they become due under the Development Agreement. For the purpose of this Section 8.09(b), all expenses shall be paid on a sixty (60) day current basis.

**Tax Credit Compliance Guaranty.** The following is herein referred to as the "Tax Credit Compliance Guaranty":

If with respect to any fiscal year of the Company there is a Tax Credit Shortfall and/or Historic Tax Credit Shortfall, the Managing Member irrevocably and unconditionally guarantees, within forty-five (45) days following the close of such fiscal year, payment to the Investor Member of an amount equal to (A) the amount of the Tax Credit Shortfall and/or Historic Tax Credit Shortfall for the fiscal year immediately preceding the payment due date, (B) all penalties and interest imposed by the Code and assessed against the Investor Member by the Internal Revenue Service with respect to any Tax Credit Shortfall and/or Historic Tax Credit Shortfall, and (C) an amount sufficient to pay any tax liability owed by the Investor Member resulting from the receipt of the amounts specified in the foregoing clauses (A), (B) and this clause (C) of this Section 8.09(c)(i) (such calculation to be made assuming the Investor Member is subject to the highest federal and state tax rates imposed on corporate tax payers under the Code at that time for the taxable year of the Investor Member in which such payment is taken into income by the Investor Member) together with interest on such amounts at the Prime Rate accruing from such payment due date.

The Managing Member irrevocably and unconditionally guarantees payments specified in this Section 8.09(c)(ii) to the Investor Member if there is a Tax Credit Recapture Event and/or Historic Tax Credit Recapture Event. The payments required by this Section 8.09(c)(ii) shall be the sum of the following amounts: (A) the amount of Tax Credits previously allocated to the Investor Member and subsequently disallowed because of such Tax Credit Recapture Event and/or Historic Tax Credit Recapture Event; (B) the "credit recapture amount" (as defined in Code Section 42(j)(2)) allocated to the Investor Member because of such Tax Credit Recapture Event; (C) all penalties and interest imposed by the Code and assessed against the Investor Member by the Internal Revenue Service with respect to such Tax Credit Recapture Event and/or Historic Tax Credit Recapture Event; (D) an amount sufficient to pay any tax liability owed by the Investor Member resulting from the receipt of the amounts specified in the foregoing clauses (A), (B), (C) and this clause (D) of this Section 8.09(c)(ii) (such calculation to be made assuming the Investor Member is subject to the highest federal and state tax rate imposed on corporate taxpayers under the Code at that time for the taxable year of the Investor Member in which such payment is taken into income by the Investor Member) together

with interest on such amounts at the Prime Rate accruing from the date the Investor Member remits funds to a taxing authority with respect to a Tax Credit Recapture Event and/or Historic Tax Credit Recapture Event; and (E) if the cause of the Tax Credit Recapture Event and/or Historic Tax Credit Recapture Event will, in the determination of the Investor Member, decrease the maximum amount of Tax Credits that will be available to the Company and allocated to the Investor Member during the remainder of the compliance period under Section 42 of the Code, assuming full compliance with Section 42 of the Code, then an amount equal to the total amount of such decrease. The Managing Member shall make such payment to the Investor Member within forty-five (45) days of the Tax Credit Recapture Event and/or Historic Tax Credit Recapture Event.

The Tax Credit Compliance Guaranty set forth herein shall not apply to amounts due solely to the transfer by the Investor Member of all or a portion of its Interest in the Company or to changes in the Code after the date hereof with which the Managing Member is unable to comply despite the exercise of its good faith and reasonable efforts.

8.10 Guaranty. Concurrently with the execution of this Agreement, the Managing Member shall deliver to the Investor Member (a) the Guaranty fully executed by each Guarantor, and (b) an opinion of counsel to the Guarantors in form satisfactory to the Investor Member regarding the Guaranty.

**ARTICLE 9.**  
**TRANSFERS AND RESTRICTIONS ON TRANSFERS**  
**OF INTERESTS OF INVESTOR MEMBERS**

9.01 Transfer of Investor Members' Interests. The Investor Member shall have the right to sell, transfer and/or assign interests within the Investor Member or to transfer Interests of the Investor Member, without the Consent of the Managing Member, to any other Person once during the term of this Agreement, so long as assignee agrees to be bound by the terms of this Agreement. The Investor Member shall provide Notice to the Managing Member(s) of such transfer.

Except as described in Section 9.01(a), under no circumstances will any offer, sale, transfer, assignment, hypothecation or pledge of any Investor Member Interest be permitted unless the Managing Member, in its sole discretion, shall have Consented thereto, and the Project Lenders, if required, also shall have Consented thereto, provided however, that the Managing Member's Consent shall not be required for a pledge by the Investor Member of its Investor Member Interest or a transfer of its right to receive distributions hereunder, so long as no pledgee or transferee shall have any right to become a Substitute Investor Member in the Company or exercise any voting rights of the Investor Member. Notwithstanding the foregoing, in no event shall the Managing Member's Consent to a transfer of the Investor Member's Interest be required after the Investor Member has made all Capital Contributions required hereunder.

9.02 Admission of Substitute Investor Members.

An assignee of the Interest of a Investor Member pursuant to Section 9.01(a) (which shall be understood to include any purchaser, transferee, donee, or other recipient of any disposition of such Interest) shall be deemed admitted as a Substitute Investor Member of the Company upon Notice to the Managing Member without the need for further action of any parties or the need for an amendment hereto; provided, however, an amended Certificate

evidencing the admission of such Person as a Investor Member shall be promptly filed for recording pursuant to the requirements of the Act, if required.

Subject to the other provisions of this Article 9, an assignee of the Interest of a Investor Member other than pursuant to Section 9.01(a), shall be deemed admitted as a Substitute Investor Member of the Company upon completion of the following:

Consent of the Managing Member (which may be withheld in its sole discretion), and the consent of the Project Lenders, if required, shall have been given; such Consent of the Managing Member may be evidenced by the execution by the Managing Member of an amended Agreement and/or Certificate evidencing the admission of such Person as a Investor Member pursuant to the requirements to the Act, provided, however, that no Consent shall be required for any sale, transfer or assignment pursuant to Section 9.01 (a);

the assignee shall have accepted and agreed to be bound by the terms and provisions of this Agreement by executing an assignment pursuant to which it assumes all of the obligations of the Investor Member to be performed hereunder from and after the effective date of such assignment;

an amended Agreement or Certificate evidencing the admission of such Person as a Investor Member shall have been filed for recording pursuant to the requirements of the Act, if required;

if the assignee is a corporation, the assignee shall have provided the Managing Member with evidence satisfactory to Counsel for the Company of its authority to become a Investor Member under the terms and provisions of this Agreement; and

the assignee or the assignor shall have reimbursed the Company for all reasonable expenses, including all reasonable legal fees and recording charges, incurred by the Company in connection with such assignment.

For the purpose of allocation of profits, losses and credits, and for the purpose of distributing cash of the Company, a Substitute Investor Member shall be treated as having become, and as appearing in, the records of the Company as a Member upon his signing of an assumption agreement agreeing to be bound hereby in the case of an assignment pursuant to Section 9.01(a) or an amendment to this Agreement agreeing to be bound hereby in the case of an assignment pursuant to Section 9.01(b).

The Managing Member shall cooperate with the Person seeking to become a Substitute Investor Member by preparing the documentation required by this Section and making all official filings and publications. In such event, the Company shall take all such action, including the filing, if required, of any amended Agreement and/or Certificate evidencing the admission of any Person as a Investor Member, and the making of any other official filings and publications, as promptly as practicable after the satisfaction by the assignee of the Interest of a Investor Member of the conditions contained in this Article 9 to the admission of such Person as a Investor Member of the Company. Any cost or expense incurred in connection with such admission shall be borne by the Substitute Investor Member.

### 9.03 Rights of Assignee of Company Interest.

Except as provided in this Article and as required by operation of law, the Company shall not be obligated for any purpose whatsoever to recognize the assignment by any Investor Member of its Interest until the Company has received actual Notice thereof.

Any Person who is the assignee of all or any portion of a Investor Member's Interest, but does not become a Substitute Investor Member, and who desires to make a further assignment of such Interest, shall be subject to all the provisions of this Article 9 to the same extent and in the same manner as any Investor Member desiring to make an assignment of its Interest.

**ARTICLE 10.**  
**RIGHTS AND OBLIGATIONS OF INVESTOR MEMBERS**

**10.01 Management of the Company.** No Investor Member or Special Member shall take part in the management or control of the business of the Company nor transact any business in the name of the Company. Except as otherwise expressly provided in this Agreement, no Investor Member or Special Member shall have the power or authority to bind the Company or to sign any agreement or document in the name of the Company. No Investor Member or Special Member shall have any power or authority with respect to the Company except insofar as the consent of any Investor Member shall be expressly required in this Agreement and except as otherwise expressly provided in this Agreement.

**10.02 Limitation on Liability of Investor Members.** The liability of the Investor Member and the Special Member is limited to each of its Capital Contributions as and when payable under the provisions of this Agreement, and as provided under the Act. Neither the Investor Member nor the Special Member shall have any other liability to contribute money to, or in respect of the liabilities or obligations of, the Company, nor shall the Investor Member or Special Member be personally liable for any obligations of the Company, except as and to the extent provided in the Act. Neither the Investor Member nor the Special Member shall be obligated to make loans to the Company.

**10.03 Other Activities.** The Investor Member and Special Member and any Affiliates thereof may engage in or possess interests in other ventures of every kind and description for its own account, including without limitation, serving as general or Investor Member of other partnerships which own, either directly or through interests in other partnerships, government-assisted housing projects similar to the Apartment Complex. Neither the Company nor any of the Members shall have any right by virtue of this Agreement in or to such other business ventures to the income or profits derived therefrom.

**10.04 Inspection.** The Investor Member and its Affiliates shall have the right, from time to time, upon prior reasonable notice during business hours, to make a physical inspection of the Apartment Complex, subject to the rights of existing tenants.

**ARTICLE 11.**  
**PROFITS, LOSSES AND DISTRIBUTIONS**

**11.01 Allocation of Profits and Losses Other Than From Capital Transactions.**

**Manner of Determination.** Profits, Losses and credits for all purposes of this Agreement shall be determined in accordance with the definition of the same under Article 11 of this Agreement (as applicable) and in accordance with the accrual accounting method and in accordance with applicable Code sections and Treasury Regulations governing same.

**Allocations.** All Profits, Losses, Historic Tax Credits and State Historic Tax Credits, except those items in Sections 11.02, 11.05, 11.07 and 12.02(b) below, shall be allocated to the Members in accordance with their Percentage Interests. Every item of income, gain, loss, deduction, or tax preference entering into the computation of such Profits and Losses, or applicable to the period during which such Profits and Losses were realized, shall be considered allocated to each Member in the same proportion as Profits and Losses are allocated to such Member.

**11.02 Allocation of Profits and Losses from Capital Transactions.** Except to the extent provided in Sections 11.07 and 12.02(b), Profits and Losses recognized by the Company upon a Capital Transaction shall be allocated in the following manner:

Profits shall be allocated (i) first, to the Members with negative Capital Account balances, that portion of gains (including any gains treated as ordinary income for federal income tax purposes) which is equal in amount to, and in proportion to, such Members' respective negative Capital Accounts in the Company; provided that no gain shall be allocated under this Section 11.02(a)(i) to a Member once such Member's Capital Account is brought to zero and (ii) second, gains in excess of the amount allocated under (i) shall be allocated to the Members in the amounts and to the extent necessary to increase the Members' respective Capital Accounts so that the proceeds distributed under Section 11.04(e) will be distributed in accordance with the Members' respective Capital Accounts.

Losses shall be allocated (i) first, to the extent and in such proportions as the respective positive balances in all Members' Capital Accounts, and (ii) second, any remaining loss to the Members in accordance with the manner in which they bear the economic risk of loss associated with such loss or, if none, to the Members in accordance with their Company Interests.

Any portion of the Profits treated as ordinary income for federal income tax purposes under Sections 1245 and 1250 of the Code ("Recapture Amount") shall be allocated on a dollar for dollar basis to those Members to whom the items of Company deduction or loss giving rise to the Recapture Amount had been previously allocated.

**11.03 Distributions: Net Cash Flow.**

**Determination of Net Cash Flow.** Net Cash Flow shall be determined separately for each fiscal year or portion thereof commencing on the day after Final Closing and shall not be cumulative. Wherever there is a reference to the distribution of Net Cash Flow pursuant to the provisions of this Agreement, Net Cash Flow shall be deemed to be limited to Surplus Cash available for distribution. Income received by the Company during the construction period and ending on the date of the Final Closing shall not be distributed during such period and shall be treated as Net Cash Flow with respect to the first Payment Date following Final Closing.

**Manner of Distribution.** Subsequent to Final Closing, subject to the approval of the Project Lenders, Net Cash Flow shall be applied and/or distributed on each Payment Date in the following priority:

first, until the end of the Credit Period, to the Managing Member and the Investor Member until the aggregate amount of distributions made to the Managing Member and the Investor Member under this Section 11.03(b)(i) for the current and all prior years equals the Assumed Investor Member Tax Liability for the current and all prior years;

second, to the Investor Member in an amount equal to any Unpaid Tax Credit Shortfall, Investor Member Advances, or Special Additional Capital Contributions;

third, until all amounts due under the Development Agreement have been paid in full, one hundred percent (100%) to the payment of such amounts and then one hundred percent (100%) to the return of any Capital Contributions made by the Managing Member to the Company and used solely by the Company to pay amounts due under the Development Agreement;

fourth, following the full payment of amounts due under the Development Agreement, to the pro rata payment of any outstanding Operating Deficit Loans and GP Loans, based upon the respective outstanding balances of each;

fifth, to the payment of the Company Management Fee;

thereafter, 99.99% to the Investor Member, 0.009% to the Managing Member and 0.001% to the Special Member.

Notwithstanding anything to the contrary contained in this Agreement, during any fiscal year all or a portion of which occurs during the period commencing on the sixth (6<sup>th</sup>) anniversary of the date on which the last QREs are placed in service, any Net Cash Flow distributions under clause (vi) of this Section 11.03(b) shall be applied as follows: first, 90.00% to the payment of the Incentive Management Fee and thereafter 99.99% to the Investor Member; 0.009% to the Managing Member; and 0.001% to the Special Member.

Distributions to be Subject to Regulatory Restrictions. Notwithstanding the foregoing, during such time as regulations of the Project Lenders are applicable to the Apartment Complex, the total amount of Net Cash Flow which may be so distributed to the Members with respect to any fiscal year shall not exceed such amounts as such regulations permit to be distributed.

**11.04 Distributions: Capital Transactions and Liquidation of Company.** Except as may be required under Section 12.02(b), the proceeds resulting from the liquidation of the Company assets pursuant to Section 12.02, and the net proceeds resulting from any Capital Transaction, as the case may be, shall be distributed and applied in the following order of priority:

to the payment of all matured debts and liabilities of the Company (including amounts due pursuant to any Project Loan and all expenses of the Company incident to any such sale or refinancing), excluding (1) debts and liabilities of the Company to Members or any Affiliates, and (2) all unpaid fees owing to the Managing Member under this Agreement;

to the setting up of any reserves which the Liquidator (or the Managing Member if the distribution is not pursuant to the liquidation of the Company) deems reasonably necessary for contingent, unmatured or unforeseen liabilities or obligations of the Company;

to the payment of any debts and liabilities (including unpaid fees) owed to the Members or any Affiliates by the Company for Company obligations; provided, however, that the foregoing debts and liabilities owed to Members and their Affiliates shall be paid or repaid, as applicable, in the following order of priority, if and to the extent applicable: (i) to the Investor Member, an amount equal to any Unpaid Tax Credit Shortfall (applied first to accrued but unpaid interest (at the Default Rate) and then principal), Investor Member Advances or Special Additional Capital Contributions; (ii) to the Investor Members an amount equal to the Net Projected Tax Liabilities of the Investor Member's Members or members and their respective Members or members until they each have received, cumulatively, an amount equal to their respective Net Projected Tax Liabilities; (iii) to the Investor Member, an amount equal to any Special Additional Capital Contribution; (iv) to the payment of any outstanding GP Loans; (v) to amounts due under the Development Agreement; (vi) amounts due with respect to Operating Deficit Loans, if any; and (vii) any other such debts and liabilities;

the balance, 99.99% to the Investor Member, 0.009% to the Managing Member and 0.001% to the Special Member.

Notwithstanding anything to the contrary contained in this Agreement, during any fiscal year all or a portion of which occurs during the period commencing on the sixth (6<sup>th</sup>) anniversary of the date on which the last QREs are placed in service, any net proceeds resulting from any Capital Transaction following application of clauses (a) through (c) of this Section 11.04 shall be allocated as follows: 9.999% to the Investor Member; 90% to the Managing Member; and 0.001% to the Special Member.

Written determination of the proposed distributions of proceeds of Capital Transactions, showing all relevant calculations and assumptions, shall be delivered to the Investor Member and Special Member not later than twenty (20) days prior to the Company entering into any agreement for a Capital Transaction, and written confirmation or any revision thereof shall be delivered to the Investor Member and Special Member not later than twenty (20) days prior to the making of any such distribution.

#### 11.05 Distributions and Allocations: General Provisions.

In any year in which a Member sells, assigns or transfers all or any portion of an Interest to any Person who during such year is admitted as a substitute Member, the share of all profits and losses allocated to, and of all Net Cash Flow and of all cash proceeds distributable under Section 11.04 distributed to, all Members which is attributable to the Interest sold, assigned or transferred shall be divided between the assignor and the assignee ratably on the basis of the number of monthly periods in such year before, and the number of monthly periods on and after, the first day of the month during which such Person is admitted as a substitute Member.

The Company shall, subject to any applicable limitation on the distribution of Net Cash Flow and any required approval by the Project Lenders, distribute Net Cash Flow not less frequently than annually in the manner provided in Section 11.03(b).

In the event that there is a determination that there is any original issue discount or imputed interest attributable to the Capital Contribution of any Member, or any loan between a Member and the Company, any income or deduction of the Company attributable to such imputed interest or original issue discount on such Capital Contribution or loan (whether stated or unstated) shall be allocated solely to such Member.

In the event that the deduction of all or a portion of any fee paid or incurred by the Company to a Member or an Affiliate of a Member is disallowed for federal income tax purposes by the Internal Revenue Service with respect to a taxable year of the Company, the Company shall then allocate to such Member an amount of gross income of the Company for such year equal to the amount of such fee as to which the deduction is disallowed.

If any Member's Interest in the Company is reduced but not eliminated because of the admission of new Members or otherwise, or if any Member is treated as receiving any items of property described in Section 751(a) of the Code, the Member's Interest in such items of Section 751(a) property that was property of the Company while such Person was a Member shall not be reduced, but shall be retained by the Member so long as the Member has an Interest in the Company and so long as the Company has an Interest in such property.

In accordance with Section 704(c) of the Code (relating to allocations with respect to appreciated contributed property) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall be allocated, solely for tax purposes, 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 fair market value. Any elections or other decisions relating to such allocations shall be made by the Managing Member in any manner that reasonably reflects the purpose and intention of this Agreement.

In the event that the Managing Member makes any Operating Deficit Loans pursuant to Section 8.09(b), any deductions or losses of the Company attributable to the use of those funds shall be specially allocated to the Managing Member.

Any income attributable to the Capital Contribution of the Managing Member will be allocated to the Managing Member.

#### 11.06 Capital Accounts.

Establishment and Maintenance. A separate Capital Account shall be maintained and adjusted for each Member. There shall be credited to each Member's Capital Account the amount of its Capital Contribution, the fair market value of any property contributed to the Company (net of any liabilities secured by such property) and such Member's distributive share of the net income gains and profits for tax purposes of the Company; and there shall be charged against each Member's Capital Account the amount of all cash flow distributed to such Member, the fair market value of any property distributed to such Member (net of any liabilities secured by such property), the net proceeds resulting from the liquidation of the Company's assets or from any sale or refinancing of the Apartment Complex distributed to such Member, and such Member's distributive share of the losses for tax purposes of the Company. Each Member's Capital Account shall be maintained and adjusted in accordance with the Code and the Treasury Regulations thereunder. The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treas. Reg. § 1.704-1(b), and shall be interpreted and applied in a manner consistent with such regulations. It is the intention of the Members that the Capital Accounts maintained under this Agreement be determined and maintained throughout the full term of this Agreement in accordance with the accounting rules of Treas. Reg. § 1.704-1(b)(2)(iv).

Deficit Capital Accounts; Regulatory Liquidation. In the event that the Company is liquidated within the meaning of Treas. Reg. § 1.704-1(b)(2)(ii)(g), if the Managing Member's

Capital Account has a deficit balance (after giving effect to all contributions, distributions and allocations), the Managing Member shall make Capital Contributions in the amount of such deficit in compliance with Treas. Reg. §1.704-1(b)(2)(ii)(b)(3). In the event that the Investor Member's Capital Account should have a deficit balance at such time, it shall have no obligation to fund or otherwise contribute capital to the Company in connection with such deficit. Notwithstanding the foregoing, in the event the Company is liquidated within the meaning of Treas. Reg. § 1.704-1(b)(2)(ii)(g) but no event has occurred under Section 12.01 to dissolve the Company, the Company assets shall not be liquidated, the Company's liabilities shall not be paid or discharged, and the Company's affairs shall not be wound up. Instead, the Company shall be deemed to have contributed all of its assets and liabilities to a new Company in exchange for an interest in the new Company. Immediately thereafter, the terminated Company shall be deemed to have distributed interests in the new Company to the Members of the terminated Company in proportion to their respective interests in the terminated Company in liquidation of the terminated Company.

**11.07 Special Allocations.** Notwithstanding anything to the contrary contained in Section 11.01(a) or (b), the following special allocations in all events apply in determining the allocation of Profits and Losses among the Members and are made prior to the allocations required under §11.01(a) and (b):

**Depreciation and Tax Credits.**

Depreciation (cost recovery) deductions and Tax Credits are allocated to the Members in accordance with their Percentage Interests.

Any recapture of Tax Credits is allocated to the Members that were allocated (or whose predecessors-in-interest were allocated) the depreciation/cost recovery deduction and Tax Credits associated therewith.

**Limitation on Allocations of Losses.**

To the extent the allocation of any Losses to a Member would cause that Member to have an Adjusted Capital Account Deficit at the end of any fiscal year of the Company, then those Losses will not be allocated to that Member, but rather will be specially allocated to the remaining Members in proportion with their relative interests in the Company.

In the event one but not all of the Members would have Adjusted Capital Account Deficits due to an allocation of Losses, the limitation set forth in this Section 11.07(b) shall be applied on a Member by Member basis so as to allocate the maximum permissible Losses to each Member who is not a Managing Member under Treas. Reg. §1.704 1(b)(2)(ii)(d). All Losses in excess of the limitation set forth in this Section 11.07(b) shall be allocated to the Managing Member.

**Profit Chargeback.** To the extent any Losses are specially allocated to a Member in accordance with Section 11.07(b), then Profits will thereafter first be specially allocated to such Member in proportion to and in an amount (1) up to but not exceeding the amount of any such special allocation of Losses away from such Member under such subparagraph (b) but (2) not to the extent that Losses or depreciation deductions would be allocated to the remaining Members in excess of the amount permitted by 11.07(b).

**Nonrecourse Deductions.** Nonrecourse Deductions for any fiscal year shall be allocated to the Members in accordance with their Percentage Interests.

**Member Nonrecourse Deductions.** Any Member Nonrecourse Deductions for any fiscal year shall be specially allocated to the Member or Members that bear the Economic Risk of Loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treas. Reg. §1.704-2(b)(4) and Treas. Reg. §1.704-2(i).

**Company Minimum Gain Chargeback.** Notwithstanding any other provision of this Agreement, if there is a net decrease in the Company's Minimum Gain attributable to Nonrecourse Liabilities during any taxable year, each Member shall be specially allocated a pro rata portion of each of the Company's items of income and gain for such year (and, if necessary for subsequent years) in proportion to, and to the extent of, an amount equal to such Member's share of the net decrease in such Minimum Gain during such taxable year as determined in accordance with the provisions of Treas. Reg. §1.704-2(g)(2). In the event that such net decrease in the Company's Minimum Gain occurs in connection with the disposition of all or any portion of the Apartment Complex, then any items of Company income or gain allocated in accordance with the previous sentence shall first consist of gain recognized by the Company as a result of such disposition. It is the intent that the allocations provided in this Section 11.07(f) shall be determined in accordance with and only to the extent required by Treas. Reg. §1.704-2(f) and (j)(2)(i).

**Member Minimum Gain Chargeback.** Notwithstanding any other provision of this Agreement, if there is a net decrease in the amount of the Company's Minimum Gain during any taxable year with respect to a Member Nonrecourse Debt, the Member bearing the Economic Risk of Loss with respect to such Member Nonrecourse Debt shall be specially allocated a pro rata portion of each of the Company's items of income and gain for such taxable year (and, if necessary, for subsequent years) in proportion to, and to the extent of the amount of such Member's share of the net decrease in such Minimum Gain during such taxable year as determined in accordance with the provisions of Treas. Reg. §1.704-2(i)(4). In the event that such net decrease in the Member's Minimum Gain occurs in connection with the disposition of all or any portion of Apartment Complex, then any items of Company income or gain allocated in accordance with the previous sentence shall first consist of gain recognized by the Company as a result of such disposition. It is the intent that the allocations provided in this Section 11.07(g) shall be determined in accordance with and only to the extent required by the provisions of Treas. Reg. §1.704-2(i) and (j)(2)(ii).

**Qualified Income Offset.** If a Member unexpectedly receives any adjustments, allocations, or distributions described in §1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Regulations, then items of Company income or gain will be specially allocated to that Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of that Member as quickly as possible. The special allocations required pursuant to this subparagraph (h) are made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 11 have been tentatively made as if this subparagraph (h) were not in this Company Agreement. This subparagraph (h) is intended to comply with the qualified income offset requirements of §1.704-1(b)(2)(ii)(d) of the Regulations and will be interpreted consistently therewith.

**Gross Income Allocation.** In the event any Member has a deficit Capital Account at the end of any fiscal year in excess of the sum of (i) the amount that such Member must

restore pursuant to any provision of this Agreement, if any, and (ii) the amount such Member is deemed obligated to restore pursuant to the penultimate sentence of Treas. Reg. § 1.704-2(g) and § 1.704-2(i)(5), such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 11.07(i) shall be made if and only to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article 11 have been tentatively made as if this Section 11.07(i) and Section 11.07(h) hereof were not in this Company Agreement.

**§754 Adjustment.** To the extent an adjustment to the adjusted tax basis of any Company Property undertaken pursuant to §734(b) or 743(b) of the Code is required to be taken into account in determining the Capital Accounts of the Members under Treas. Reg. §1.704-1(b)(2)(iv)(m), then the amount of such adjustment to the Capital Accounts will 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 will 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 the aforementioned section of the regulations.

**Curative Allocations.** In the event that income, loss or items thereof are allocated to one or more Members pursuant to Sections 11.07(h) through (i), subsequent income, loss or items thereof shall be allocated (subject to the provisions of Sections 11.07(h) and (i)) to the Members so that, to the extent possible in the judgment of the Managing Member, the net amount of allocations shall be equal to the amount that would have been allocated had Section 11.07 not been applied. Notwithstanding the foregoing, the allocation of depreciation deductions will be governed by Section 11.07(a) and this Section 11.07(k) shall not apply to allocations of depreciation deductions.

**Excess Nonrecourse Liabilities.** Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Treas. Reg. §1.752-3(a)(3), the Members' respective interests in Company Profits shall equal their Percentage Interests (determined without regard to Section 11.07(a)-(k)).

**Authority to Vary Allocations to Preserve and Protect Members' Intent.**

It is the intent of the Members that each Member's distributive share of income, gain, loss, deduction, or credit (or item thereof) shall be determined and allocated in accordance with this Article 11 to the fullest extent permitted by Section 704(b) of the Code. In order to preserve and protect the determinations and allocations provided for in this Article 11, the Managing Member, shall upon the direction in writing of the Special Member, allocate income, gain, loss, deduction, or credit (or item thereof) arising in any year differently than otherwise provided for in this Article 11 as necessary to ensure that all allocations of income, gain, loss, deduction or credit (or item thereof) to the Members are permitted by Section 704(b) of the Code and Treasury Regulations promulgated thereunder. Any allocation made pursuant to this Section 11.07 shall be deemed to be a complete substitute for any allocation otherwise provided for in this Article 11 and no amendment of this Agreement or approval of any Member shall be required.

In making any allocation (the "New Allocation") under Section 11.07(m)(l), the Managing Member is authorized to act only upon the direction in writing of the Special Member or the Investor Member.

If the Managing Member receives a recommendation from the Accountants to make any New Allocation in a manner less favorable to the Investor Member than is otherwise provided for in this Article 11, then the Managing Member shall do so only with the Investor Member's or the Special Member's Consent and only after having given the Investor Member and the Special Member the opportunity to discuss such allocation with the Accountants, and only after the Managing Member has been advised by the Accountants that it is permitted by Section 704(b) of the Code, to allocate income, gain, loss, deduction, or credit (or item thereof) arising in later years in such manner so as to bring the allocations of income, gain, loss, deduction, or credit (or item thereof) to the Investor Members as nearly as possible to the allocations thereof otherwise contemplated by this Article 11.

**Grant Income.** Any income recognized as a result of any receipt of grants by the Company shall be allocated one hundred percent (100%) to the Managing Member. However, if the Managing Member is exempt from federal income taxation under Code Section 501(c)(3) or any other Code provision, then the allocations to the Managing Member under this 11.07(n) shall be limited to the highest percentage of the Company's property treated as tax-exempt use property, as reflected in the Projections.

## ARTICLE 12. SALE, DISSOLUTION AND LIQUIDATION

**12.01 Dissolution of the Company.** The Company shall be dissolved upon the earlier of the expiration of the term of the Company, or upon:

the withdrawal, Bankruptcy, death, dissolution or adjudication of incompetency of the Managing Member who is at that time the sole Managing Member, subject to the provisions of Section 6.03, unless a majority in interest of the other Members, within ninety (90) days after receiving Notice of such withdrawal, Bankruptcy, death, dissolution or adjudication of incompetence, elects to designate a successor Managing Member(s) and continue the Company upon the admission of such successor Managing Member(s) to the Company;

the sale or other disposition of all or substantially all of the assets of the Company, subject to the provisions of Section 6.03 and the Consent required pursuant to Section 8.02(b) hereof;

the election by the Managing Member, with the Consent of a majority in interest of the other Members; or

any other event causing the dissolution of the Company under the laws of the State.

### **12.02 Winding Up and Distribution.**

Upon the dissolution of the Company pursuant to Section 12.01, (i) a certificate of cancellation shall be filed in such offices within the State as may be required or appropriate and (ii) the Company business shall be wound up and its assets liquidated as provided in this Section 12.02 and the net proceeds of such liquidation, except as provided in Section 12.02(b) below, shall be distributed in accordance with Section 11.04.

It is the intent of the Members that, upon liquidation of the Company, any liquidation proceeds available for distribution to the Members be distributed in accordance with

the Members' respective positive Capital Account balances. The Members believe that distributions under Section 11.04 will effectuate such intent. In the event that, upon liquidation, there would otherwise be any conflict between a distribution pursuant to the Members' respective positive Capital Account balances and the intent of the Members with respect to distribution of proceeds as provided in Section 11.04, the Liquidator shall, notwithstanding the provisions of Sections 11.01, 11.02, 11.03 and 11.05, allocate the Company's gains, profits and losses in a manner that will, as nearly as possible, cause the distribution of liquidation proceeds to the Members to be in accordance both with the Members' economic expectations as set forth in Section 11.04 and their respective Capital Account balances. If the Company's gains, profits and losses are insufficient to cause the Members' Capital Accounts to be in such amounts as will permit liquidation proceeds to be distributed both in accordance with the Members' respective positive Capital Account balances and Section 11.04, then liquidation proceeds shall be distributed in accordance with the Members' respective positive Capital Account balances after the allocations described herein have been made.

The Liquidator shall file all certificates and notices of the dissolution of the Company required by law. The Liquidator shall proceed without any unnecessary delay to sell and otherwise liquidate the Company's property and assets; provided, however, that if the Liquidator shall determine that an immediate sale of part or all of the Company property would cause undue loss to the Members, then in order to avoid such loss, the Liquidator may, except to the extent prohibited by the Act, defer the liquidation as may be necessary to satisfy the debts and liabilities of the Company to Persons other than the Members. Upon the complete liquidation and distribution of the Company assets, the Members shall cease to be Members of the Company, and the Liquidator shall execute, acknowledge and cause to be filed all certificates and notices required by the law to terminate the Company.

Upon the dissolution of the Company pursuant to Section 12.01, the Accountants shall promptly prepare, and the Liquidator shall furnish to each Member, a statement setting forth the assets and liabilities of the Company upon its dissolution. Promptly following the complete liquidation and distribution of the Company property and assets, the Accountants shall prepare, and the Liquidator shall furnish to each Member, a statement showing the manner in which the Company assets were liquidated and distributed.

**ARTICLE 13.**  
**BOOKS AND RECORDS, ACCOUNTING,**  
**TAX ELECTIONS, ETC.**

13.01 Books and Records. The books and records of the Company shall be maintained on an accrual basis in accordance with sound federal income tax accounting principles. These and all other records of the Company, including information relating to the status of the Apartment Complex and information with respect to the sale by the Managing Members or any Affiliate of goods or services to the Company, shall be kept at the principal office of the Company and shall be available for examination there by any Member, or his duly authorized representative, at any and all reasonable times. Any Member, or his duly authorized representative, upon paying the costs of collection, duplication and mailing, shall be entitled to a copy of the list of names and addresses of the Investor Members.

13.02 Bank Accounts. All funds of the Company not otherwise invested shall be deposited in one or more accounts maintained in such banking institutions as the Managing Member shall determine, and withdrawals shall be made only in the regular course of Company business on such signature or signatures as the Managing Member may, from time to time,

determine. No funds of the Company shall be deposited in any financial institution in which any Member is an officer, director or holder of any proprietary interest.

**13.03 Accountants.** The Accountants shall annually prepare for execution by the Managing Member all tax returns of the Company, shall annually audit the books of the Company, and shall certify, in accordance with tax basis accounting with adjustment for generally accepted accounting principles, a balance sheet, a profit and loss statement, and a cash flow statement. With respect to each fiscal year during the Company's operations, at such time as the Accountants shall have prepared the proposed tax return for such year, the Accountants shall provide copies of such proposed tax return to the Investor Member for its review and comment. Any material changes in such proposed tax return recommended by the Investor Member's accountants shall be made by the Accountants prior to the completion of such tax return for execution by the Managing Member. The Company shall reimburse the Investor Member for its expenses incurred in causing the Company's proposed tax return to be reviewed by the Investor Member's accountants when such review exceeds the scope of the Investor Member's accountant's standard review, as determined by the Investor Member in its sole discretion. A full detailed statement shall be furnished to all Members showing such assets, properties, and net worth and the profits and losses of the Company for the preceding fiscal year. All Members shall have the right and power to examine and copy, at any and all reasonable times, the books, records and accounts of the Company. Notwithstanding anything to the contrary contained herein, the Special Member shall have the discretion to dismiss the Accountants for cause if such Accountant fails to provide, or untimely provides, or inaccurately provides, the information required in this Agreement.

**13.04 Reports to Members.** In addition to the information required pursuant to the provisions of Section 7.05 hereof, the Managing Member shall provide to the Members the following:

**Monthly Reports.** The Managing Member shall cause to be prepared and distributed to all Persons who were Members at any time during the month prior to the date the report is due, the following monthly reports:

Prior to Substantial Completion, if requested by the Special Member, a monthly report, certified, upon request by the Special Member, by the Managing Member to be true, complete and correct in all respects, providing:

an analysis of the quality of construction and any known non-compliance with Plans and Specifications;

any changes or deviations from the construction budget and construction schedule;

any known environmental issues arising since the Initial Closing;

any known delay in payment, or non-payment, of construction costs for which equity has been expended, or construction loan proceeds have been requisitioned or disbursed; and

copies of all construction draw documentation submitted by the General Contractor in connection with a request for payment, including change orders.

Prior to Breakeven Operations, a monthly report, certified, if requested by the Special Member, by the Managing Member to be true, complete and correct in all respects providing:

a rent roll commencing at initial occupancy;

statement of income and expense, and cash flow for the month, together with a balance sheet, each of which may be unaudited;

a summary of any tenant compliance review conducted by the Managing Member (which must be conducted not less frequently than every twelve (12) months) summarizing compliance with the Minimum Set-Aside Test, Rent Restriction Test and other requirements to qualify for the Tax Credits, including those set forth in the Regulatory Agreement and Extended Use Agreement;

upon commencement of leasing activity, and if requested by the Special Member, a schedule of budgeted leasing activity with comparison against actual leasing activity for such month as well as a description of all marketing activities; and

if requested by the Special Member, a summary of any on-site physical inspection of the Apartment Complex by the Managing Member (including photographs), which must be conducted not less frequently than every twelve (12) months.

Monthly reports as described in this Section 13.04 shall be delivered to the Members within twenty (20) days after the last day of the prior month which is the subject of the report.

Quarterly Reports. The Managing Member shall cause to be prepared and distributed to all Persons who were Members at any time during the fiscal quarter prior to the date the report is due, the following reports:

all monthly reports not previously delivered as required under Section 13.04(a);

a quarterly statement of income and expense and a cash flow statement for the quarter and the period then ending, which may be unaudited;

a balance sheet, which may be unaudited;

upon the occurrence of a significant or material activity affecting the Company and the Apartment Complex during the quarter, a statement of operations describing such activity;

if requested by the Special Member, a schedule of all fees, other compensation, distributions and reimbursements of expenses paid on behalf of the Company to the Managing Member or any of its Affiliates during the quarter; and

All quarterly reports from the Managing Member as described in this subsection (b) shall be delivered to the Members within thirty (30) days of the last day of the fiscal quarter which is the subject of the report.

**Annual Reports.** The Managing Member shall cause to be prepared and distributed to all Persons who were Members at any time during the fiscal year of the Company, the following reports:

13.04(a); all monthly reports not previously delivered as required under Section

13.04(b); all quarterly reports not previously delivered as required under Section

within seventy-five (75) days after the close of each fiscal year of the Company audited financial statements of the Company for the fiscal year prepared by the Accountants (or other independent accountants approved by the Special Member) in accordance with tax basis accounting with adjustments for generally accepted accounting principles, and such financial information with respect to each fiscal year of the Company as shall be reportable for federal and state income tax purposes; and within ninety (90) days after the close of each fiscal year of the Company unaudited financial statements of the Guarantor for the fiscal year; provided, however, that audited financial statements of the Guarantor for the fiscal year shall be prepared by the Accountants (or other independent accountants approved by the Special Member) in accordance with tax basis accounting with adjustments for generally accepted accounting principles and distributed as soon as reasonably possible after the distribution of the unaudited financials.

Company: within seventy-five (75) days after the close of each fiscal year of the

tax basis balance sheet, statements of income and expense, Members' equity, and cash flows (including a calculation of Net Cash Flow and Surplus Cash) prepared by the Accountants and accompanied by an Accountant's report and opinion;

a report of the Managing Member detailing distributions made during the fiscal year, separately identifying distributions from Net Cash Flow for the reporting fiscal year and prior fiscal years, proceeds from Capital Transactions, and proceeds from reserves or other deposits held by or for the benefit of the Company;

a schedule of all fees, other compensation, distributions and reimbursements of expenses to the Managing Member or any of its Affiliates during the fiscal year, not previously reported to the Members under Section 13.04(a) or (b) above; and

the current rent roll for the Apartment Complex.

**Annual Certification as to Project Loans and Other Matters.** Within sixty (60) days after the end of each fiscal year of the Company, the Managing Member shall provide to the Investor Member:

a certification by the Managing Member that (A) all Project Loan payments and taxes and insurance payments with respect to the Apartment Complex are current as of the date of the year-end report, (B) there is no material default under the Project Documents or this Agreement, or if there is any material default, a description thereof, and (C) it

has not received notice of any building, health or fire code violation or similar violation of a governmental law, ordinance or regulation against the Apartment Complex or, if any such notice of any violation has been received, a description thereof;

if requested by the Special Member, a descriptive statement of all transactions during the fiscal year between the Company and the Managing Member and/or any Affiliate, including the nature of the transaction and the payments involved (including accrued cash or other payments); and

a copy of the annual report to be filed with the Agency concerning the status of the Apartment Complex as low-income housing, to the extent such report is required by the Agency.

Information Upon Investor Member Request. Upon the written request of the Investor Member for further information with respect to any matter covered in Section 13.04(a) through (d) above, the Managing Member shall furnish such information within ten (10) days of receipt of such request.

Annual Reports on Occupancy and Other Operational Matters. The Managing Member, on behalf of the Company, shall send to the Investor Member, on or before March 31 in each year, a report which shall state:

the then occupancy level of the Apartment Complex;

if there are any Operating Deficits or anticipated Operating Deficits, the manner in which such Deficits will be funded; and

such other matters as shall be material to the operation of the Company, including, without limitation, any building, health or fire code violation or similar violation of a governmental law, ordinance or regulation by the Apartment Complex of which the Managing Member is aware.

Estimates of Tax Items and Budgets. Upon the request of the Special Member and not less than sixty (60) days prior to the end of each fiscal year, the Managing Member, on behalf of the Company, shall send to the Investor Member, for its Consent, an estimate of the Investor Member's share of the Tax Credits, profits and losses of the Company for federal income tax purposes for the current fiscal year, and the budget for the Company and Apartment Complex for the fiscal year to come.

Reports on Defaults and Other Matters. The Managing Member shall send the Investor Member a detailed report of any of the following events within fifteen (15) days after the end of any calendar quarter during which such event occurs:

a material default by the Company under the Project Documents or in payment of any mortgage, taxes, interest or other obligations on secured or unsecured debt;

the reduction or termination of any reserve by application of funds therein for purposes materially different from those for which such reserve was established;

the receipt by the Managing Member of any notice of a material fact which may substantially affect further distributions;

the pledge or collateralization by any Member of its Interest in the Company; or

such other matters as shall be material to the operation of the Company including, without limitation, any building, health or fire code violation or similar violation of a governmental law, ordinance or regulation by the Apartment Complex of which the Managing Member is aware.

After the date of Substantial Completion, the Managing Member, on behalf of the Company, shall send to the Investor Member, a copy of all applicable periodic reports covering the status of the Apartment Complex as may be required by the Agency or the Project Lenders, within ten (10) days of submission of such reports to the Agency and/or applicable Project Lender.

**Liquidated Damages.**

In the event that the tax returns and audited statements provided for in Sections 13.04(a) through (d) above are, at any time, not provided within the time frames set forth therein, unless such delay is caused solely by the Special Member, the Managing Member shall be obligated to pay to the Special Member, upon demand, the sum of \$150.00 per day, as liquidated damages, for each day from the date upon which such report(s) or information is (are) due pursuant to the provisions of the aforesaid Sections until the date upon which such report(s) or information is (are) provided in form acceptable to the Special Member. If the Managing Member provides the foregoing information within 5 Business Days after receipt of Notice from the Special Member, it shall not be obligated to pay such liquidated damages. In the event the Managing Member does not pay such fee as required above, the amount owed by the Managing Member shall be distributed to the Special Member from Net Cash Flow prior to any payment of Net Cash Flow which might otherwise be payable to the Managing Member or its Affiliates pursuant to the provisions of Section 11.03. Such amount shall be included as an amount guaranteed by the Guarantor pursuant to the Guaranty.

In the event that the tax returns and those reports prepared by the Accountants in any of the above provisions of this Section 13.04 are not met, the Investor Member, in its reasonable discretion, may direct the Managing Member to dismiss the Accountants, and to designate successor Accountants, subject to the approval of the Special Member; provided, however, that the fees of such successor Accountants shall be paid by the Company.

**Notification of Default, Service Proceedings, and Agency Audits.** In addition to any requirements set forth in Article 13 hereof, the Managing Member shall immediately notify the Investor Member of any written or oral notice of (i) any default or failure of compliance with respect to any of the Project Loans, Project Documents or any other financial contractual or governmental obligation of the Company or the Managing Member, and (ii) any Service proceeding regarding the Apartment Complex or the Company. Any such notice shall be accompanied by copies of the foregoing documents.

**13.05 Section 754 Elections.** In the event of a transfer of all or any part of the Interest of a Managing Member or of a Investor Member, the Company may elect, pursuant to Sections 743 and 754 of the Code (or any corresponding provision of succeeding law), to adjust the basis of the Company property if, in the opinion of the Investor Member, based upon the advice of the Accountants, such election would be most advantageous to the Investor Member. Each

Member agrees to furnish the Company with all information necessary to give effect to such election.

**13.06 Fiscal Year and Accounting Method.** The fiscal year of the Company shall be the fiscal year of the Investor Member, which ends at December 31, or such other date as is necessary to be consistent with the Investor Member's accounting practices. All Company accounts shall be determined on an accrual basis.

**13.07 Tax Matters Member.**

The Managing Member hereby is designated as Tax Matters Member of the Company, and shall engage in such undertakings as are required of the Tax Matters Member of the Company, as provided in regulations pursuant to Section 6231 of the Code. Each Member, by its execution of this Agreement, Consents to such designation of the Tax Matters Member and agrees to execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such Consent.

The Tax Matters Member shall have and perform all of the duties required under the Code, including the following duties:

Furnish the name, address, profits interest, and taxpayer identification number of each Member to the IRS; and

Within five calendar days after the receipt of any correspondence or communication relating to the Company or a Member from the IRS, the Tax Matters Member shall forward to each Member a photocopy of all such correspondence or communication(s). The Tax Matters Member shall, within five calendar days thereafter, advise each Member in writing of the substance and form of any conversation or communication held with any representative of the IRS.

The Tax Matters Member shall not without the Consent of the Investor Members:

Extend the statute of limitations for assessing or computing any tax liability against the Company (or the amount or character of any Company tax items);

Settle any audit with the IRS concerning the adjustment or readjustment of any Company item(s) (within the meaning of Section 6231(a)(3) of the Code);

File a request for an administrative adjustment with the IRS at any time or file a petition for judicial review with respect to any such request;

Initiate or settle any judicial review or action concerning the amount or character of any Company tax item(s) (within the meaning of Section 6231(a)(3) of the Code);

Intervene in any action brought by any other Member for judicial review of a final adjustment; or

Take any other action not expressly permitted by this Section 13.07 on behalf of the Members of the Company in connection with any administrative or judicial tax proceeding.

In the event of any Company-level proceeding instituted by the IRS pursuant to Sections 6221 through 6233 of the Code, the Tax Matters Member shall consult with the Investor Members regarding the nature and content of all action and defense to be taken by the Company in response to such proceeding. The Tax Matters Member also shall consult with the Investor Members regarding the nature and content of any proceeding pursuant to Sections 6221 through 6233 of the Code instituted by or on behalf of the Company (including the decision to institute proceedings, whether administrative or judicial, and whether in response to a previous IRS proceeding against the Company or otherwise).

The Company shall indemnify and reimburse the Tax Matters Member for all expenses, including legal and accounting fees, claims, liabilities, losses and damages incurred in connection with any administrative or judicial proceeding with respect to the tax liability of the Members. The payment of all such expenses shall be made before any distributions are made from Net Cash Flow or any discretionary reserves are set aside by the Managing Member. The Managing Member shall have the obligation to provide funds for such purpose. Notwithstanding the foregoing, the provisions on liability and indemnification of the Managing Member set forth in Section 8.07 of this Agreement shall be fully applicable to the Tax Matters Member in its capacity as such.

#### **ARTICLE 14. FEES AND PAYMENTS**

**14.01 Development Fee.** The Company has entered into a Development Agreement of even date herewith with the Developer for its services in connection with the development and construction of the Apartment Complex. In consideration for such services, a Development Fee in a total amount equal to \$2,100,000 shall be payable by the Company, in accordance with the terms of the Development Agreement and Article 11 of this Agreement. Of the total Development Fee, approximately \$2,100,000 is anticipated to be deferred and paid out of Net Cash Flow.

**14.02 Incentive Management Fee.** The Company has entered into a Supervisory and Incentive Management Fee Agreement, in the form attached hereto as Exhibit E, with the Managing Member of even date herewith for its services in managing the business of the Company for the period from the date hereof throughout the term of the Company. In no event shall the Incentive Management Fee be cumulative. Payment of such fee shall be in accordance with any applicable requirements of the Project Lenders.

**14.03 Withholding of Fee Payments.**

**Conditions for Withholding.** In the event that (i) the Managing Member or any successor Managing Member shall not have substantially complied with any material provisions under this Agreement, after Notice from the Investor Member of such noncompliance and failure to cure such noncompliance within a period of thirty (30) days from and after the date of such Notice, or (ii) any Project Lender shall have declared the Company to be in default under any Project Loan and such default shall not have been cured within the applicable cure period, or (iii) foreclosure proceedings shall have been commenced against the Apartment Complex, then (A) the Managing Member shall be in default of this Agreement, and the Company shall withhold payment of any installment of fees and/or allowance payable pursuant to Sections 14.01 and/or 14.02 and (B) the Managing Member shall be liable for the Company's payment of any and all installments of the Development Fee payable pursuant to Section 14.01. Any amount of Development Fee withheld hereunder shall be withheld only until such time as the final payment is due under the Development Agreement and shall be paid in accordance with Section 5.01(b) hereof.

**Release of Fees.** All amounts so withheld by the Company under this Section 14.03 shall be promptly released to the payees thereof only after the Managing Member has cured the default justifying the withholding, as demonstrated by evidence reasonably acceptable to the Investor Member.

**14.04 Company Management Fee.** The Company shall pay the Managing Member a cumulative Company Management Fee annually in the amount of \$5,000 for its services in managing the Company and monitoring the day-to-day operations of the Apartment Complex. The Company Management Fee will commence on the month following the date on which a certificate of occupancy has been issued for the Apartment Complex and such fee shall increase annually by three percent (3%) of the Company Management Fee for the preceding year and shall be payable in accordance with Section 11.03(b).

**ARTICLE 15.  
CONSENTS, VOTING AND MEETINGS**

**15.01 Method of Giving Consent.** Any Consent required by this Agreement may be given by a written Consent given by the consenting Member and received by the Managing Member at or prior to the doing of the act or thing for which the Consent is solicited.

**15.02 Submissions to Investor Members.** The Managing Member shall give the Investor Member Notice of any proposal or other matter required by any provision of this Agreement or by law to be submitted for consideration and approval of the Investor Members. Such Notice shall include any information required by the relevant provision or by law.

**15.03 Meetings; Submission of Matter for Voting.** A majority in Interest of the Investor Members shall have the authority to convene meetings of the Company and to submit matters to a vote of the Members.

**ARTICLE 16.  
GENERAL PROVISIONS**

16.01 Burden and Benefit. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

16.02 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State.

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

16.04 Separability of Provisions. Each provision of this Agreement shall be considered separable, and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement which are valid.

16.05 Entire Agreement. This Agreement sets forth all (and is intended by all parties to be an integration of all) of the representations, promises, agreements and understandings among the parties hereto with respect to the Company, the Company business and the property of the Company, and there are no representations, promises, agreements or understandings, oral or written, express or implied, among them other than as set forth or incorporated herein.

16.06 Proposal and Adoption of Amendments. This Agreement may be amended by the Managing Member with the Consent of the Investor Member; provided that such Consent shall not be unreasonably withheld as to any proposed amendment which does not affect the obligations of the Managing Member or the rights of any of the Members under this Agreement; and further provided that, if the Investor Member proposes an amendment to this Agreement which either (a) increases or imposes upon the Investor Member the obligation to restore a deficit balance in its Capital Account, or (b) prospectively decreases the obligation of the Investor Member to restore a deficit balance in its Capital Account in a subsequent Fiscal Year of the Company, the Managing Member shall effectuate the adoption of such amendment; provided, however, that the Managing Member shall not be liable to the Investor Member for any adverse tax consequences that may result from any such increase or decrease.

16.07 Liability of the Investor Member. Notwithstanding anything to the contrary contained herein, neither the Investor Member nor any of its members or Members, general or limited, as the case may be, shall have any personal liability to any of the parties to this Agreement with regard to the representations and covenants extended, or the obligations undertaken, by the Investor Member under this Agreement, except that the Investor Member shall be personally obligated to fund its Capital Contributions when, as and if required by this Agreement and subject to any defenses and offsets it may have with respect to the funding of such Capital Contributions. In the event that the Investor Member shall be in default under any of the terms of this Agreement, the sole recourse of any party hereto for any indebtedness due hereunder, or for any damages resulting from any such default by the Investor Member, shall be either against the Interest of the Investor Member and the capital contributions of the investor limited partners of the Investor Member (either directly or through another Investor Member) allocated to, and remaining for investment in, the Company; provided, however, that under no circumstances shall the liability of the Investor Member for any such default be in excess of the amount of Capital Contribution payable by the Investor Member to the Company, under the

terms of this Agreement, at the time of such default, less the value of the Interest of the Investor Member, if such Interest is claimed as compensation for damages.

**16.08 Notices.** All notices, demands, solicitations of consent or approval, and other communications hereunder required or permitted shall be in writing and shall be deemed to have been given (i) when personally delivered or telecopied, (ii) one business day after the date when deposited with an overnight courier, or (iii) five (5) days after the date when deposited in the United States mail and sent postage prepaid by registered or certified mail, return receipt requested, addressed as follows:

To the Investor Member or Special Member:

Conifer 2011 Tax Credit Fund, LP  
c/o Red Stone Equity Partners, LLC  
200 Public Square, Suite 1550  
Cleveland, OH 44114  
Attention: Managing Director & General Counsel  
Fax No.: (216) 820-4751  
with a copy to:

Nixon Peabody LLP  
100 Summer Street  
Boston, Massachusetts 02110  
Attention: Roger W. Holmes, Esq.  
Fax No.: (866) 947-1881

To the Managing Member:

James Street Managing Member, LLC  
c/o Conifer Realty, LLC  
183 East Main Street  
6th Floor  
Rochester, New York 14604  
Telephone No.: (585) 324-0500  
Fax No.: (585) 324-0555

**16.09 Headings.** All section headings are for convenience only and shall not be taken into consideration in interpreting or otherwise construing this Agreement.

**16.10 Pronouns and Plurals.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or persons may require.

**16.11 Waiver of Jury Trial.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY PROJECT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT,

**IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

**ARTICLE 17.  
NYSHFA REGULATIONS**

**The Company has applied for certain Project Loans from NYSHFA. The Company acknowledges that any review of the provisions of this Agreement by NYSHFA is performed in accordance with its responsibility as a Lender and is intended only to assure that the Company is validly formed according to law, with the legal authority to borrow the funds which will constitute the Project Loans and to operate the Apartment Complex securing the Project Loans. Notwithstanding any other provisions herein, the Company acknowledges and agrees that as a condition of obtaining the Project Loans, that NYSHFA statutes, rules and regulations and all the financing documents in connection with the Project Loans, are applicable to the Company and the Apartment Complex securing the Project Loans. The Company further acknowledges that, except as contained in this Article 18, NYSHFA makes no representations express or implied, as to this Agreement; and the Company and its Members shall not rely upon NYSHFA review of this Agreement.**

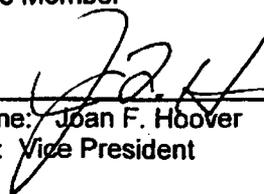
*(signature page follows)*

IN WITNESS WHEREOF, the parties have affixed their signatures and seals to this Amended and Restated Operating Agreement of James Street Apartments, LLC as of the date first written above.

**MANAGING MEMBER:**

**JAMES STREET MANAGING MEMBER, LLC,**  
a New York limited liability company

By: Conifer Realty, LLC, a New York limited liability company  
Its: Sole Member

By:   
Name: Joan F. Hoover  
Its: Vice President

**INVESTOR MEMBER:**

**CONIFER 2011 TAX CREDIT FUND, LP,**  
a Delaware limited partnership

By: RSEP MM, LLC, its Managing Member

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

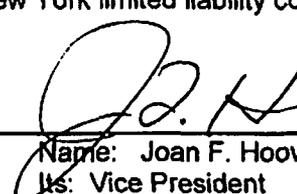
**SPECIAL MEMBER:**

**RED STONE EQUITY MANAGER, LLC,**  
a Delaware limited liability company

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

**WITHDRAWING MEMBER:**

**CONIFER REALTY, LLC,**  
a New York limited liability company

By:   
Name: Joan F. Hoover  
Its: Vice President

The undersigned hereby consent to the foregoing Agreement as of the date first set forth hereinabove.

**MANAGING MEMBERS:**

James Street Managing Member, LLC, a New York limited liability company

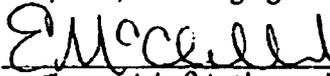
By: Conifer Realty, LLC, a New York limited liability company, its sole Member

By: \_\_\_\_\_  
Name: Joan F. Hoover  
Its: Vice President

**INVESTOR MEMBER:**

Conifer 2011 Tax Credit Fund, LP, a Delaware limited partnership

By: RSEP MM, LLC, its Managing Member

By:   
Name: Eric McClelland  
Title: Managing Member

**SPECIAL MEMBER:**

Red Stone Equity Manager, LLC, a Delaware limited liability company

By:   
Name: Eric McClelland  
Title: Managing Member

## **TABLE OF EXHIBITS**

- A Legal Description
- B Contribution Certificate
- C Guaranty Agreement
- D Development Agreement
- E Supervisory Management and Incentive Agreement
- F Pledge and Security Agreement
- G Post Closing Due Diligence Checklist
- H Summary of Project Loans
- I Projections
- J Project Development Budget
- K Insurance Requirements
- L [Intentionally Omitted]
- M [Intentionally Omitted]
- N Management Agreement
- O Purchase Option Agreement

**EXHIBIT A  
TO OPERATING AGREEMENT**

**LEGAL DESCRIPTION**

**PARCEL ONE (615 James Street, Syracuse, NY, TA#017.00-19-05)**

**ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Lot Number 1 of Block Number 31 in said City, bounded and described as follows:**

**BEGINNING AT A POINT, said point being North 55 degrees 44 minutes 50 seconds East a distance of 116.20" from the intersection of the northerly line of James Street with the easterly line of McBride Street.**

**THENCE North 30 degrees 29 minutes 10 seconds West for a distance of 264.27 feet to a point on the southerly line of East Willow Street;**

**THENCE North 55 degrees 44 minutes 50 seconds East for a distance of 83.80 feet along the southerly line of East Willow Street to a point;**

**THENCE South 30 degrees 29 minutes 10 seconds East for a distance of 264.27 feet to a point on the northerly line of James Street;**

**THENCE South 55 degrees 44 minutes 50 seconds West for a distance of 83.80 feet TO THE POINT AND PLACE OF BEGINNING.**

and

**PARCEL TWO (622 James Street, Syracuse, NY, TA#103.00-05-04)**

**ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Block 33 in said City, bounded and described as follows, viz:**

**BEGINNING at a point in the southeasterly line of James Street 188 feet northeasterly along said street line from the northeasterly line of N. McBride Street;**

**thence along said southeasterly line of James Street N. 55° 44' 50" E., 74.53 feet to a point;**

**thence S. 30° 45' 40" E., 125.00 feet to a point;**

**thence S. 55° 44' 50: W., 19.00 feet to a point;**

**thence S. 30° 45' 40" E., 92.76 feet to a point;**

**thence N. 59° 14' 20" E., 66.00 feet to a point;**

**thence S. 30° 45' 40: E., 104.09 feet to a point;**

**thence S. 59° 14' 20" W., 90.73 feet to a point;**

**thence N. 34° 07' 00" W., 179.73 feet to a point;**

thence S. 55° 44' 50" W., 12.00 feet to a point;

thence N. 34° 07' 00" W., 140.00 feet to the point and place of beginning.

TOGETHER WITH the benefits, in common with others, over a 15 foot right of way known as Wilkinson Avenue running westerly to N. McBride Street as recited in deeds at Liber 276, page 39, Liber 924, page 275 and Liber 2443, page 599.

**EXHIBIT B  
TO OPERATING AGREEMENT**

**CONTRIBUTION CERTIFICATE**

(See Attached)

## CONTRIBUTION CERTIFICATE

WHEREAS, the undersigned is the Vice President of Conifer Realty, LLC, the sole member of James Street Managing Member, LLC, a New York limited liability company (the "Managing Member");

WHEREAS, the Managing Member is the managing member of James Street Apartments, LLC (the "Company");

WHEREAS, the Managing Member, Conifer 2011 Tax Credit Fund, LP, a Delaware limited partnership (the "Investor Member"), and Red Stone Equity Manager, LLC, a Delaware limited liability company (the "Special Member") have entered into that certain Amended and Restated Operating Agreement (the "Operating Agreement"), dated as of December 22, 2011 (all capitalized terms not otherwise defined herein shall have the applicable meaning set forth in the Operating Agreement); and

WHEREAS, the Managing Member has requested that the Investor Member make its \_\_\_\_\_ Capital Contribution to the Company.

NOW, THEREFORE, the undersigned hereby certifies to the Investor Member and the Special Member as follows:

1. The Company is not in default under any of the Project Documents and no event has occurred which, with the giving of notice or the passage of time, or both, could constitute a default by the Company under any of the Project Documents.
2. The Managing Member is not in default under the Operating Agreement or any of the Project Documents to which it is a party and no event has occurred which, with the giving of notice or the passage of time, or both, could constitute a default by the Managing Member under the Operating Agreement or any of the Project Documents to which it is a party.
3. To the best knowledge of the Managing Member, the Managing Member is not in default under the Operating Agreement or any of the Project Documents to which it is a party and no event has occurred which, with the giving of notice or the passage of time, or both, could constitute a default by the Managing Member under the Operating Agreement or any of the Project Documents to which it is a party.
4. No Guarantor is in default under the Guaranty Agreement or any of the Project Documents to which it is a party and no event has occurred which, with the giving of notice or the passage of time, or both, could constitute a default by a Guarantor under the Guaranty Agreement or any of the Project Documents to which it is a party.
5. No condition for repurchase of the Investor Member's Interest exists under Section 5.08 of the Operating Agreement, and no event has occurred which, with the giving of notice or the passage of time, or both, could give rise to a condition to repurchase of the Investor Member's Interest under Section 5.08 of the Operating Agreement.

6. The installments of the Investor Member's Capital Contributions previously contributed to the Company by the Investor Member, and the proceeds of all Project Loans previously funded to the Company by the Project Lenders, have been applied by the Company in accordance with the Development Budget for the Apartment Complex approved by the Investor Member.

7. All of the representations and warranties of the Managing Member set forth in the Operating Agreement are true, correct and complete as of the date hereof and the Managing Member has performed all covenants required to be performed by them on or before the date hereof.

8. There have been no changes or modifications of any kind to the Plans and Specifications, except as disclosed to the Investor Member in writing.

9. All conditions precedent to funding of the Investor Member's Capital Contribution to which this Certificate relates have been satisfied in full.

This Contribution Certificate is made on the date hereof as a condition to a Capital Contribution under the Operating Agreement and the Exhibits.

Dated as of \_\_\_\_\_, 200\_\_

**JAMES STREET MANAGING MEMBER,  
LLC, a New York limited liability company**

**By: Conifer Realty, LLC, a New York limited  
liability company  
Its: Sole Member**

**By: \_\_\_\_\_  
Name: Andrew I. Crossed  
Its: Executive Vice President**

**EXHIBIT C  
TO OPERATING AGREEMENT**

**GUARANTY AGREEMENT**

(See Attached)

## GUARANTY AGREEMENT

**THIS AFFILIATE GUARANTY** (this "Guaranty Agreement"), made as of December 22, 2011, is by Conifer, LLC, a New York limited liability company, Conifer Realty, LLC, a New York limited liability company and James Street Managing Member, LLC, a New York limited liability company (collectively, the "Guarantor"), for the benefit of Conifer 2011 Tax Credit Fund, LP, its successors and/or assigns ("Red Stone").

### Recitals

WHEREAS, James Street Managing Member, LLC, a New York limited liability company (the "Managing Member") is the Managing Member of James Street Apartments, LLC (the "Company");

WHEREAS, the Company is governed by its Amended and Restated Operating Agreement dated as of December 22, 2011 (the "Operating Agreement");

WHEREAS, Conifer, LLC, a New York limited liability company ("Developer") and the Company have entered into that certain Development Agreement dated as of the date hereof (the "Development Agreement");

WHEREAS, Red Stone has been requested to enter into the Operating Agreement and the Company with the Managing Member;

WHEREAS, Guarantor is an affiliate of James Street Managing Member, LLC, and believes it shall substantially benefit, directly or indirectly, from Red Stone's entering into the Operating Agreement and the Company with James Street Managing Member, LLC; and

WHEREAS, as a condition to entering into the Operating Agreement and the Company, Red Stone has required the Guarantor to guarantee to Red Stone the obligations of the Managing Member and the Developer under the Operating Agreement and certain other items as herein set forth;

**NOW, THEREFORE**, in order to induce Red Stone to enter into the Operating Agreement and the Company in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Guarantor hereby covenants and agrees as follows:

1. Guarantor irrevocably and unconditionally fully guarantees the due, prompt and complete performance of each and every one of the following obligations: (a) the payment and performance by the Managing Member of each and every obligation of the Managing Member due under Sections 4.02, 4.03, 5.01(b), 5.03, 5.08, 6.05, 7.06, 8.08, 8.09 and 13.04(j) of the Operating Agreement; and (b) the payment and performance by the Developer of each and every obligation of the Developer under the Development Agreement; and (c) the due, prompt and complete payment of all costs and expenses (including, without limitation, reasonable attorneys'

fees) incurred by Red Stone in collection of the enforcement of this Guaranty Agreement against the Guarantor (the obligations described in this Paragraph 1 are hereinafter collectively referred to as the "Indebtedness").

2. Guarantor hereby grants to Red Stone, in the discretion of Red Stone, and without notice to any Guarantor, the power and authority to deal in any lawful manner with the Indebtedness and the other obligations guaranteed hereby, and without limiting the generality of the foregoing, further power and authority, from time to time:

(a) to renew, compromise, extend, accelerate or otherwise change the time or place of payment of or to otherwise change the terms of the Indebtedness;

(b) to modify or to waive any of the terms of the Operating Agreement, the Development Agreement and/or any other obligations guaranteed hereby;

(c) to take and hold security for the payment of the Indebtedness and/or performance of the other obligations guaranteed hereby and to impair, exhaust, exchange, enforce, waive or release any such security;

(d) to direct the order or manner of sale of any such security as Red Stone, in its discretion, may determine;

(e) to grant any indulgence, forbearance or waiver with respect to the Indebtedness or any of the other obligations guaranteed hereby;

(f) to release or waive rights against any one or more Guarantors without releasing or waiving any rights against any other Guarantor; and/or

(g) to agree to any valuation by Red Stone of any collateral securing payment of any of the Indebtedness in any proceedings under the United States Bankruptcy Code concerning Red Stone or the Guarantor.

The liability of Guarantor hereunder shall not be affected, impaired or reduced in any way by any action taken by Red Stone under the foregoing provisions or any other provision hereof, or by any delay, failure or refusal of Red Stone to exercise any right or remedy it may have against the Managing Member or any other person, firm or corporation, including other guarantors, if any, liable for all or any part of the Indebtedness or any of the other obligations guaranteed hereby.

3. Guarantor agrees that if any of the Indebtedness is not fully and timely paid or performed according to the tenor thereof, whether by acceleration or otherwise, the Guarantor shall immediately upon receipt of written demand therefor from Red Stone pay all of the Indebtedness hereby guaranteed in like manner as if the Indebtedness constituted the direct and primary obligation of Guarantor. The Guarantor shall not have any right of subrogation as a result of any payment hereunder or any other payment made by the Guarantor on account of the Indebtedness, and Guarantor hereby waives, releases and relinquishes any claim based on any right of subrogation, any claim for unjust enrichment or any other theory that would entitle a

Guarantor to a claim against the Managing Member based on any payment made hereunder or otherwise on account of the Indebtedness.

4. This Guaranty Agreement has been duly executed and delivered to Red Stone, and the obligations of Guarantor set forth herein are the legal, valid and binding obligations of the Guarantor enforceable in accordance with the terms hereof subject to creditors rights and general principles of equity. Neither the entry into nor the performance of and compliance with this Guaranty Agreement has resulted or will result in any violation of, or a conflict with or a default under any judgment, decree, order, mortgage, indenture contract, agreement or lease by which the Guarantor or any of its property is bound or any statute, rule or regulation applicable to the Guarantor.

5. The Guarantor represents and warrants that it has a minimum liquidity (cash and marketable securities) of \$1,000,000 and a minimum net worth (determined in accordance with generally accepted accounting principles) of \$10,000,000. On or before April 1 of each year, Guarantor will provide evidence to Red Stone that it has met the minimum liquidity and net worth requirements set forth above.

6. This Guaranty Agreement and the obligations of Guarantor hereunder shall be continuing and irrevocable until the Indebtedness has been satisfied in full. Notwithstanding the foregoing or anything else set forth herein, and in addition thereto, if at any time all or any part of any payment received by Red Stone from a Guarantor under or with respect to this Guaranty Agreement is or must be rescinded or returned for any reason whatsoever (including, but not limited to, determination that said payment was a voidable preference or fraudulent transfer under insolvency, bankruptcy or reorganization laws), then Guarantor's obligations hereunder shall, to the extent of the payment rescinded or returned, be deemed to have continued in existence, notwithstanding such previous receipt of payment by Red Stone, and Guarantor's obligations hereunder shall continue to be effective or be reinstated as to such payment, all as though such previous payment to Red Stone had never been made. The provisions of the foregoing sentence shall survive termination of this Guaranty Agreement, and shall remain a valid and binding obligation of Guarantor until satisfied.

7. Guarantor hereby waives notice of acceptance of this Guaranty Agreement by Red Stone and this Guaranty Agreement shall immediately be binding upon Guarantor. Any Guarantor who executes this Agreement shall be fully bound hereby regardless of whether or not any other Guarantor subsequently executes this Guaranty Agreement.

8. Guarantor hereby waives and agrees not to assert or take advantage of:

(a) any right to require the Managing Member to proceed against any other person or to proceed against or exhaust any security held by the Managing Member at any time or to pursue any other remedy in the Managing Member's power before proceeding against any one or more Guarantors hereunder;

(b) any right to require Red Stone to proceed against the Managing Member or any other person or to proceed against or exhaust any security held by Red Stone at any time

or to pursue any other remedy in Red Stone's power before proceeding against Guarantor hereunder;

(c) the defense of the statute of limitations in any action hereunder or in any action for the collection of the Indebtedness or the performance of any other obligations guaranteed hereby;

(d) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or persons or the failure of Red Stone to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;

(e) demand, presentment for payment, notice of non-payment, protest, notice of protest and all other notices of any kind, including, without limitation, notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Red Stone or any endorser or creditor of Red Stone or any Guarantor or on the part of any other person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by Red Stone or in connection with the Indebtedness;

(f) any defense based upon an election of remedies by Red Stone, the right of Guarantor to proceed against Red Stone for reimbursement, or both, or if contrary to the express agreement of the parties, New York State law is deemed to apply to this Guaranty, any rights or benefits under the bankruptcy and insolvency laws of the State of New York or under Sections 364 and 1111 of the U.S. Bankruptcy Code as same may be amended or replaced from time to time;

(g) any election by Red Stone to exercise any right or remedy it may have against the Company or any security held by Red Stone, including, without limitation, the right to foreclose upon any such security by judicial or non-judicial sale, without affecting or impairing in any way the liability of Guarantor hereunder, except to the extent the indebtedness has been paid, and Guarantor waives any default arising out of the absence, impairment or loss of any right of reimbursement, contribution or subrogation or any other right or remedy of the Guarantor against the Company or any such security whether resulting from such election by Red Stone or otherwise. Guarantor understands that if all or any part of the liability of the Company to Red Stone for the Indebtedness is secured by real property Guarantor shall be liable for the full amount of their liability hereunder, notwithstanding foreclosure on such real property by trustee sale or any other reason impairing the Guarantor's right to proceed against the Company; and

(h) all duty or obligation on the part of Red Stone to perfect, protect, not impair, retain or enforce any security for the payment of the Indebtedness or performance of any of the other obligations guaranteed hereby.

9. All existing and future indebtedness of the Managing Member to the Guarantor or to any person controlled or owned in whole or in part by any of the Guarantor and, the right of the Guarantor to withdraw or to cause or permit any person controlled or owned in whole or in

part by any of the Guarantors to withdraw any capital invested by such Guarantor or such person in the Managing Member, is hereby subordinated to the Indebtedness at any time after a default exists under the Indebtedness. Furthermore, without the prior written consent of Red Stone, such subordinated indebtedness shall not be paid and such capital shall not be withdrawn in whole or in part nor shall any Guarantor accept or cause or permit any person controlled or owned in whole or in part by a Guarantor to accept any payment of or on account of any such subordinated indebtedness or as a withdrawal of capital at any time after a default exists under the Indebtedness. Any payment received by any Guarantor in violation of this Guaranty Agreement shall be received by the person to whom paid in trust for Red Stone, and such Guarantor shall cause the same to be paid to Red Stone immediately on account of the Indebtedness. No such payment shall reduce or affect in any manner the liability of the Guarantor under this Guaranty Agreement.

10. The amount of Guarantor's liability and all rights, powers and remedies of Red Stone hereunder shall be cumulative and not alternative and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Red Stone under the Operating Agreement, any document or agreement relating in any way to the terms and provisions thereof or otherwise by law. With respect to each Guarantor, this Guaranty Agreement is in addition to and exclusive of the guaranty of any other Guarantor executing this Guaranty Agreement or any other person or entity which guarantees the Indebtedness and/or the other obligations guaranteed hereby.

11. The liability of each Guarantor under this Guaranty Agreement shall be an absolute, direct, immediate and unconditional guarantee of payment and not of collectability. The obligations of each Guarantor hereunder are independent of the obligations of the Managing Member or any other party which may be initially or otherwise responsible for performance or payment of the obligations hereunder guaranteed and each other Guarantor, and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against any one or more Guarantor, whether or not the Managing Member is joined therein or a separate action or actions are brought against the Managing Member. Red Stone may maintain successive actions for other defaults. Red Stone's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless the Indebtedness has been paid in full.

12. Red Stone, in its sole discretion, may at any time enter into agreements with the Managing Member or with any other person to amend, modify or change the Operating Agreement or any document or agreement relating in any way to the terms and provisions thereof, or may at any time waive or release any provision or provisions thereof and, with reference thereto, may make and enter into all such agreements as Red Stone may deem proper or desirable, without any notice or further assent from any Guarantor and without in any manner impairing or affecting this Guaranty Agreement or any of the rights of Red Stone or any Guarantor's obligations hereunder.

13. The Guarantor hereby agrees to pay to Red Stone, upon demand, reasonable attorneys' fees and all other costs and other expenses which Red Stone expends or incurs in collecting or compromising the Indebtedness or in enforcing this Guaranty Agreement against any Guarantor whether or not suit is filed, including, without limitation, all costs, attorneys' fees

and expenses incurred by Red Stone in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceedings involving a Guarantor which in any way affect the exercise by Red Stone of its rights and remedies hereunder. Any and all such costs, attorneys' fees and expenses not so paid shall bear interest at an annual interest rate equal to the lesser of (i) 18%, or (ii) the highest rate permitted by applicable law, from the date incurred by Red Stone until paid by the Guarantor.

14. Should any one or more provisions of this Guaranty Agreement be determined to be *illegal or unenforceable*, all other provisions nevertheless shall be effective.

15. No provision of this Guaranty Agreement or right of Red Stone hereunder can be waived nor can any Guarantor be released from such Guarantor's obligations hereunder except by a writing duly executed by Red Stone. This Guaranty Agreement may not be modified, amended, revised, revoked, terminated, changed or varied in any way whatsoever except by the express terms of a writing duly executed by Red Stone.

16. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, Company, corporation, trust or other legal entity of any kind whatsoever.

17. The Guarantor acknowledges that it is contemplated that Red Stone may assign its interest in the Company pursuant to Article 9 of the Operating Agreement. If and when any or all of the Indebtedness is assigned by Red Stone, this Guaranty Agreement shall automatically be assigned therewith in whole or in part, as applicable, without the need of any express assignment and when so assigned, each Guarantor shall be bound as set forth herein to the assignee(s) without any further action or consent required of the Guarantor or in any manner affecting any Guarantor's liability hereunder for any part of the Indebtedness retained by Red Stone.

18. This Guaranty Agreement shall inure to the benefit of and bind the heirs, legal representatives, administrators, executors, successors and assigns of Red Stone and Guarantor.

19. This Guaranty Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of law, except to the extent that any of such laws may now or hereafter be preempted by Federal law, in which case, such Federal law shall so govern and be controlling. In any action brought under or arising out of this Guaranty Agreement, Guarantor hereby consents to the jurisdiction of any competent court within the State of New York and consents to service of process by any means authorized by the laws of such state. Except as provided in any other written agreement now or at any time hereafter in force between Red Stone and any Guarantor, this Guaranty Agreement shall constitute the entire agreement of Guarantor with Red Stone with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Red Stone or any Guarantor unless expressed herein.

20. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been

validly given or served by delivery of same in person to the addressee or by depositing same with Federal Express for next business day delivery or by depositing same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

Red Stone: Red Stone Equity Partners, LLC  
200 Public Square, Suite 1550  
Cleveland, Ohio 44114

Guarantor: Conifer Realty, LLC  
183 East Main Street  
6th Floor  
Rochester, New York 14604

All notices, demands and requests shall be effective upon such personal delivery or upon being deposited with Federal Express (or comparable overnight courier) or in the United States mail as required above. However, with respect to notices, demands or requests so deposited with Federal Express or in the United States mail, the time period in which a response to any such notice, demand or request must be given shall commence to run from the next business day following any such deposit with Federal Express or, in the case of a deposit in the United States mail as provided above, the date on the return receipt of the notice, demand or request reflecting the date of delivery or rejection of the same by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least 30 days' written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

21. Guarantor hereby agrees that this Guaranty Agreement, the Indebtedness and all other obligations guaranteed hereby, shall remain in full force and effect at all times hereinafter until paid and/or performed in full notwithstanding any action or undertakings by, or against, Red Stone, any Guarantor, and/or any member of Red Stone in any proceeding in the United States Bankruptcy Court, including, without limitation, any proceeding relating to valuation of collateral, election or imposition of secured or unsecured claim status upon claims by Red Stone pursuant to any Chapter of the Bankruptcy Code or the Rules of Bankruptcy Procedure as same may be applicable from time to time.

22. Any married person who signs this Guaranty hereby agrees that recourse may be had against his or her separate property for all of his or her obligations,

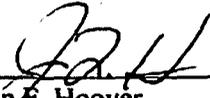
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IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty as of the day and year first above written.

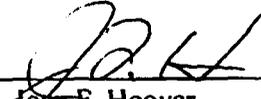
**GUARANTOR:**

**CONIFER, LLC, a New York limited liability company**

By: Conifer Realty, LLC, its sole member

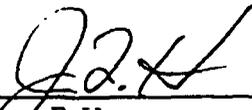
By:   
Name: Joan F. Hoover  
Its: Vice President

**CONIFER REALTY, LLC, a New York limited liability company**

By:   
Name: Joan F. Hoover  
Its: Vice President

**JAMES STREET MANAGING MEMBER, LLC a New York limited liability company**

By: Conifer Realty, LLC, a New York limited liability company  
Its: Sole Member

By:   
Name: Joan F. Hoover  
Its: Vice President



**EXHIBIT D  
TO OPERATING AGREEMENT**

**DEVELOPMENT AGREEMENT**

(See Attached)

## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of December 22, 2011, among James Street Apartments, LLC (the "Company") and Conifer, LLC, a New York limited liability company (the "Developer").

This Agreement is made with reference to the following facts:

A. WHEREAS, the Company is governed by its Amended and Restated Operating Agreement dated as of even date herewith (the "Operating Agreement") (capitalized terms used herein without definition shall have the definitions given them in the Operating Agreement).

B. WHEREAS, the Company has been formed to develop, construct, own, maintain and operate the Apartment Complex.

C. WHEREAS, James Street Managing Member, LLC, a New York limited liability company (the "Managing Member"), Conifer 2011 Tax Credit Fund, LP, a Delaware limited partnership (the "Investor Member"), and Red Stone Equity Manager, LLC, a Delaware limited liability company (the "Special Member") are the sole Members in the Company.

D. WHEREAS, the Company and the Developer desire to enter into this Development Agreement in connection with the Developer providing certain services for the Company with respect to overseeing the development of the Apartment Complex until all development work is completed.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Appointment. The Company hereby appoints the Developer to render services for the Company, and confirms and ratifies the appointment of the Developer with respect to services rendered for the Company to date, in supervising and overseeing the development of the Apartment Complex as herein contemplated.

2. Authority. In conformity with the provisions of the Operating Agreement, the Developer shall have, and has had, the authority and the obligation to:

(a) coordinate the preparation of the Plans and Specifications by the Architect and recommend alternative solutions whenever in the Developer's judgment design details affect construction feasibility or schedules;

(b) monitor disbursement and payment of amounts owed to the Architect and the subcontractors;

- (c) inspect the construction of the Apartment Complex and advise the Company of items the Developer finds to be deficient;
- (d) cooperate with the Company in securing all building code approvals and obtain certificates of occupancy (to the extent necessary) for all of the residential units of the Apartment Complex;
- (e) keep, or cause to be kept, accounts and cost records as to the construction of the Apartment Complex;
- (f) maintain, or cause to be maintained, at its expense, all office and accounting facilities and equipment necessary to adequately perform the foregoing functions;
- (g) make available to the Company, during normal business hours and upon the Company's written request, copies of all material contracts and subcontracts held by Developer related to the Apartment Complex;
- (h) provide and periodically update an Apartment Complex construction time schedule which coordinates and integrates Architect's services with construction schedules;
- (i) assist the Company in negotiating the Construction Contract and supervising construction;
- (j) provide regular monitoring of the schedule as construction progresses, identify potential variances between scheduled and probable completion dates, review the schedule for work not started or incomplete, recommend to the Company adjustments in the schedule to meet the probable completion date, provide summary reports of such monitoring, and document all changes in the schedule;
- (k) provide regular monitoring of the approved estimate of construction cost, show actual costs for activities in process and estimates for uncompleted tasks, identify variances between actual and budgeted or estimated costs and advise the Company whenever projected costs exceed budgets or estimates;
- (l) develop and implement a system for review and processing of change orders as to construction of the Apartment Complex;
- (m) in collaboration with Architect, establish and implement procedures for expediting the processing and approval of shop drawings and samples;
- (n) investigate and recommend a schedule for purchase by the Company of all materials and equipment requiring long lead time procurement, coordinate the schedule with Architect and expedite and coordinate delivery of such purchases;
- (o) prepare pre-qualification criteria for bidders interested in the Apartment Complex, establish bidding schedules and conduct pre-bid conferences to familiarize bidders with the bidding documents and management techniques and with any special systems, materials or methods;

- (p) receive bids, prepare bid analyses and make recommendations to the Company for award of contracts or rejection of bids;
- (q) develop and implement a procedure for the review and processing of applications by subcontractors for progress and final payments; and
- (r) provide a detailed schedule of realistic activity sequences and durations, allocation of labor and materials and processing of shop drawings and samples.
- (s) recommend courses of action to the Company when requirements of the construction contract and subcontracts are not being fulfilled;
- (t) revise and refine the approved estimate of construction cost, incorporate changes as they occur, and develop cash flow reports and forecasts as needed;
- (u) review change orders as to construction of the Apartment Complex; and
- (v) review requests for disbursements of proceeds of loans to the Company for the construction of the Apartment Complex.

3. Development Fee.

(a) For services performed and to be performed under Sections 1 and 2 of this Agreement, the Company shall pay the Developer a Development Fee in the aggregate amount of \$2,100,000. The full amount of the Development Fee (the "Deferred Development Fee") shall be payable solely from Net Cash Flow, proceeds of a Capital Transaction and proceeds of a dissolution and liquidation of the Company pursuant to Article 11 of the Operating Agreement. The Development Fee shall be the only amount payable to Developer for services performed pursuant to this Agreement. The Developer shall not be entitled to any reimbursement for costs and expenses, including without limitation salaries, compensation and fringe benefits of employees of Developer or for Developer's overhead.

The Deferred Development Fee shall not bear interest. All payments made to the Deferred Development Fee shall be applied to the outstanding balance of the Deferred Development Fee until the fee is paid in full. Notwithstanding anything to the contrary contained in Section 7, any unpaid portion of the Deferred Development Fee shall be payable by the earlier of (i) the end of the 15<sup>th</sup> year after the Apartment Complex has been placed in service, (ii) the date of liquidation of the Company, or (iii) the date of removal of the Managing Member from the Company.

4. Scope of Developer's Responsibility. The Developer is responsible for the duties that it has specifically undertaken in this Agreement, and no additional duties or responsibilities may be implied from this Agreement.

5. Withholding of Fee Payments. If (a) the Managing Member, Guarantor or Developer shall not have complied with any provisions under the Operating Agreement, this Agreement, the Supervisory and Incentive Management Fee Agreement, or the Guaranty, as applicable, within thirty (30) days after the Special Member delivers written notice of such

noncompliance to the Managing Member, or (b) any holder of any Project Loan shall have declared the Company to be in default under the applicable Project Loan after the expiration of all applicable cure periods, if any, as a result of acts or omissions of either the Managing Member, the Developer, the Guarantor or any Affiliate of any of them, or (c) foreclosure proceedings shall have been commenced against the Apartment Complex as a result of acts or omissions of the Managing Member, the Developer, the Guarantor or any Affiliate of any of them, then the Developer shall be in default of this Agreement and the Company shall withhold payment of any installment of fees payable to the Developer. All amounts so withheld by the Company under this Section 5 shall be promptly released to the Developer only after the default justifying the withholding has been cured, as demonstrated by evidence reasonably acceptable to Special Member. In addition, the Company shall be entitled to withhold payments to the Developer hereunder pursuant to Section 14.03 of the Operating Agreement.

6. Assignment of Fees. The Developer shall not assign, pledge or otherwise encumber, for security or otherwise, the Development Fee, or any portion thereof or any right of such Developer thereto, without the Consent of Special Member.

7. Successors and Assigns. This Agreement shall be binding on the parties hereto, their successors and assigns. However, this Agreement may not be assigned by the Company or the Developer without the Consent of Special Member, nor may it be terminated by the Company or the Developer without the Consent of Special Member.

8. No Lien Filings. The Developer hereby represents, warrants and covenants that neither it nor its Affiliates shall file a mechanic's lien, materialmen's lien or other lien against the Apartment Complex or any other assets of the Company, and hereby waives and releases any right it may have or may hereafter acquire to file a such lien against the Apartment Complex or any other assets of the Company. The Developer shall indemnify and hold harmless the Company and the Investor Member from any losses, damages, and/or liabilities, to or as a result of a breach of this provision.

9. Severability of Provisions. Each provision of this Agreement shall be considered severable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement which are valid.

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

11. Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS DEVELOPMENT AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY PRESENT OR FUTURE AMENDMENT THEREOF, OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH

RESPECT TO THE DEVELOPMENT AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

12. No Continuing Waiver. No waiver by a party hereto of any breach of this Agreement shall be effective unless in a writing executed by such party. No waiver shall operate or be construed to be a waiver of any subsequent breach.

13. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

14. Third Party Beneficiary. The Investor Member and Special Member are third party beneficiaries of this Agreement.

15. Amendments. Each party hereto expressly agrees that any amendment to this Agreement shall not be effective unless signed by the parties hereto and Consented to by the Special Member.

16. Attorney's Fees. Each party hereto agrees to pay the other party, without demand, reasonable attorney's fees and all costs and expenses expended or incurred in collecting any amounts payable by such party hereunder or in enforcing this Agreement against the other party, whether or not suit is filed.

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IN WITNESS WHEREOF, the parties have caused this Development Agreement to be duly executed as of the date first written above.

**COMPANY:**

**JAMES STREET APARTMENTS, LLC**, a New York limited liability Company

By: James Street Managing Member, LLC  
a New York limited liability company

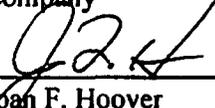
By: Conifer Realty, LLC, a New York limited liability company  
Its: Sole Member

By:   
Name: Joan F. Hoover  
Its: Vice President

**DEVELOPER:**

**CONIFER, LLC**, a New York limited liability company

By: Conifer Realty, LLC, a New York limited liability company

By:   
Name: Joan F. Hoover  
Its: Vice President

## **SCHEDULE A**

The Developer Fee shall be earned as follows:

- (1) 20% upon receipt of satisfactory environmental, title and survey reports with respect to the Project;
- (2) 10% upon receipt of all required zoning approvals and subdivision approvals needed to permit development of the Project;
- (3) 10% upon preparation of construction cost projections;
- (4) 10% upon finalization of architectural and engineering contracts;
- (5) 10% upon commencement of construction; and
- (6) 40% during the construction period, with the fee recognized on a pro rata basis as construction progresses with the entire amount earned not later than receipt of certificates of occupancy for all units in the Project (or the local equivalent thereof).

**EXHIBIT E**  
**TO OPERATING AGREEMENT**  
**SUPERVISORY MANAGEMENT AND INCENTIVE AGREEMENT**

(See Attached)

## **SUPERVISORY MANAGEMENT AND INCENTIVE AGREEMENT**

This Supervisory Management and Incentive Agreement (the "Agreement") is made as of December 22, 2011, by and between James Street Apartments, LLC, a New York limited liability company (the "Company"), and James Street Managing Member, LLC, a New York limited liability company (the "Supervisory Agent"). This Agreement is made with reference to the following facts:

A. WHEREAS, the Company, pursuant to its Amended and Restated Operating Agreement of even date herewith (the "Operating Agreement"), is engaged in the construction, ownership and operation of a 83-unit apartment complex, 18 of which units will be rented to low-income families, known as James Street Apartments in Syracuse, New York (the "Apartment Complex"). (Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Operating Agreement.)

B. WHEREAS, the Supervisory Agent is being retained to perform certain additional management and oversight services, and the Company has agreed to pay the Supervisory Agent a certain fee, all as hereinafter provided.

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

1. Appointment and Term. The Company hereby retains the Supervisory Agent to render services in managing the business of the Company as herein contemplated. The term of this Agreement shall begin on the date hereof and shall end when terminated by the Company in accordance with the Operating Agreement; provided, however, that this Agreement shall terminate if the Supervisory Agent or its Affiliate is no longer a Managing Member of the Company for any reason.

2. Authority and Obligations. Subject to the approval rights of the Special Member as set forth in the Operating Agreement, the Supervisory Agent shall have the authority and obligation to:

(i) provide for the use of Company funds, perform certain economic analyses and prepare projections, reports and recommendations as it may deem necessary or desirable with respect to the business of the Company;

(ii) provide office space, support staff and administrative services as required by the Company;

(iii) administer, manage, and direct the business of the Company and take such further action as it may deem necessary or desirable to further the interest of the Company;

(iv) monitor the management and day-to-day operations of the Apartment Complex;

(v) investigate and make recommendations with respect to the selection of and conduct of relations with consultants and technical advisors (including, without limitation, accountants, attorneys, management agents, escrow agents, depositories, custodians, agents for collection, insurers, insurance agents and banks), and persons acting in any other capacity, in connection with the management and administration of the Company;

(vi) maintain the books and records of the Company in accordance with sound federal income tax accounting principles and generally accepted accounting principles;

(vii) be responsible for the safekeeping and use of all funds and assets of the Company, including the maintenance of bank accounts; and

(viii) furnish all Persons who were Members of the Company at any time during the Company's prior Fiscal Year such reports (including such reports as are required by Lenders), tax returns and financial statements as are required under Section 13 of the Operating Agreement. The out-of-pocket costs of preparing the tax returns and financial statements of the Company and Apartment Complex required under the Operating Agreement shall be reimbursed by the Company.

3. **Compensation.** In consideration of the services to be rendered by the Supervisory Agent to the Company hereunder, the Company shall pay to the Supervisory Agent, commencing on the sixth (6<sup>th</sup>) anniversary of the date on which the last QREs are placed in service, an incentive management fee (the "Incentive Management Fee") in an amount equal to 90% of Net Cash Flow pursuant to Section 11.03(b) of the Operating Agreement for such year; provided that the Incentive Management Fee for any year shall not exceed ten percent (10%) of gross revenues of the Apartment Complex for such year.

The fees due under this Section 3 shall be subject to the limitations set forth in Section 14.03 of the Operating Agreement, and shall be the only amount payable to the Supervisory Agent for services performed pursuant to this Agreement. Except for the costs described in Section 2(viii), the Supervisory Agent shall not be entitled to any reimbursement for costs and expenses, including without limitation, salaries, compensation and fringe benefits of employees of the Supervisory Agent or overhead of the Supervisory Agent.

4. **Default of the Supervisory Agent.** Notwithstanding anything contained in this Agreement to the contrary, in the event that (a) either Supervisory Agent shall default in any material respect in any of its obligations hereunder and such default is not cured following notice to the Supervisory Agent and a 10 business day cure period, or (b) the Managing Member and/or the Guarantors default in any of their obligations under the Operating Agreement and such default shall continue beyond any applicable notice or cure period, then the Company shall have the right to withhold all compensation otherwise payable to the Supervisory Agent hereunder until such default is fully cured, and to set off against such compensation any obligations of the Supervisory Agent hereunder or of the Managing Member or Guarantors under the Operating Agreement. In addition, this Agreement shall automatically terminate upon the withdrawal of

the Managing Member as a Managing Member of the Company for whatever reason, unless this Agreement has been assigned to a new Managing Member.

5. **Burden and Benefit.** The covenants and agreements contained herein shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. Neither party may assign this Agreement without the consent of the other party.

6. **Severability of Provisions.** Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

7. **No Continuing Waiver.** The waiver of either party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

8. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York and to be performed entirely therein.

9. **Headings.** All section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any section.

10. **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine and neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

11. **Reliance.** No person other than the parties to this Agreement may directly or indirectly rely upon or enforce the provisions of this Agreement, whether as a third party beneficiary or otherwise.

12. **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties or any third party to create the relationship of partners or joint venturers between the Supervisory Agent and the Company.

13. **Waiver of Jury Trial.** EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY PRESENT OR FUTURE AMENDMENT THEREOF, OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE DEVELOPMENT AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY

SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

14. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original for all purposes, but all of which taken together shall constitute only one agreement. The production of any executed counterpart of this Agreement shall be sufficient for all purposes without producing any other counterpart thereof.

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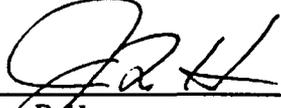
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

**SUPERVISORY AGENT:**

**JAMES STREET MANAGING MEMBER,  
LLC, a New York limited liability company**

By: Conifer Realty, LLC, a New York limited liability company

Its: Sole Managing Member

By:   
Name: Joan F. Hoover  
Its: Vice President

**COMPANY:**

**JAMES STREET APARTMENTS, LLC, a New York limited liability Company**

By: James Street Managing Member, LLC  
a New York limited liability company

By: Conifer Realty, LLC, a New York limited liability company

Its: Sole Member

By:   
Name: Joan F. Hoover  
Its: Vice President

**EXHIBIT F**  
**TO OPERATING AGREEMENT**  
**PLEDGE AND SECURITY AGREEMENT**

(See Attached)

## PLEDGE AND SECURITY AGREEMENT

**THIS PLEDGE AND SECURITY AGREEMENT** (this "Agreement"), made as of December 22, 2011, by James Street Managing Member, LLC, a New York limited liability company (the "Pledgor"), having offices at 183 East Main Street, 6th Floor, Rochester, New York 14604 for the benefit of Conifer 2011 Tax Credit Fund, LP, its successors and/or assigns ("Pledgee").

### Recitals

WHEREAS, the Pledgor is a Managing Member of James Street Apartments, LLC, a New York limited liability company (the "Company"), and the Company is governed by its Amended and Restated Operating Agreement dated as of December 22, 2011 (the "Operating Agreement") (capitalized terms not otherwise defined herein shall have the definitions given them in the Operating Agreement).

WHEREAS, Pledgee is the Investor Member of the Company.

WHEREAS, in order to secure the full payment and performance by Pledgor of all of Pledgor's obligations, duties, expenses and liabilities under or in connection with the Operating Agreement as such Operating Agreement may be now or hereafter amended, modified or restated (such obligations, duties, expenses and liabilities under and in connection with the Operating Agreement and all other sums of any kind which may or shall become due thereunder are collectively referred to herein as the "Obligations"), Pledgor is entering into this Agreement for the benefit of Pledgee.

**NOW, THEREFORE**, in consideration of the recitals, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereby agree as follows:

1. Definitions.

(a) "Collateral" shall mean:

(i) All of Pledgor's right, title and interest in the Company, whether now owned or hereafter acquired, including, without limitation, its Managing Member Interest in the Company and its right to receive distributions, allocations and payments under the Operating Agreement, as such Operating Agreement may be modified from time to time with the consent of the Pledgee;

(ii) All fees and charges to be paid by the Company to the Pledgor, whether now owned or hereafter acquired, whether arising under the Operating Agreement or otherwise, including, without limitation, the Incentive Management Fee;

(iii) All indebtedness of the Company to Pledgor of any kind or description, including without limitation, Pledgor's right to receive payment of Operating Deficit Loans or other loans to the Company;

(iv) All products and proceeds, whether cash proceeds or noncash proceeds, and products of any and all of the foregoing.

(b) "Event of Default" shall mean an event of default described in Paragraph 8 herein.

2. Pledge of Collateral and Grant of Security Interest Pledgor does hereby unconditionally and irrevocably assign, pledge, convey, transfer, deliver, set over and grant unto Pledgee, its successors and assigns, as security for Pledgor's complete and timely payment and performance of the Obligations, a continuing subordinate security interest under the Uniform Commercial Code of the State of New York in the Collateral. Pledgor hereby further grants to the Pledgee all rights in the Collateral as are available to a secured party of such collateral under the Uniform Commercial Code of the State of New York (being the principal place of business of Pledgor and the location of Pledgor's chief executive office) and, upon the request of Pledgee, shall deliver to Pledgee UCC- 1 Financing Statements suitable for filing in the State of New York with respect to the Collateral and agrees, upon request, to deliver any other documents which Pledgee may reasonably request with respect thereto.

3. Delivery to Pledgee.

(a) Pledgor agrees to execute and to cause all other necessary parties, and any successors and assigns thereof, to execute and deliver to Pledgee such other agreements, instruments and documentation as Pledgee may reasonably request from time to time to effect the conveyance, transfer, and grant to Pledgee of each and all of Pledgor's right, title and interest in and to the Collateral as security for the Obligations.

(b) If required by Pledgee, Pledgor agrees and covenants to execute an amendment to the Operating Agreement in such form as Pledgee may require to reflect the substitution of the Pledgee in place of Pledgor as a Managing Member in the Company. Pledgor further agrees to execute and to cause the other members of the Company (other than the Pledgee) to execute and deliver to Pledgee such other agreements, instruments and documentation as Pledgee may reasonably request from time to time to effectuate the conveyance, transfer, assignment and grant to Pledgee of all of Pledgor's right, title and interest in and to the Collateral and to evidence the substitution of the Pledgee in place of Pledgor as a Managing Member in the Company.

4. Proceeds and Products of the Collateral.

(a) Unless and until there occurs an Event of Default, Pledgee agrees to forbear in exercising its right to receive all benefits pertaining to the Collateral,

and the Pledgor shall be permitted to exercise all rights and to receive all benefits of the Collateral, including, without limitation, the right to exercise all voting, approval, consent and similar rights of Pledgor pertaining to the Collateral, payments due under, proceeds, whether cash proceeds or noncash proceeds, and products of the Collateral and retain and enjoy the same, provided, however, that Pledgor shall not cast any vote or give any approval, consent, waiver or ratification or take any action which would be inconsistent with or violate any provision of this Agreement.

(b) Pledgor acknowledges and agrees with the Pledgee, that, unless Pledgee otherwise consents, in Pledgee's sole discretion, Pledgor shall not exercise any voting, approval, consent or other rights with respect to the Collateral at any time (i) after the occurrence of an Event of Default while such Event of Default is continuing, and (ii) delivery of notice from the Pledgee instructing Pledgor not to exercise any such voting, approval, consent or other rights with respect to the Collateral; provided, however, that Pledgor shall exercise any such right it may have under the Operating Agreement with respect to the business affairs of the Company as is reasonably necessary to protect and preserve the Collateral.

(c) Upon or at any time after the occurrence of an Event of Default and while such Event of Default is continuing, Pledgee, at its option to be exercised in its sole discretion, may exercise all rights and remedies granted under this Agreement, including, without limitation, the right to require the obligors under the Collateral to make all payments due under and to pay all proceeds, whether cash proceeds or noncash proceeds, and products of the Collateral to Pledgee. Upon the giving of any such notice, the security constituted by this Agreement shall become immediately enforceable by the Pledgee, without any presentment, further demand, protest or other notice of any kind, all of which are hereby expressly and irrevocably waived by Pledgor. Pledgor hereby authorizes and directs each respective obligor under the agreements constituting the Collateral, that upon receipt of written notice from Pledgee of an Event of Default by Pledgor hereunder, to assign, set over, transfer, distribute, pay and deliver any and all Collateral or said payments, proceeds or products of the Collateral to Pledgee, at such address as Pledgee may direct, at such time and in such manner as Collateral and such payments, proceeds and products of the Collateral would otherwise be distributed, transferred, paid or delivered to Pledgor. The respective obligors under the agreements constituting the Collateral shall be entitled to conclusively rely on such notice and make all such assignments and transfers of the Collateral and all such payments with respect to the Collateral and pay all such proceeds and products of the Collateral to Pledgee and shall have no liability to Pledgor for any loss or damage Pledgor may incur by reason of said reliance.

5. No Assumption. Notwithstanding any of the foregoing, whether or not an Event of Default shall have occurred, and whether or not Pledgee elects to foreclose on its security interest in the Collateral as set forth herein, neither the execution of this Agreement, receipt by

Pledgee of any of Pledgor's right, title and interest in and to the Collateral and the payments, proceeds and products of the Collateral, now or hereafter due to Pledgor from any obligor of the Collateral, nor Pledgee's foreclosure of its security interest in the Collateral, shall in any way be deemed to obligate Pledgee to assume any of Pledgor's obligations, duties, expenses or liabilities under the Collateral or any agreements constituting the Collateral, as presently existing or as hereafter amended, or under any and all other agreements now existing or hereafter drafted or executed (collectively, the "Pledgor's Liabilities"), unless Pledgee otherwise agrees to assume any or all of Pledgor's Liabilities in writing. In the event of foreclosure by Pledgee of its security interest in the Collateral, Pledgor shall remain bound and obligated to perform its Pledgor's Liabilities and Pledgee shall not be deemed to have assumed any of Pledgor's Liabilities, except as provided in the preceding sentence. In the event the entity or person acquiring the Collateral at a foreclosure sale elects to assume Pledgor's Liabilities, such assignee shall agree to be bound by the terms and provisions of the applicable agreement.

6. **Indemnification.** Pledgor hereby agrees to indemnify, defend and hold Pledgee, its successors and assigns harmless from and against any and all damages, losses, claims, costs or expenses (including reasonable attorneys' fees) and any other liabilities whatsoever that Pledgee or its successors or assigns may incur by reason of this Agreement or by reason of any assignment of Pledgor's right, title and interest in and to any or all of the Collateral, except for any damages resulting from Pledgee's gross negligence or willful misconduct.

7. **Representations, Warranties and Covenants.** In addition to the representations made by Pledgor in the Operating Agreement, Pledgor makes the following representations and warranties, which shall be deemed to be continuing representations and warranties in favor of Pledgee, and covenants and agrees to perform all acts necessary to maintain the truth and correctness, in all material respects, of the following:

(a) Pledgor owns the Collateral free and clear of any claim, lien or encumbrance.

(b) Pledgor has delivered to Pledgee true and complete copies of the Operating Agreement, the Incentive Management Fee Agreement and any other agreements pertinent to the Collateral, and such agreements are currently in full force and effect and have not been amended or modified except as disclosed to Pledgee in writing.

(c) Pledgor has the full right and title to its interest in the Collateral and has the full power, legal right and authority to pledge, convey, transfer and assign such interest. None of the Collateral is subject to any existing or subsequent assignment, claim, lien, pledge, transfer or other security interest of any character, or to any attachment, levy, garnishment or other judicial process or to any claim for set-off, counterclaim, deduction or discount. Pledgor shall not, without the prior written consent of Pledgee, which consent may be granted or denied in Pledgee's sole discretion, further convey, transfer, set over or pledge to any party any of its interests in the Collateral. Pledgor agrees to (i) warrant and defend its title to the Collateral and the security interest created by this Agreement

against all claims of all persons (other than Pledgee and persons claiming through Pledgee), and (ii) maintain and preserve the Collateral and such security interests.

(d) Pledgor's Employer Identification Number is 45-1354389 and its principal place of business is located at 183 East Main Street, 6th Floor Rochester, New York 14604.

(e) Pledgor agrees that it shall not, without at least thirty (30) days' prior written notification to Pledgee, move or otherwise change its principal place of business.

(f) Pledgor shall not exercise any voting rights, or give any approvals, consents waiver or other ratifications in respect to the Collateral which would violate or contravene, or which would cause or otherwise authorize Pledgor to violate or contravene, any provision of this Agreement.

8. Event of Default. Each of the following shall constitute an Event of Default hereunder:

(a) An event of default shall have occurred under the Operating Agreement or the Incentive Management Fee Agreement, and such default shall not have been cured after written notice and within any applicable grace period provided therein; or

(b) Any warranty, representation or statement of the Pledgor in this Agreement proves to have been false in any material respect when made or furnished; or

(c) There occurs the issuance of a writ, order of attachment or garnishment with respect to any of the Collateral and such writ, order of attachment or garnishment is not dismissed and removed within thirty (30) days thereafter; or

(d) A material breach or violation of any covenant or agreement contained herein shall have occurred, which is not cured within ten (10) business days after notice has been given to Pledgor by Pledgee.

Any Event of Default under this Agreement shall be an event of default by Pledgor under the Operating Agreement.

9. Remedies.

(a) Upon the occurrence of an Event of Default, Pledgee may by giving notice of such Event of Default, at its option, do any one or more of the following:

(i) Declare all of the Obligations secured hereby to be immediately due and payable, whereupon all unpaid principal and interest on said Obligations and other amounts declared due and payable shall become immediately due and payable without presentment, demand, protest or notice of any kind; and

(ii) Take possession of all or any of the Collateral, collect, and apply against the Obligations, all payments due, proceeds, whether cash proceeds or noncash proceeds, and products from any obligor under the agreements constituting the Collateral, that would otherwise be paid to the Pledgor; and

(iii) Either personally, or by means of a court-appointed receiver, take possession of all or any of the Collateral and exclude therefrom Pledgor and all others claiming under Pledgor, and thereafter exercise all rights and powers of Pledgor with respect to the Collateral or any part thereof. In the event Pledgee demands, or attempts to take possession of any of the Collateral in the exercise of any rights under this Agreement, Pledgor promises and agrees to promptly turn over and deliver complete possession thereof to Pledgee; and

(iv) Without notice to or demand upon Pledgor, make such payments and do such acts as Pledgee may deem necessary to protect its security interest in the Collateral, including, without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority to pay all expenses incurred in connection therewith; and

(v) Require Pledgor to take all actions necessary to deliver such Collateral to Pledgee, or an agent or representative designated by it. Pledgee, and its agents and representatives, shall have the right to enter upon any or all of Pledgor's premises and property to exercise Pledgee's rights hereunder; and

(vi) Foreclose upon this Agreement as herein provided or in any manner permitted by law, and exercise any and all of the rights and remedies conferred upon Pledgee by the Operating Agreement, or in any other document executed by Pledgor in connection with the Obligations secured hereby, either concurrently or in such order as Pledgee may determine; and sell or cause to be sold in such order as Pledgee may determine, as a whole or in such parcels as Pledgee may determine, the Collateral, without affecting in any way the rights or remedies to which Pledgee may be entitled under the other such instruments; and

(vii) Sell or otherwise dispose of the Collateral at public sale, without having the Collateral at the place of sale, and upon terms and in such manner as Pledgee may determine. Pledgee may be a purchaser at any sale; and

(viii) Exercise any remedies of a secured party under the Uniform Commercial Code of the State of New York or any other applicable law; and

(ix) Exercise any remedies available to Pledgee under the Operating Agreement, including, but not limited to, the removal of the Pledgor as a Managing Member of the Company and exercise of any rights of offset in favor of the Pledgee as a Managing Member of the Company; and

(x) Notwithstanding anything to the contrary contained in this Agreement at any time after an Event of Default, the Pledgee may, by delivering written notice to the Company and to the Pledgor, succeed, or designate its nominee or designee to succeed, to all right, title and interest of Pledgor (including, without limitation, the right, if any, to vote on or take any action with respect to Company matters) as a Managing Member of the Company in respect of the Collateral. The Pledgor hereby irrevocably authorizes and directs the Company on receipt of any such notice (a) to deem and treat the Pledgee or such nominee or designee in all respects as a Managing Member (and not merely an assignee of a Managing Member) of the Company, entitled to exercise all the rights, powers and privileges (including the right to vote on or take any action with respect to Company matters pursuant to the Operating Agreement, to receive all distributions, to be credited with the capital account and to have all other rights, powers and privileges appertaining to the Collateral to which Pledgor would have been entitled had the Collateral not been transferred to the Pledgee or such nominee or designee), and (b) to file an amended certificate of Company, if required, admitting the Pledgee or such nominee or designee as Managing Member of the Company in place of Pledgor; and

(xi) The rights granted to the Pledgee under this Agreement are of a special, unique, unusual and extraordinary character. The loss of any of such rights cannot reasonably or adequately be compensated by way of damages in any action at law, and any material breach by Pledgor of any of Pledgor's covenants, agreements or obligations under this Agreement will cause the Pledgee irreparable injury and damage. In the event of any such breach, the Pledgee shall be entitled, as a matter of right, to injunctive relief or other equitable relief in any court of competent jurisdiction to prevent the violation or contravention of any of the provisions of this Agreement or to compel compliance with the terms of this Agreement by Pledgor. The Pledgee is absolutely and irrevocably authorized and empowered by Pledgor to demand specific performance of each of the covenants and agreements of Pledgor in this Agreement. Pledgor hereby irrevocably waives any defense based on the adequacy of any remedy at law which might otherwise be asserted by Pledgor as a bar to the remedy of specific performance in any action brought by the Pledgee against Pledgor to enforce any of the covenants or agreements of Pledgor in this Agreement.

(b) Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Pledgee shall give Pledgor at least ten (10) days' prior written notice of the time and place of any public sale of the Collateral subject to this Agreement or other intended disposition thereof to be made. Such notice shall be conclusively deemed to have been delivered to Pledgor at the address set forth in paragraph 7(c) of this

Agreement, unless Pledgor shall notify Pledgee in writing of its change of its principal place of business and provide Pledgee with the address of its new principal place of business.

(c) The proceeds of any sale under Subparagraphs 9(a)(vi) and (vii) above shall be applied as follows:

(i) To the repayment of the costs and expenses of retaking, holding and preparing for the sale and the selling of the Collateral (including actual reasonable legal expenses and attorneys' fees) and the discharge of all assessments, encumbrances, charges or liens, if any, on the Collateral prior to the lien hereof (except any taxes, assessments, encumbrances, charges or liens subject to which such sale shall have been made);

(ii) To the payment of the whole amount then due and unpaid of the Obligations;

(iii) To the payment of all other amounts then secured hereby; and

(iv) The aggregate surplus, if any, shall be paid to Pledgor in a lump sum, without recourse to Pledgee, or as a court or competent jurisdiction may direct.

(d) Pledgee shall have the right to enforce one or more remedies hereunder under this Agreement and under the Operating Agreement, successively or concurrently, and such action shall not operate to estop or prevent Pledgee from pursuing any further remedy which it may have, and any repossession or retaking or sale of the Collateral pursuant to the terms hereof shall not operate to release Pledgor until full payment of any deficiency has been made in cash.

(e) PLEDGOR ACKNOWLEDGES THAT PLEDGEE MAY BE UNABLE TO EFFECT A PUBLIC SALE OF ALL OR ANY PART OF THE COLLATERAL AND MAY BE COMPELLED TO RESORT TO ONE OR MORE PRIVATE SALES TO A RESTRICTED GROUP OF PURCHASERS WHO WILL BE OBLIGATED TO AGREE, AMONG OTHER THINGS, TO ACQUIRE THE COLLATERAL FOR THEIR OWN ACCOUNT, FOR INVESTMENT AND NOT WITH A VIEW TO THE DISTRIBUTION OR RESALE THEREOF. PLEDGOR FURTHER ACKNOWLEDGES THAT ANY SUCH PRIVATE SALES MAY BE AT PRICES AND ON TERMS LESS FAVORABLE THAN THOSE OF PUBLIC SALES, AND AGREES THAT SUCH PRIVATE SALES SHALL BE DEEMED TO HAVE BEEN MADE IN A COMMERCIALY REASONABLE MANNER AND THAT PLEDGEE HAS NO OBLIGATION TO DELAY SALE OF ANY COLLATERAL TO PERMIT THE ISSUER THEREOF TO REGISTER IT FOR PUBLIC SALE UNDER THE SECURITIES ACT OF 1933. PLEDGOR AGREES THAT PLEDGEE SHALL BE PERMITTED TO TAKE SUCH ACTIONS AS PLEDGEE DEEMS

REASONABLY NECESSARY IN DISPOSING OF THE COLLATERAL TO AVOID CONDUCTING A PUBLIC DISTRIBUTION OF SECURITIES IN VIOLATION OF THE SECURITIES ACT OF 1933 OR THE SECURITIES LAWS OF ANY STATE, AS NOW ENACTED OR AS THE SAME MAY IN THE FUTURE BE AMENDED, AND ACKNOWLEDGES THAT ANY SUCH ACTIONS SHALL BE COMMERCIALY REASONABLE. IN ADDITION, PLEDGOR AGREES TO EXECUTE, FROM TIME TO TIME, ANY AMENDMENT TO THIS AGREEMENT OR OTHER DOCUMENT AS PLEDGEE MAY REASONABLY REQUIRE TO EVIDENCE THE ACKNOWLEDGMENTS AND CONSENTS OF PLEDGOR SET FORTH IN THIS PARAGRAPH.

10. Attorneys Fees. Pledgor agrees to pay to Pledgee, without demand, reasonable attorneys' fees and all costs and other expenses which Pledgee expends or incurs in collecting any amounts payable by Pledgor hereunder or in enforcing this Agreement against Pledgor whether or not suit is filed.

11. Further Documentation. Pledgor hereby agrees to execute, from time to time, one or more financing statements and such other instruments as may be required to perfect the security interest created hereby, including any continuation or amendments of such financing statements, and pay the cost of filing or recording the same in the public records specified by Pledgee.

12. Waiver and Estoppel. Pledgor represents and acknowledges that it knowingly waives each and every one of the following rights, and agrees that it will be estopped from asserting any argument to the contrary: (a) any promptness in making any claim or demand hereunder; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of Pledgor or the failure to file or enforce a claim against Pledgor's estate (in administration, bankruptcy or any other proceeding); (c) any defense based upon an election of remedies by Pledgee which destroys or otherwise impairs any or all of the Collateral; (d) the right of Pledgor to proceed against Pledgee or any other person, for reimbursement; and (e) all duty or obligation of the Pledgee to perfect, protect, retain or enforce any security for the payment of amounts payable by Pledgor hereunder.

**TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY TO THIS AGREEMENT SEVERALLY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM BROUGHT BY ANY PARTY TO THIS AGREEMENT ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT.**

No delay or failure on the part of Pledgee in the exercise of any right or remedy against Pledgor or any other party against whom Pledgee may have any rights, shall operate as a waiver of any agreement or obligation contained herein, and no single or partial exercise by Pledgee of any rights or remedies hereunder shall preclude other or further exercise thereof or other exercise of any other right or remedy whether contained in this Agreement or in any of the other

documents regarding the Obligations, including without limitation the Operating Agreement. No waiver of the rights of Pledgee hereunder or in connection herewith and no release of Pledgor shall be effective unless in writing executed by Pledgee. No actions of Pledgee permitted under this Agreement shall in any way impair or affect the enforceability of any agreement or obligation contained herein.

13. Independent Obligations. The obligations of Pledgor are independent of the obligations of any other party which may be initially or otherwise responsible for performance or payment of the Obligations, and a separate action or actions for payment, damages or performance may be brought and prosecuted by Pledgee against Pledgor, individually, for the full amount of the Obligations then due and payable, whether or not an action is brought against any other party, whether or not the Pledgee is involved in any proceedings and whether or not the Pledgee or the Pledgor or other person is joined in any action or proceedings.

14. No Offset Rights of Pledgor. No lawful act of commission or omission of any kind or at any time upon the part of Pledgor shall in any way affect or impair the rights of the Pledgee to enforce any right, power or benefit under this Agreement, and no set-off, recoupment, counterclaim, claim, reduction or diminution of any obligation or any defense of any kind or nature which Pledgor has or may have against Pledgee or against any other party shall be available against Pledgee in any suit or action brought by Pledgee to enforce any right, power or benefit under this Agreement.

15. Power of Attorney. Pledgor hereby appoints Pledgee as its attorney-in-fact to execute and file, effective upon the occurrence of an Event of Default, on its behalf any financing statements, continuation statements or other documentation required to perfect or continue the security interest created hereby. This power, being coupled with an interest, shall be irrevocable until all amounts secured hereby have been paid, satisfied and discharged in full. Pledgor acknowledges and agrees that the exercise by Pledgee of its rights under this Paragraph 15 will not be deemed a satisfaction of any amounts owed Pledgee unless Pledgee so elects.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of law.

17. Successors and Assigns. All agreements, covenants, conditions and provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

18. Notices. Whenever any party hereto shall desire to, or be required to, give or serve any notice, demand, request or other communication with respect to this Agreement, each such notice, demand, request or communication shall be in writing and shall be effective only if the same is delivered by personal service (including, without limitation, courier or express service) or mailed certified or registered mail, postage prepaid, return receipt requested, or sent by telegram to the parties at the addresses shown throughout this Agreement or such other addresses which the parties may provide to one another in accordance herewith.

Notices delivered personally will be effective upon delivery to an authorized representative of the party at the designated address; notices sent by mail in accordance with the above paragraph will be effective upon execution by the addressee of the Return Receipt Requested.

19. Consent of Pledgor. Pledgor consents to the exercise by Pledgee of any rights of Pledgor in accordance with the provisions of this Agreement.

20. Severability. Every provision of this Agreement is intended to be severable. In the event any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

21. Amendment. This Agreement may be modified or rescinded only by a writing expressly relating to this Agreement and signed by all of the parties.

22. Termination. This Agreement shall terminate, and shall be of no further force or effect, and the Collateral shall be released from any lien hereunder, upon the earlier to occur of the performance in full of the Obligations of the Pledgor or upon the mutual written consent of Pledgor and the Pledgee. Pledgor and Pledgee shall cooperate in the preparation and filing of all required documents to terminate all UCC-1s that have been filed with respect to the security interest under this Agreement.

23. Expenses. Pledgor shall pay all reasonable out-of-pocket fees and charges incurred by Pledgee in connection with this Agreement and the transaction contemplated by this Agreement and the documents entered into in connection therewith, including, without limitation, reasonable attorneys' fees incurred by Pledgee.

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**EXHIBIT G  
TO OPERATING AGREEMENT**

**POST CLOSING DUE DILIGENCE CHECKLIST**

1. Issued owner's title insurance policy (within 30 days)
2. Final plans and specs (within 30 days)
3. Executed bond documents (within 30 days)
4. Bond counsel opinion (within 30 days)

**EXHIBIT H  
TO OPERATING AGREEMENT**

**SUMMARY OF PROJECT LOAN TERMS**

1. **Short Term Bond Loan**

Lender: New York State Housing Finance Agency  
Type of Loan: Construction  
Loan Amount: \$8,775,000  
Interest Rate: 2.0% plus a 0.25% servicing fee  
Term: 18 months  
Repayment terms: Interest only payments until maturity  
Security: Guaranteed by Conifer Realty, LLC and secured by a first priority mortgage on the property  
Source of Funds: Tax-Exempt Bonds

2. **Long Term Bond Loan**

Lender: New York State Housing Finance Agency  
Type of Loan: Construction/Permanent  
Loan Amount: \$4,750,000  
Interest Rate: 3.75% plus a 0.75% servicing fee and a 0.50% SONYMA fee  
Term: 32 years  
Repayment terms: Payments of principal and interest based on a 30 year amortization schedule  
Security: Guaranteed by Conifer Realty, LLC during construction and secured by a first priority mortgage on the property  
Source of Funds: Tax-Exempt Bonds

3. **HOME Loan**

Lender: City of Syracuse  
Type of Loan: Permanent  
Loan Amount: \$2,000,000  
Interest Rate: 1%  
Term: 32 years  
Repayment terms: Payments of interest only deferred until January 1, 2029 subject to surplus cash  
Security: Non-recourse with a subordinate mortgage on the property  
Source of Funds: HOME program

4. HFA Subsidy Loan

**Lender:** New York State Housing Finance Agency  
**Type of Loan:** Permanent Loan  
**Loan Amount:** \$850,000  
**Interest Rate:** 1.0% (6% during construction)  
**Term:** 32 years  
**Repayment terms:** Payments of interest only from available cash flow after payment of Deferred Development Fee or January 1, 2029, whichever occurs first  
**Security:** Non-recourse with a subordinate mortgage on the property  
**Source of Funds:** HFA Subsidy Loan program

**EXHIBIT I  
TO OPERATING AGREEMENT**

**PROJECTIONS**

(See Attached)

# RED STONE

## EQUITY PARTNERS

### Kasson/Leavenworth Apartments Financial Projections

Updated: 11/30/11

Syracuse, NY

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These projections do not guarantee actual operating results. Information herein may be revised based upon changes to assumptions and third-party information. Inapplicable schedules may be omitted. This information is proprietary and may be shared only with Red Stone's prior consent.

**Project Info**

Property Information	
Name:	Kasson/Leavenworth Apartments
Street Address:	615 & 622 James St.
City / County:	Syracuse Onondaga
State:	NY
Total Units:	83
LIMITC Units:	18
Manager Unit:	1
Number of Buildings:	2
Scattered Site:	No
Construction Type:	Rehabilitation
Building Type:	Low-Rise
Market:	Suburban
Taxpayer Tenants:	Family

Partnership Entities							
Developer: <b>Conifer, LLC</b>							
Partnership: <b>James Street Apartments, LLC</b>							
Managing GP	James Street Managing Member, LLC	Income/Loss	0.009%	LIMITC - Fed	0.009%	Historic	0.009%
Co-GP							
Limited Partner	Conifer 2011 Tax Credit Fund, LP	99.990%	99.990%	99.990%	99.990%	99.990%	9.999%
Special LP	Red Stone Equity Manager, LLC	0.001%	0.001%	0.001%	0.001%	0.001%	0.001%
Other LP							
		100.000%	100.000%	100.000%	100.000%	100.000%	100.000%

Date Benchmarks	
Model Start	12/1/2011
Construction Start	12/1/2011
LT Close	12/1/2011
Completion - First Bldg	2/1/2013
Completion - Last Bldg	2/1/2013
Construction Term	14
Operation Start	2/1/2013
Months in First Year	11
Depreciation Start	2/1/2013
Lease Up Start	2/1/2013
Lease Up Period	8
100% QO	2/1/2013
First Tax Credit Month	2/1/2013

UT Tax Rate 3.5%

Model Updated: 11/30/11  
By: CJM

**Financing Assumptions - Cash Flow Waterfall**

Name of Financing	Type	Calculation Type	Term (years)	Amount	Rate	Amortization (months)	% of Cash Flow For Payment	Sum Dates		Deductions	MIP/Fee	Cash Flow %	Fixed Amount	Inflation	Deductible	Cumulative Balance	Cash Basis	Necessary
								Start	End									
HFA Bonds	Loan	Hard-Amort	30	4,750,000	3.7500%	360	100%	10/1/2013	10/1/2013		0.7500%				Yes	Yes	No	Yes
2nd																		No
3rd																		No
4th																		No
LP Asset Management Fee																		No
6th																		No
7th																		No
Deferred Developer Fee	DDF	Soft-% CF	15	2,100,000	0.0000%	180	100%	2/1/2013	2/1/2013						Yes	Yes	Yes	No
Syracuse HOME	Loan	Soft-Int only	32	2,000,000	1.0000%	384	0%	2/1/2013	2/1/2013						Yes	Yes	No	Yes
HFA Subsidy	Loan	Soft-Int only	32	650,000	1.0000%	384	100%	2/1/2013	2/1/2013						Yes	Yes	No	No
Partnership Management Fee	Fee-GP	\$	15			180	100%	2/1/2013	2/1/2013				\$5,000	70%	Yes	Yes	No	No
12th																		No
13th																		No
Incentive Management Fee	DMF	% CF	15			180	100%	2/1/2019	2/1/2019			90%			Yes	No	No	No
15th																		No
16th																		No
17th																		No

**Tax Credit Calculation**

Allocation Year	2010	Rehab Credit Rate	3.20%	Rate of Rate	12/1/2011
Credit Type	4%	Acquisition Rate	3.20%		12/1/2011
DDA/QCT	Yes				
Total					
LIMITC Reservation	\$102,258	\$	1,022,580		
LIMITC Projected	102,258	\$	1,022,580	SF Percentage	20.00%
Lesser of:	102,258	\$	1,022,580	Limit Percentage	21.95%
Excess Basis (Share/dil)	0			Lesser of	20.00%

Historic Tax Credits: Yes

Override Credits: No

**Comments/Notes**

DDF paid in year 17 under 3-3-3

**Equity Pay-In Assumptions**

Benchmark	Projected Date	DATE	% of Equity	Equity
Closing	12/1/2011	12/1/2011	10.00%	630,925
50% Completion	7/1/2012	7/1/2012	10.00%	630,925
75% Completion	10/1/2012	10/1/2012	10.00%	630,925
Pool Construction Contributions				
Completion	2/1/2013	2/1/2013	10.00%	630,925
Conversion	10/1/2013	10/1/2013	50.00%	3,154,624
8609's	10/1/2013	10/1/2013	10.00%	630,925
<b>TOTAL</b>			<b>100.00%</b>	<b>\$ 6,309,249</b>

**Base Year DSC Ratio**

Net Income	804,767
Comm/Other	
Op Expenses	\$ (421,336)
Rep. Reserves	\$ (20,750)
Base Year NOI	362,681
Base Year DS	299,601
Base Year DSC	1.21

Check From Sources \$ 6,309,249

**Monthly Construction Draws**

Draw #	Projected Date	DATE	%	Equity
Draw 1	12/1/2011	12/1/2011	0.00%	\$ -
Draw 2	1/1/2012	1/1/2012	0.00%	-
Draw 3	2/1/2012	2/1/2012	0.00%	-
Draw 4	3/1/2012	3/1/2012	0.00%	-
Draw 5	4/1/2012	4/1/2012	0.00%	-
Draw 6	5/1/2012	5/1/2012	0.00%	-
Draw 7	6/1/2012	6/1/2012	0.00%	-
Draw 8	7/1/2012	7/1/2012	0.00%	-
Draw 9	8/1/2012	8/1/2012	0.00%	-
Draw 10	9/1/2012	9/1/2012	0.00%	-
Draw 11	10/1/2012	10/1/2012	0.00%	-
Draw 12	11/1/2012	11/1/2012	0.00%	-
Draw 13	12/1/2012	12/1/2012	0.00%	-
Draw 14	1/1/2013	1/1/2013	0.00%	-
Draw 15	2/1/2013	2/1/2013	0.00%	-
Draw 16	3/1/2013	3/1/2013	0.00%	-
Draw 17	4/1/2013	4/1/2013	0.00%	-
Draw 18	5/1/2013	5/1/2013	0.00%	-
Draw 19	6/1/2013	6/1/2013	0.00%	-
Draw 20	7/1/2013	7/1/2013	0.00%	-
Draw 21	8/1/2013	8/1/2013	0.00%	-
Draw 22	9/1/2013	9/1/2013	0.00%	-
Draw 23	10/1/2013	10/1/2013	0.00%	-
Draw 24	11/1/2013	11/1/2013	0.00%	-



**Sources of Funds**

Sources	Total	Accrued Interest
HFA Bonds	\$ 4,750,000	-
	-	-
	-	-
	-	-
	-	-
	-	-
	-	-
Deferred Developer Fee	2,100,000	-
Syracuse HOME	2,000,000	-
HFA Subsidy	850,000	-
	-	-
	-	-
	-	-
	-	-
	-	-
	-	-
Accrued interest during construction	-	-
Operating Income during construction	160,753	-
Grants (reduction of basis)	133,109	-
Deferred Interest	91,800	-
Capital - General Partner	100	-
Capital - Limited Partner	6,309,249	-
Capital - Special Limited Partner	10	-
Capital - Other	-	-
<b>Total Sources</b>	<b>\$ 16,395,021</b>	

**Kasson/Leavenworth Apartments**

Sources During Construction	Total	Rate	Term
Short Term Bonds	8,775,000	2.25%	18
HFA Subsidy	765,000	6.00%	
Deferred Interest	-		
HOME	2,000,000	1.00%	
NYSERDA	-		
Red Stone Bridge Loan	-		
Predevelopment Loan	-		
<b>Total Cons. Financing</b>	<b>\$ 11,540,000</b>		

**Notes/Comments**

50% Test : 8,775,000 57.13%  
 \$ 15,359,789

NYSERDA  
 Deferred Interest on HFA Subsidy  
 \$ 971,354 Fed  
 \$ 5,337,893 Historic

Uses of Funds						
Uses	Total	Eligible Basis	Dep. Basis	Expense/Amort.	Non-Dep	Comments
Land	\$ 21,382	\$ -	\$ -	\$ -	\$ 21,382	
Building Acquisition	-	-	-	-	-	
Other Acquisition Costs	-	-	-	-	-	
Subtotal	\$ 21,382					
Structures and Rehabilitation	8,534,972	8,534,972	8,534,972	-	-	
Site Work	372,880	372,880	372,880	-	-	
Personal Property	307,328	307,328	307,328	-	-	
Construction Contingency	1,107,956	1,107,956	1,107,956	-	-	Outside K
General Requirements	552,911	552,911	552,911	-	-	
Builder Profit	276,455	276,455	276,455	-	-	
Builder Overhead	184,304	184,304	184,304	-	-	
Building Permits	70,000	70,000	70,000	-	-	Outside K
P&P Bond Costs	-	-	-	-	-	
Environmental Remediation	-	-	-	-	-	
Demolition Costs	-	-	-	-	-	
Off-Site Work	-	-	-	-	-	
Other Construction	-	-	-	-	-	
Ins.	64,506	64,506	64,506	-	-	
Other 3	-	-	-	-	-	K = 10,293,356
Subtotal	11,471,312					
Architect - Design	420,000	420,000	420,000	-	-	
Architect - Supervision	-	-	-	-	-	
Municipal/Tap Fees	-	-	-	-	-	
Impact Fees	-	-	-	-	-	
Appraisal/Market Study	16,000	16,000	16,000	-	-	
Title and Recording	60,000	60,000	60,000	-	-	
Legal	75,000	75,000	75,000	-	-	
Organizational Legal	50,000	50,000	50,000	-	-	Leader Legal
Accounting/Cost Cert	10,000	-	-	10,000	-	
Phase I/Environmental	95,000	95,000	95,000	-	-	
Soils/Geotech	-	-	-	-	-	
Survey	22,500	22,500	22,500	-	-	
Tax Credit Fees	-	-	-	-	-	
Construction Period Taxes/Ins.	132,650	132,650	132,650	-	-	
Soft Cost Contingency	61,257	-	-	-	61,257	
Engineering	20,000	20,000	20,000	-	-	
Working Capital	346,631	-	-	-	346,631	
PILOT Fees	194,949	194,949	194,949	-	-	
Subtotal	1,503,987					
CPI Capitalized	307,230	307,230	307,230	-	-	
CPI Expensed	131,624	-	-	131,624	-	
Prorated Interest	-	-	-	-	-	
Bridge Loan Interest	-	-	-	-	-	
Accrued CPI	91,800	91,800	91,800	-	-	
Subtotal	530,654					
Developer Fee	2,100,000	2,100,000	2,100,000	-	-	
Subtotal	2,100,000					
Perm Loan Fees	461,838	-	-	461,838	-	
Construction Loan Fees	303,348	303,348	303,348	-	-	Bond Fees
Subtotal	765,186					
Rem-Up	-	-	-	-	-	
Marketing	-	-	-	-	-	
Organization	2,500	-	-	2,500	-	
Syndication Costs	-	-	-	-	-	
Subtotal	2,500					
Replacement Reserves	-	-	-	-	-	
Operating Reserves	-	-	-	-	-	
Tax/Insurance Escrow	-	-	-	-	-	
Other 1	-	-	-	-	-	
Other 2	-	-	-	-	-	
Subtotal	-					
<b>Total Uses</b>	<b>\$ 16,395,021</b>	<b>\$ 16,395,021</b>	<b>\$ 15,359,789</b>	<b>\$ 15,359,789</b>	<b>\$ 605,962</b>	<b>\$ 429,270</b>



**Operating Expenses**

Kasson/Leavenworth Apartments

**Variable Expenses**

	Annual	Per unit
<u>Administrative</u>		
Accounting	-	-
Advertising	10,000	120
Professional Fees	9,000	108
Leased Equipment	-	-
Legal/Partnership	-	-
Social Services	-	-
Model Apartment Rent	-	-
Office Expenses	-	-
Telephone	-	-
Other Office Expenses	-	-
General	17,000	205
<b>Total</b>	<b>\$ 36,000</b>	<b>\$ 434</b>

Repair and Maintenance

Elevator	12,300	148
Exterminating	-	-
Grounds	13,545	163
Repairs	8,715	105
Trash	11,500	139
Contract Services	-	-
General	21,780	262
<b>Total</b>	<b>\$ 67,840</b>	<b>\$ 817</b>

Payroll

Administrative Payroll	41,500	500
R&M Payroll	34,832	420
Payroll Taxes and Insurance	22,488	271
General	-	-
<b>Total</b>	<b>\$ 98,820</b>	<b>\$ 1,191</b>

Utilities

Gas	48,140	580
Electric	17,430	210
Water & Sewer	61,580	742
Other	-	-
General	-	-
<b>Total</b>	<b>\$ 127,150</b>	<b>\$ 1,532</b>

**Total Variable Expenses: \$ 329,810 \$ 3,974**

**Fixed Expenses**

	Annual	Per unit
<u>Insurance</u>		
Property Insurance	23,240	280
Other Insurance	-	-
<b>Total</b>	<b>\$ 23,240</b>	<b>\$ 280</b>

Management Fee

Percent of Revenues:	6.00%	48,286	582
Fee/unit/month:	-	-	-
<b>Total</b>	<b>\$ 48,286</b>	<b>\$ 582</b>	

Real Estate Taxes

Real Estate Taxes	20,000	241
Other	-	-
<b>Total</b>	<b>\$ 20,000</b>	<b>\$ 241</b>

**Total Fixed Expenses: \$ 91,526 \$ 1,103**

**Total All Expenses: \$ 421,336 \$ 5,076**

Replacement Reserve

RR Start Date	2/1/2013			
	Per Unit	Annual		
Red Stone	250	\$ 20,750	\$ 20,750	250
Lender	\$ -	\$ -	-	-

**Total Expenses & RR \$ 442,086 \$ 5,326**

Expense Summary

	Annual	Per Unit
Administrative	36,000	434
Repairs & Maintenance	67,840	817
Payroll	98,820	1,191
Utilities	127,150	1,532
Water & Sewer	-	-
Subtotal Variable:	\$ 329,810	\$ 3,974
Insurance	23,240	280
RE Tax	20,000	241
Management Fee	48,286	582
Sub Variable & Fixed	\$ 421,336	\$ 5,076
Replacement Reserve	20,750	250
<b>Total Expense &amp; RR</b>	<b>\$ 442,086</b>	<b>\$ 5,326</b>

Trending Assumptions

Expense Inflation:	103.0%
RE Tax Inflation:	103.0%
Mgmt Fee Inflation:	103.0%
Replacement Reserve Inflation:	100.0%



**Credit Calculation**

**Kasson/Leavenworth Apartments**

**LIHTC Tax Credit Calculation**

	Rehabilitation	Acquisition
Eligible Basis	\$ 15,359,789	
Less:		
Acquisition Costs	-	-
Historic Credits	(2,809,699)	
Grants	(133,109)	
Acquisition Dev. Fee		
Other 1		
Other 2		
Other 3	(126,356)	
	\$ 12,290,625	\$ -
Eligible Basis	\$ 12,290,625	\$ -
DDA/QCT	Yes 130%	100%
Total Eligible Basis	15,977,813	-
Basis Limitation	-	-
Low Income %	20.00%	20.00%
Qualified Basis	3,195,563	-
Tax Credit Rates	3.20%	3.20%
LIHTC Calculated	102,258	-
LIHTC Reservation	102,258	-
Actual LIHTC	102,258	-

**Historic Credit Calculation**

	Rehabilitation	Commercial	Total
Depreciable Basis	15,359,789	-	
Less:			
Acquisition Cost	-	-	
Personal Property	(307,328)	-	
Sitework	(372,880)	-	
Grants	(133,109)	-	
Bldg Additions/(Demo)	-	-	
Ineligible Interest	-	-	
Other 1	-	-	
Other 2	(497,979)	-	
Historic Credit Basis	14,048,493	-	
Tax Credit %	20%	20%	
Total Historic Credit	2,809,699	-	2,809,699
Delivery			
2013	2,809,699	-	2,809,699
2014	-	-	-
2015	-	-	-
2016	-	-	-

Projected 15 Yr Cash Flow		Kasson/Leavenworth Apartments																	
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	
<b>Income</b>																			
Gross LHFC Rental Revenues	-	-	102,667	117,028	139,810	142,626	145,479	148,348	151,196	154,111	157,471	160,620	161,811	167,110	170,452	171,601	177,148	181,643	
Gross Market Rental Revenue	-	-	447,100	729,994	744,593	790,483	774,673	790,169	805,972	822,091	834,533	851,304	872,410	889,858	907,815	929,808	944,423	961,211	
Less Vacancies	-	-	(15,493)	(40,696)	(61,910)	(61,148)	(64,411)	(63,649)	(67,013)	(68,933)	(69,720)	(71,113)	(72,517)	(73,925)	(75,407)	(76,977)	(78,516)	(80,071)	
Net Rental Revenues	-	-	311,469	306,186	322,514	314,964	333,743	327,818	340,155	346,151	354,854	360,707	369,294	376,933	386,450	397,631	408,907	421,783	
Rental Subsidy (Net)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Other Income (Net)	-	-	9,548	14,477	14,765	15,092	15,361	15,670	15,944	16,301	16,629	16,962	17,301	17,647	18,000	18,360	18,727	19,102	
Occupancy Income (Net)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Effective Gross Income	\$	\$	\$ 320,817	\$ 320,663	\$ 337,280	\$ 334,026	\$ 349,104	\$ 343,488	\$ 356,099	\$ 362,452	\$ 368,483	\$ 377,659	\$ 386,595	\$ 396,580	\$ 407,650	\$ 418,991	\$ 430,630	\$ 442,885	\$ 455,785
<b>Expenses</b>																			
Variable Expenses	-	-	217,224	379,704	349,999	369,792	378,204	382,340	393,810	405,625	417,793	430,127	442,217	456,134	470,246	484,317	499,067	513,811	
Insurance	-	-	21,303	23,937	24,655	25,795	26,137	26,942	27,790	28,582	29,440	30,323	31,211	32,170	33,153	34,129	35,153	36,207	
Management Fee	-	-	11,249	49,252	50,237	51,242	52,266	53,312	54,378	55,462	56,575	57,706	58,840	60,014	61,238	62,461	63,712	64,987	
Real Estate Taxes - Total	-	-	18,133	20,600	21,218	21,875	22,510	23,183	23,870	24,570	25,283	26,004	26,744	27,500	28,272	29,060	29,864	30,684	
Other/RE Tax Abatement	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Project Operating Exp.	\$	\$	\$ 388,110	\$ 473,493	\$ 446,026	\$ 458,583	\$ 472,137	\$ 483,770	\$ 498,368	\$ 508,395	\$ 520,970	\$ 537,360	\$ 553,905	\$ 574,901	\$ 594,642	\$ 614,870	\$ 634,991	\$ 655,991	\$ 677,123
MOI Drive Replacement Reserves	-	-	232,707	187,149	191,274	195,142	198,149	202,749	204,711	206,029	208,543	214,411	223,102	229,634	235,997	242,182	248,182	254,960	
Replacement Reserves	-	-	19,021	20,750	20,750	20,750	20,750	20,750	20,750	20,750	20,750	20,750	20,750	20,750	20,750	20,750	20,750	20,750	
Net Operating Income	\$	\$	\$ 213,687	\$ 346,619	\$ 378,254	\$ 374,972	\$ 378,219	\$ 361,999	\$ 363,981	\$ 365,379	\$ 368,193	\$ 369,081	\$ 374,342	\$ 379,684	\$ 386,247	\$ 394,432	\$ 403,432	\$ 413,413	\$ 424,236
<b>Plus Other Cash Sources:</b>																			
Interest on Reserve Assets	-	-	-	380	795	1,210	1,625	2,040	415	830	1,245	1,660	2,075	415	830	1,245	1,660	2,075	
Operating Income as a Tenant	-	-	(118,807)	(21,946)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Total Other Cash Sources	-	-	(118,807)	(21,566)	795	1,210	1,625	2,040	415	830	1,245	1,660	2,075	415	830	1,245	1,660	2,075	
Available Cash Flow	\$	\$	\$ 34,880	\$ 343,053	\$ 379,119	\$ 373,002	\$ 379,844	\$ 364,039	\$ 364,396	\$ 366,109	\$ 370,418	\$ 370,761	\$ 376,427	\$ 380,290	\$ 389,077	\$ 397,617	\$ 407,092	\$ 417,111	\$ 427,811
<b>Cash Requirements/Waterfall:</b>																			
Construction Loan Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
MO A Bonds	-	-	(74,830)	(299,109)	(208,433)	(297,736)	(297,019)	(296,233)	(295,473)	(294,660)	(293,817)	(292,941)	(292,012)	(291,083)	(290,108)	(289,091)	(288,013)	(286,918)	
Net	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
LP Asset Management Fee	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
MO	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Deferred Developer Fee	-	-	(43,944)	(72,884)	(77,884)	(82,813)	(87,784)	(92,733)	(97,649)	(102,521)	(107,352)	(112,142)	(116,891)	(121,611)	(126,309)	(131,000)	(135,700)	(140,413)	
Syracuse MOA-EL	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
MOA Subsidy	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Partnership Management Fee	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
MO	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Incentive Management Fee	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
MO	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
MO	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
MO	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Net Cash Flow	\$	\$	\$ (2)	\$ 0	\$ 0	\$ 0	\$ (9)	\$ 0	\$ (9)	\$ 0	\$ 0	\$ 0	\$ (9)	\$ (9)	\$ 0	\$ 0	\$ 0	\$ 0	\$ (2)
Funded from Reserves	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Funded by Operating Guarantees	-	-	0	-	-	-	0	-	0	-	0	-	0	-	0	-	0	-	0
Cash for Disbursements	\$	\$	\$ -	\$ 0	\$ 0	\$ 0	\$ -	\$ 0	\$ -	\$ 0	\$ 0	\$ 0	\$ -	\$ -	\$ 0	\$ 0	\$ 0	\$ 0	\$ -
Unsettled Partner Disbursements	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Cash Flow to Fund Construction	\$	\$	\$ -	\$ 0	\$ 0	\$ 0	\$ -	\$ 0	\$ -	\$ 0	\$ 0	\$ 0	\$ -	\$ -	\$ 0	\$ 0	\$ 0	\$ 0	\$ -
Debt Service Coverage Ratio				1.21	1.24	1.26	1.27	1.29	1.23	1.17	1.11	1.04	1.04	1.05	1.05	1.06	1.06	1.06	1.06
Debt/AGI Hard Debt				1.23	1.24	1.26	1.27	1.29	1.23	1.17	1.11	1.04	1.04	1.05	1.05	1.06	1.06	1.06	1.06

Income/(Loss)	Kasson/Leavenworth Apartments																
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
NOI before Res. Reserves	-	-	232,707	387,369	391,274	395,142	398,969	402,749	384,731	366,029	345,943	324,411	325,102	325,634	325,997	326,182	326,182
Other Taxable Income:																	
Interest on Reserves	-	-	-	380	795	1,210	1,625	2,040	415	830	1,245	1,660	2,075	415	830	1,245	1,660
NYSERDA Grant Income	-	99,831	33,278	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Treat	\$ -	\$ 99,831	\$ 33,278	\$ 380	\$ 795	\$ 1,210	\$ 1,625	\$ 2,040	\$ 415	\$ 830	\$ 1,245	\$ 1,660	\$ 2,075	\$ 415	\$ 830	\$ 1,245	\$ 1,660
Partnership Deductions																	
Constructive Loan Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
MFA Bonds	-	-	(53,350)	(210,946)	(206,908)	(202,717)	(198,365)	(191,848)	(189,159)	(184,290)	(179,236)	(173,989)	(168,541)	(162,866)	(157,015)	(150,920)	(144,593)
2nd	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
3rd	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
4th	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
LP Asset Management Fee	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
6th	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
7th	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Declared Developer Fee	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Syracuse HOME	-	-	(18,335)	(20,183)	(20,385)	(20,589)	(20,795)	(21,003)	(21,213)	(21,425)	(21,639)	(21,856)	(22,074)	(22,295)	(22,518)	(22,743)	(22,971)
MFA Subsidy	-	-	(7,792)	(8,578)	(8,664)	(8,750)	(8,838)	(8,926)	(9,015)	(9,106)	(9,197)	(9,289)	(9,382)	(9,475)	(9,570)	(9,666)	(9,762)
Partnership Management Fee	-	-	(4,583)	(5,150)	(5,305)	(5,464)	(5,628)	(5,797)	(5,971)	(6,150)	(6,335)	(6,523)	(6,721)	(6,923)	(7,131)	(7,345)	(7,563)
12th	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
13th	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Incentive Management Fee	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
15th	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
16th	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
17th	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	-	-	(84,058)	(244,857)	(241,262)	(237,520)	(233,626)	(229,574)	(225,358)	(220,971)	(216,407)	(211,699)	(206,718)	(201,579)	(196,234)	(190,674)	(184,891)
Depreciation	-	-	403,991	506,913	470,108	449,305	432,965	460,151	455,194	442,197	432,084	427,250	443,815	451,356	439,927	433,932	436,002
Amortizable Expenses	14	167	136,250	16,228	16,228	16,228	16,228	16,228	16,228	16,228	16,228	16,228	16,228	16,228	16,228	16,214	16,061
	14	167	540,242	523,140	486,336	465,533	469,192	476,379	471,422	458,425	448,312	443,478	460,043	467,584	456,155	450,146	452,063
Taxable Income/(Loss)	\$ (14)	\$ 99,664	\$ (358,314)	\$ (360,246)	\$ (335,529)	\$ (306,701)	\$ (302,225)	\$ (301,163)	\$ (311,654)	\$ (312,537)	\$ (317,531)	\$ (329,066)	\$ (339,584)	\$ (343,114)	\$ (325,562)	\$ (313,392)	\$ (309,112)
Pre-Admission Income/(Loss)																	
*use as loss override																	
Initial Income/(Loss) to L.P.	(14)	99,654	(358,279)	(380,210)	(335,495)	(306,670)	(302,195)	(301,133)	(311,603)	(312,506)	(317,499)	(329,033)	(339,550)	(343,080)	(325,529)	(313,361)	(309,081)
Loss Realizations to G.P.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Income/(Loss) to Fund	\$ (14)	\$ 99,654	\$ (358,279)	\$ (380,210)	\$ (335,495)	\$ (306,670)	\$ (302,195)	\$ (301,133)	\$ (311,603)	\$ (312,506)	\$ (317,499)	\$ (329,033)	\$ (339,550)	\$ (343,080)	\$ (325,529)	\$ (313,361)	\$ (309,081)
Cumulative	\$ (14)	\$ 99,640	\$ (258,638)	\$ (638,848)	\$ (974,343)	\$ (1,281,013)	\$ (1,583,208)	\$ (1,884,341)	\$ (2,195,945)	\$ (2,508,450)	\$ (2,825,949)	\$ (3,154,982)	\$ (3,494,532)	\$ (3,837,612)	\$ (4,163,141)	\$ (4,476,502)	\$ (4,785,584)
Tax Credits																	
Federal LIHTC	\$ -	\$ -	\$ 78,114	\$ 102,258	\$ 102,258	\$ 102,258	\$ 102,258	\$ 102,258	\$ 102,258	\$ 102,258	\$ 102,258	\$ 102,258	\$ 24,144	\$ -	\$ -	\$ -	\$ -
Credits to the Fund	\$ -	\$ -	\$ 78,106	\$ 102,248	\$ 102,248	\$ 102,248	\$ 102,248	\$ 102,248	\$ 102,248	\$ 102,248	\$ 102,248	\$ 102,248	\$ 24,142	\$ -	\$ -	\$ -	\$ -
Federal Historic	\$ -	\$ -	\$ 2,809,699	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Credits to the Fund	\$ -	\$ -	\$ 2,809,418	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
State LIHTC	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Credits to the Fund	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
State Historic	\$ -	\$ -	\$ 2,809,699	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Credits to the Fund 99.99%	\$ -	\$ -	\$ 2,809,418	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Business Energy Credit	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Credits to the Fund 99.99%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

**Reserve Accounts**

Replacements Reserves		2/1/2013	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Interest Start																					
Balance at beginning of year					19,021	39,771	60,521	81,271	102,021	20,750	41,500	62,250	83,000	103,750	20,750	41,500	62,250	83,000	103,750	20,750	41,500
Deposit from initial uses	2013																				
Current year interest income	2.00%				380	795	1,210	1,625	2,040	415	830	1,245	1,660	2,075	415	830	1,245	1,660	2,075	415	830
Current year deposit from operations				19,021	20,750	20,750	20,750	20,750	20,750	20,750	20,750	20,750	20,750	20,750	20,750	20,750	20,750	20,750	20,750	20,750	20,750
Less interest income included in C/P	Yes				(380)	(795)	(1,210)	(1,625)	(2,040)	(415)	(830)	(1,245)	(1,660)	(2,075)	(415)	(830)	(1,245)	(1,660)	(2,075)	(415)	(830)
Less expenditures made from account									(102,021)						(103,750)					(103,750)	
End of Year Balance				19,021	39,771	60,521	81,271	102,021	20,750	41,500	62,250	83,000	103,750	20,750	41,500	62,250	83,000	103,750	20,750	41,500	62,250
Operating Reserves																					
Interest Start	2/1/2013																				
Balance at beginning of year																					
Deposit from initial uses	2013																				
Current year interest income	2.00%																				
Current year deposit from operations																					
Less interest income included in C/P	Yes																				
Less expenditures made from account																					
End of Year Balance																					
Tax/Insurance Escrow																					
Interest Start	2/1/2013																				
Balance at beginning of year																					
Deposit from initial uses	2013																				
Current year interest income	2.00%																				
Current year deposit from operations																					
Less interest income included in C/P	Yes																				
Less expenditures made from account																					
End of Year Balance																					
Other 1																					
Interest Start	2/1/2013																				
Balance at beginning of year																					
Deposit from initial uses	2013																				
Current year interest income	2.00%																				
Current year deposit from operations																					
Less interest income included in C/P	Yes																				
Less expenditures made from account																					
End of Year Balance																					
Other 2																					
Interest Start	2/1/2013																				
Balance at beginning of year																					
Deposit from initial uses	2013																				
Current year interest income	2.00%																				
Current year deposit from operations																					
Less interest income included in C/P	Yes																				
Less expenditures made from account																					
End of Year Balance																					



**Limited Partner Capital Account**

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	
<b>Capital Account \$ 99.99%</b>																		
Beginning Balance	\$ -	\$ 630,911	\$ 1,992,415	\$ 6,050,611	\$ 5,108,517	\$ 4,211,137	\$ 3,342,583	\$ 2,478,505	\$ 1,615,488	\$ 1,303,885	\$ 991,379	\$ 673,879	\$ 344,847	\$ 5,297	\$ (337,783)	\$ (663,313)	\$ (976,675)	
Contributions	630,925	1,261,850	4,416,474	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Distributions	-	-	-	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	
Historic Credit 3 yr.	-	-	-	(561,884)	(561,884)	(561,884)	(561,884)	(561,884)	-	-	-	-	-	-	-	-	-	
	630,925	1,892,761	6,408,889	5,488,726	4,546,633	3,649,253	2,780,700	1,916,622	1,615,488	1,303,885	991,379	673,879	344,847	5,297	(337,783)	(663,313)	(976,675)	
Income/(Losses) to L.P.	(14)	99,654	(358,279)	(380,210)	(335,495)	(306,670)	(302,195)	(301,133)	(311,603)	(312,506)	(317,499)	(329,033)	(339,550)	(343,080)	(325,529)	(313,361)	(309,081)	
Reallocation of losses to G.P.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Total Income/(Losses) to L.P.	(14)	99,654	(358,279)	(380,210)	(335,495)	(306,670)	(302,195)	(301,133)	(311,603)	(312,506)	(317,499)	(329,033)	(339,550)	(343,080)	(325,529)	(313,361)	(309,081)	
Year End Balance	\$ 630,911	\$ 1,992,415	\$ 6,050,611	\$ 5,108,517	\$ 4,211,137	\$ 3,342,583	\$ 2,478,505	\$ 1,615,488	\$ 1,303,885	\$ 991,379	\$ 673,879	\$ 344,847	\$ 5,297	\$ (337,783)	\$ (663,313)	\$ (976,675)	\$ (1,285,756)	
<b>Basis Calculation</b>																		
Capital Account Balance before losses	630,925	1,892,761	6,408,889	5,488,726	4,546,633	3,649,253	2,780,700	1,916,622	1,615,488	1,303,885	991,379	673,879	344,847	5,297	(337,784)	(663,313)	(976,675)	
Minimum Gain	-	-	-	-	-	-	-	168,877	470,017	771,790	1,078,281	1,396,023	1,620,253	1,951,458	2,264,810	2,565,698	2,862,142	
Deficit Restoration Obligation	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Maximum Loss Allocation	630,925	1,892,761	6,408,889	5,488,726	4,546,633	3,649,253	2,780,700	2,085,499	2,085,505	2,075,675	2,069,660	2,069,903	1,965,100	1,956,755	1,927,027	1,902,385	1,885,468	
<b>Nonrecourse Debt Analysis</b>																		
HFA Bonds 100%	-	-	4,728,470	4,640,307	4,548,780	4,453,761	4,355,117	4,252,710	4,146,396	4,036,026	3,921,445	3,802,493	3,679,002	3,550,800	3,417,707	3,279,536	3,136,094	
2nd 0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
3rd 0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
4th 0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
LP Asset Management Fee 0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
5th 0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
6th 0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
7th 0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Deferred Developer Fee 0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Syracuse HOME 100%	-	-	2,018,333	2,038,516	2,058,901	2,079,490	2,100,285	2,121,288	2,142,501	2,163,976	2,185,565	2,207,421	2,229,495	2,251,790	2,274,308	2,297,051	2,320,022	
HFA Subsidy 0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Partnership Management Fee 0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
12th 0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
13th 0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Incentive Management Fee 0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
15th 0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
16th 0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
17th 0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>Less Lender Held Reserves</b>																		
Replacements Reserves No	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Operating Reserves No	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Tax/Insurance Escrow No	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Other 1 No	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Other 2 No	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
	\$ -	\$ -	\$ 6,746,803	\$ 6,678,823	\$ 6,607,681	\$ 6,533,251	\$ 6,455,402	\$ 6,373,998	\$ 6,288,897	\$ 6,199,952	\$ 6,107,010	\$ 6,009,914	\$ 5,908,497	\$ 5,802,590	\$ 5,692,015	\$ 5,576,567	\$ 5,456,116	
<b>Net Book Value of Assets</b>																		
Initial Depreciable Cost	10,859,350	10,859,350	10,859,350	10,859,350	10,859,350	10,859,350	10,859,350	10,859,350	10,859,350	10,859,350	10,859,350	10,859,350	10,859,350	10,859,350	10,859,350	10,859,350	10,859,350	
Land	21,382	21,382	21,382	21,382	21,382	21,382	21,382	21,382	21,382	21,382	21,382	21,382	21,382	21,382	21,382	21,382	21,382	
Other non-depreciable assets	407,888	407,888	407,888	407,888	407,888	407,888	407,888	407,888	407,888	407,888	407,888	407,888	407,888	407,888	407,888	407,888	407,888	
Additions to depreciable basis	-	-	-	45,944	118,828	196,694	279,529	469,334	538,257	589,706	622,327	634,707	752,852	767,063	783,032	800,618	819,675	
Historic Tax Credit	-	-	-	(561,884)	(1,123,767)	(1,685,651)	(2,247,534)	(2,809,418)	(2,809,418)	(2,809,418)	(2,809,418)	(2,809,418)	(2,809,418)	(2,809,418)	(2,809,418)	(2,809,418)	(2,809,418)	
Accumulated Depreciation	-	-	(403,991)	(910,904)	(1,381,012)	(1,830,317)	(2,283,282)	(2,743,433)	(3,198,627)	(3,640,824)	(4,072,909)	(4,500,158)	(4,943,973)	(5,395,329)	(5,835,257)	(6,269,188)	(6,705,190)	
Net Book Value	\$ 11,268,620	\$ 11,288,620	\$ 10,884,629	\$ 9,861,777	\$ 8,902,669	\$ 7,969,347	\$ 7,037,333	\$ 6,205,104	\$ 5,818,833	\$ 5,428,085	\$ 5,028,621	\$ 4,613,751	\$ 4,288,082	\$ 3,850,936	\$ 3,426,978	\$ 3,010,632	\$ 2,593,687	
Minimum Gain	-	-	-	-	-	-	-	168,894	470,064	771,867	1,078,389	1,396,163	1,620,415	1,951,654	2,265,037	2,565,955	2,862,429	
L.P. Minimum Gain	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 168,877	\$ 470,017	\$ 771,790	\$ 1,078,281	\$ 1,396,023	\$ 1,620,253	\$ 1,951,458	\$ 2,264,810	\$ 2,565,698	\$ 2,862,142	

**Lower Tier Benefits Schedule**

**Kasson/Leavenworth Apart**

Year	Equity Contribution	Projected Taxable Income (Loss)	Deduct Stressed Cash Flow 100.00%	Projected Tax Benefits 35.00%	Projected Federal Housing Tax Credits	Projected Historic Rehab Tax Credits	Projected State Tax Credits	Federal Tax Effect on State Credits Yes	Projected State Historic Credits	Federal Tax Effect on State Historic Yes	Business Energy Credits	Projected Total Tax Benefits	0.00% Projected Cash Flow	Total Investing L.P. Benefits	Annual % Return of Invested Equity
2011	630,925	(14)	-	5	-	-	-	-	-	-	-	5	-	5	0.00%
2012	1,261,850	99,654	-	(34,879)	-	-	-	-	-	-	-	(34,879)	-	(34,879)	-1.84%
2013	4,416,474	(358,279)	-	125,398	78,106	2,809,418	-	-	2,809,418	(983,296)	-	4,839,043	-	4,839,043	76.70%
2014	-	(380,210)	0	133,074	102,248	-	-	-	-	-	-	235,321	-	235,321	3.73%
2015	-	(335,495)	0	117,424	102,248	-	-	-	-	-	-	219,671	-	219,671	3.48%
2016	-	(306,670)	0	107,335	102,248	-	-	-	-	-	-	209,582	-	209,582	3.32%
2017	-	(302,195)	-	105,768	102,248	-	-	-	-	-	-	208,016	-	208,016	3.30%
2018	-	(301,133)	0	105,397	102,248	-	-	-	-	-	-	207,645	-	207,645	3.29%
2019	-	(311,603)	-	109,061	102,248	-	-	-	-	-	-	211,309	-	211,309	3.35%
2020	-	(312,506)	0	109,377	102,248	-	-	-	-	-	-	211,625	-	211,625	3.35%
2021	-	(317,499)	0	111,125	102,248	-	-	-	-	-	-	213,373	-	213,373	3.38%
2022	-	(329,033)	0	115,162	102,248	-	-	-	-	-	-	217,409	-	217,409	3.45%
2023	-	(339,550)	-	118,842	24,142	-	-	-	-	-	-	142,984	-	142,984	2.27%
2024	-	(343,080)	-	120,078	-	-	-	-	-	-	-	120,078	-	120,078	1.90%
2025	-	(325,529)	0	113,935	-	-	-	-	-	-	-	113,935	-	113,935	1.81%
2026	-	(313,361)	0	109,677	-	-	-	-	-	-	-	109,677	-	109,677	1.74%
2027	-	(309,081)	0	108,178	-	-	-	-	-	-	-	108,178	-	108,178	1.71%
2028	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0.00%
2029	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0.00%
<b>Total</b>	<b>6,309,249</b>	<b>(4,785,584)</b>	<b>3</b>	<b>1,674,955</b>	<b>1,022,478</b>	<b>2,809,418</b>	<b>-</b>	<b>-</b>	<b>2,809,418</b>	<b>-</b>	<b>-</b>	<b>7,332,972</b>	<b>-</b>	<b>7,332,972</b>	
<b>Sale</b>		<b>1,285,756</b>		<b>(450,015)</b>								<b>(450,015)</b>	<b>-</b>	<b>(450,015)</b>	
<b>Totals</b>	<b>6,309,249</b>	<b>(3,499,828)</b>	<b>3</b>	<b>1,224,941</b>	<b>1,022,478</b>	<b>2,809,418</b>	<b>-</b>	<b>-</b>	<b>2,809,418</b>	<b>-</b>	<b>-</b>	<b>6,882,958</b>	<b>-</b>	<b>6,882,958</b>	

**EXHIBIT J  
TO OPERATING AGREEMENT**

**DEVELOPMENT BUDGET**

(See Attached)

Uses of Funds						
Uses	Total	Eligible Basis	Dep. Basis	Expensed/Amort.	Non-Dep.	Comments
Land	\$ 21,382	\$ -	\$ -	\$ -	\$ 21,382	
Building Acquisition	-	-	-	-	-	
Other Acquisition Costs	-	-	-	-	-	
Subtotal	\$ 21,382	-	-	-	-	
Structures and Rehabilitation	8,534,972	8,534,972	8,534,972	-	-	
Site Work	372,880	372,880	372,880	-	-	
Personal Property	307,328	307,328	307,328	-	-	
Construction Contingency	1,107,956	1,107,956	1,107,956	-	-	Outside K
General Requirements	552,911	552,911	552,911	-	-	
Builder Profit	276,455	276,455	276,455	-	-	
Builder Overhead	184,304	184,304	184,304	-	-	
Building Permits	70,000	70,000	70,000	-	-	Outside K
P&P Bond Costs	-	-	-	-	-	
Environmental Remediation	-	-	-	-	-	
Demolition Costs	-	-	-	-	-	
Off-Site Work	-	-	-	-	-	
Other Construction	-	-	-	-	-	
Ins.	64,506	64,506	64,506	-	-	
Other 3	-	-	-	-	-	K = 10,293,356
Subtotal	11,471,312	-	-	-	-	
Architect - Design	420,000	420,000	420,000	-	-	
Architect - Supervision	-	-	-	-	-	
Municipal/Tap Fees	-	-	-	-	-	
Impact Fees	-	-	-	-	-	
Appraisal/Market Study	16,000	16,000	16,000	-	-	
Title and Recording	60,000	60,000	60,000	-	-	
Legal	75,000	75,000	75,000	-	-	
Organizational Legal	50,000	50,000	50,000	-	-	Lender Legal
Accounting/Cost Cont.	10,000	-	-	10,000	-	
Phase I/Environmental	95,000	95,000	95,000	-	-	
Soils/Geotech	-	-	-	-	-	
Survey	22,500	22,500	22,500	-	-	
Tax Credit Fees	-	-	-	-	-	
Construction Period Taxes/Ins.	132,650	132,650	132,650	-	-	
Soft Cost Contingency	61,257	-	-	-	61,257	
Engineering	20,000	20,000	20,000	-	-	
Working Capital	346,631	-	-	-	346,631	
PILOT Fees	194,949	194,949	194,949	-	-	
Subtotal	1,503,987	-	-	-	-	
CPI Capitalized	307,230	307,230	307,230	-	-	
CPI Expensed	131,624	-	-	131,624	-	
Predevelopment Interest	-	-	-	-	-	
Bridge Loan Interest	-	-	-	-	-	
Accrued CPI	91,800	91,800	91,800	-	-	
Subtotal	530,654	-	-	-	-	
Developer Fee	2,100,000	2,100,000	2,100,000	-	-	
Subtotal	2,100,000	-	-	-	-	
Perm Loan Fees	461,838	-	-	461,838	-	
Construction Loan Fees	303,348	303,348	303,348	-	-	Bond Fees
Subtotal	765,186	-	-	-	-	
Ren-Up	-	-	-	-	-	
Marketing	-	-	-	-	-	
Organization	2,500	-	-	2,500	-	
Syndication Costs	-	-	-	-	-	
Subtotal	2,500	-	-	-	-	
Replacements Reserves	-	-	-	-	-	
Operating Reserves	-	-	-	-	-	
Tax/Insurance Estrow	-	-	-	-	-	
Other 1	-	-	-	-	-	
Other 2	-	-	-	-	-	
Subtotal	-	-	-	-	-	
Total Uses	\$ 16,395,021	\$ 15,359,789	\$ 15,359,789	\$ 605,962	\$ 429,270	

**EXHIBIT K  
TO OPERATING AGREEMENT**

**INSURANCE REQUIREMENTS**

The Managing Member shall maintain or cause to be maintained insurance coverages in full force and effect at all times with respect to the Project in accordance with the requirements of this Exhibit K. All capitalized terms used in this Exhibit K shall have the meanings as set forth in the Agreement.

(1) **Property Insurance.** The Company shall carry “special form” property insurance in an amount equal to 100% of the insurable replacement cost of the Project with coinsurance waived. If a coinsurance clause is in effect, an agreed amount endorsement is required. Endorsements shall extend coverage to building ordinance compliance, demolition and increased cost of construction, and shall be subject to a per loss deductible not to exceed \$10,000. The policy shall not contain any exclusions for acts of terrorism. If the policy contains such exclusion, separate insurance coverage of any such exclusion for terrorist acts shall be obtained, provided that such coverage is available in the marketplace. Blanket policies must include a statement of values and limits by property location. Such coverage shall also include business income coverage in an amount equal to not less than six (6) months scheduled rental income from the Property, and naming Investor Member and the Special Member as loss payee and certificate holder. All such policies must be on an Acord 28 Form as Evidence of Insurance.

(a) **Mechanical Breakdown/Boiler and Machinery Insurance** only applies to central systems and/or elevators per code. Boiler insurance is required if there is a steam boiler or other pressurized vessel in operation in connection with the premises. A minimum coverage of \$250,000 per accident is required, with Total Building Value Limit, comprehensive form including Mechanical Breakdown.

(b) **Flood Insurance.** If the Project is in a flood plain or is otherwise susceptible to flooding, flood insurance for the building and its contents will be required for the full replacement cost of the building(s), improvements and contents; or the maximum amount of flood insurance available on the date the Company was closed at the lower tier. The flood insurance policy must be satisfactory to the Investor Member;

(c) **Other Coverages.** The Company shall also obtain and maintain prudent and commercially reasonable insurance coverage over and above the minimum requirements specified as appropriate to the property type and location. Additional coverages may include windstorm, mine subsidence, sinkhole, personal property, supplemental liability, or coverages of other property-specific risks.

2. **Commercial General Liability** insurance with a combined single limit for bodily injury and property damage in the amount of not less than \$1,000,000 combined single limit per occurrence per project, \$2,000,000 in the aggregate with a minimum of \$5,000,000 per

occurrence umbrella coverage liability insurance, including personal and advertising injury \$1,000,000 per occurrence, fire damage liability \$50,000 and medical expense limit \$5,000.

The Other insurance clause shall be deleted and as such insurance is to be primary as to the Contractor, Owner, Architect and all other persons and/or entities entitled to indemnities as set forth in the contract documents.

Commercial Automobile liability insurance in an amount not less than \$1,000,000 (combined single limit) for all owned, hired and non-owned vehicles.

### **INSURANCE REQUIREMENTS FOR THIRD PARTY MANAGEMENT AGENT**

1. **Property Manager Responsibilities.** The Managing Member shall cause the Property Management Agreement to require the Property Manager to obtain, and maintain in full force and effect, at all times with respect to the Project the insurance coverage as required by this Exhibit. The Property Management Agreement shall require the Property Manager to provide the Managing Member with evidence of the required coverage in the form of current certificates of insurance for as long as the Property Management Agreement shall remain in force.

2. **Property Manager Coverages.** In addition to the Company coverages required by this Exhibit, the Property Manager shall obtain and maintain in full force and effect, at all times with respect to the services it provides to the Company the following policies of insurance:

(a) Commercial general liability insurance in amounts not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate which shall name the Company, Investor Member and Special Member as an additional insured.

(b) Worker's compensation insurance as required by the state in which the work is performed, including Employer Liability coverage not less than \$100,000 for each accident, \$500,000 disease – policy limit, \$100,000 disease for each employee;

(c) A fidelity bond in an amount not less than six (6) months of projected gross rental receipts or Employee Theft and Dishonesty in an amount acceptable by the Investor Member and Special Member.

(d) Commercial automobile liability insurance in an amount not less than \$1,000,000 (combined single limit), including owned, hired and non-owned vehicles.

### **INSURANCE REQUIREMENTS DURING CONSTRUCTION**

1. **Contractor.** Prior to commencement of any work and until final completion and final acceptance of the work by the owner, the Contractor and each and every subcontractor of any tier of the Contractors shall, at its sole cost and expense, maintain the following insurance:

(a) **Commercial General Liability Insurance** with a minimum combined single limit of \$1,000,000 per occurrence per project with an aggregate of not less than \$5,000,000 (which may be in the form of umbrella/excess insurance) covering the following perils: Products/completed operations (\$2,000,000) for one year after completion of the Project; broad form property damage including completed operations for one year after completion of the Project.

(b) **Commercial Automobile liability insurance** in an amount not less than \$1,000,000 (combined single limit) for all owned, hired and non-owned vehicles utilized by contractor in connection with the Project.

(c) **Workers Compensation insurance** as required by the state in which the work is to be performed, including Employer's Liability with a minimum limit of \$100,000.

(d) The Company, Investor Member and Special Member shall be named as additional insureds and certificate holder.

(e) The Other Insurance clause shall be deleted and such insurance is to be primary as to the Contractor, Owner, Architect and all other persons and/or entities entitled to indemnities as set forth in the contract documents.

(f) The Managing Member shall use its best efforts to assure that the Contractor shall cause each of its subcontractors to purchase and maintain insurance of the types set forth above in this Section. The Managing Member shall obtain from the Contractor copies of certificates of insurance evidencing such coverage for each such subcontractor.

2. **Builder's Risk.** The Managing Member shall purchase and maintain, or shall require the Contractor to purchase and maintain, property insurance written on a builder's risk, "all risk" or equivalent policy form in the amount of the Construction Contract sum (including the value of any modifications) on a replacement cost basis. Such insurance shall be maintained until final payment has been made to the Contractor. Such policies shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, windstorm, testing and startup, temporary buildings, portions of the work stored off site, all portions of the work in transit, debris removal including demolition occasioned by the enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. If obtained by the Contractor, the Company, Investor Member and Special Member shall be named as an additional insured and certificate holder.

3. **Other Coverages.** The Company shall also obtain and maintain prudent and commercially reasonable insurance coverage over and above the minimum requirements specified as appropriate to the property type and location. Additional coverages may include windstorm, mine subsidence, sinkhole, personal property, supplemental liability, or coverages of other property-specific risks. Partial occupancy or use shall not commence until the insurance company providing the property insurance has consented to such partial occupancy or use by

endorsement or otherwise. The Managing Member shall take no action with respect to partial occupancy or use that would cause the cancellation, lapse or reduction of insurance.

4. **Architect.** The Architect shall obtain, and maintain in full force and effect, at all times with respect to the Project, the following policies of insurance:

- (a) Commercial general liability insurance in amounts not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate which shall name the Company, Investor Member and Special Member as additional insured and certificate holder.
- (b) Professional liability insurance in an amount not less than \$1,000,000.

### **ADMINISTRATIVE REQUIREMENTS**

1. **Carrier Requirements.** All of the insurance policies required hereunder shall (a) be written by insurance companies which are licensed to do business in the State where the Project is located or otherwise in conformity with the laws of such State, in a General Policy holder Rating of A or higher, and a Financial Rating of VIII or better, as reported in the most current issue of Best's Insurance Guide, or as reported by Best on its internet web site, such insurance shall specifically identify the Investor Member and Special Member as an additional insured; and (c) include a provision requiring the insurance company to notify in writing no less than thirty (30) days prior to any cancellation, non-renewal or material change in the terms and conditions of coverage. In addition, the Managing Member shall provide policies of all insurance contracts required hereunder within thirty (30) days of their inception and subsequent renewals.

2. **Review of Coverage.** The Managing Member shall review regularly all of the Company and Project insurance coverage to insure that it is adequate. In particular, the Managing Member shall review at least annually the insurance coverage required hereunder to insure that it is in an amount at least equal to the then current full replacement value of the Improvements.

3. **Additional Insured.** The clause used to refer to the Investor Member must read verbatim as follows:

Conifer 2011 Tax Credit Fund, LP, its successors and/or assigns,  
200 Public Square, Suite 1550  
Cleveland, OH 44114

The clause used to refer to the Special Member must read verbatim as follows:

Red Stone Equity Manager, LLC, its successors and/or assigns  
200 Public Square, Suite 1550  
Cleveland, OH 44114

4. **Certificates of Coverage and Policies.** The Managing Member shall provide copies of all such insurance policies to the Investor Member promptly after receipt thereof. Binders are acceptable for a period not to exceed 90 days. In the event hereafter there are exclusions, redefinitions, or other modifications by the insurance industry to any standard form of coverage specified hereinabove and such changes materially increase risks to the Company, the foregoing requirements shall, to the extent feasible, be deemed to include the same coverage of such risks as presently required.

5. **Notice.** The Investor Members must be immediately notified of any physical damage, additional improvements or other factors affecting any insurance contract, including any claims under the Company Insurance.

6. **Limitation of Liability.** The Managing Member hereby releases and relieves the Investor Member, the Special Member, [Fund if applicable], for any and all liability, and waives its entire right of recovery against them, with respect to any loss or damage of property or for property damage, bodily injury or personal injury to third parties arising out of or incident to any loss or peril insured against under any of the foregoing policies, and any other perils for which the Managing Member is responsible for arranging such insurance.

**EXHIBIT L  
TO OPERATING AGREEMENT**

**[Intentionally Omitted]**

**EXHIBIT M  
TO OPERATING AGREEMENT**

**[INTENTIONALLY OMITTED]**

**EXHIBIT N**  
**TO OPERATING AGREEMENT**  
**MANAGEMENT AGREEMENT**

(See Attached)

**EXHIBIT O  
TO OPERATING AGREEMENT**

**PURCHASE OPTION AGREEMENT**

(See Attached)

## PURCHASE OPTION AGREEMENT

This Purchase Option Agreement (the "Agreement") is made and entered into as of December 22, 2011, among James Street Apartments, LLC, a New York limited liability company (the "Company"), James Street Managing Member, LLC, a New York limited liability company ("Optionee"), Conifer 2011 Tax Credit Fund, LP, a Delaware limited partnership (the "Investor Member") and by Red Stone Equity Manager, LLC, a Delaware limited liability company (the "Special Member").

### RECITALS

Concurrently with the execution and delivery of this Agreement, James Street Managing Member, LLC (the "Managing Member"), the Investor Member and the Special Member are entering the Amended and Restated Operating Agreement dated as of the date hereof (the "Operating Agreement") continuing the Company by amending and restating a prior Operating Agreement.

The Apartment Complex is or will be subject to an extended use agreement (the "Extended Use Agreement") with the Agency restricting the Apartment Complex's use to low-income housing (such use restrictions under the Extended Use Agreement being referred to collectively herein as the "Use Restrictions").

The Optionee desires to have the right to acquire the Apartment Complex or the interests of the Investor Member and Special Member in the Company upon termination of the Compliance Period.

Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Operating Agreement.

NOW, THEREFORE, in consideration of the execution and delivery of the Operating Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Grant of Option.

The Company hereby grants to the Optionee an option (the "Option") to purchase the real estate, fixtures, and personal property comprising the Apartment Complex or associated with the physical operation thereof, located at the Apartment Complex and owned by the Company at the time of purchase, after the close of the fifteen (15) year compliance period for the low-income housing tax credit for the Apartment Complex (the "Compliance Period") as determined under Section 42(i)(1) of the Internal Revenue Code of 1986, as amended (the "Code"), on the terms and conditions set forth in this Agreement and subject to the conditions precedent to exercise of the Option specified herein. The Apartment Complex is legally described in Exhibit A attached hereto and made a part hereof.

2. Purchase Price Under Option.

The purchase price for the Apartment Complex pursuant to the Option (the "Option Price") shall be the greater of the following amounts, subject to the provision set forth hereinbelow:

(a) Price Formula. An amount, determined by the Company's Accountants, which is equal to the sum of (1) the outstanding principal, accrued interest, any prepayment penalty and any other amounts due under all mortgage documents relating to the Apartment Complex, whether or not such amounts are due upon sale, and the total amount of all other indebtedness of the Company as of the date of the closing hereunder; and (2) an amount sufficient to assure receipt by the Investor Member of the Company from the proceeds of the sale of the Apartment Complex (when distributed pursuant to Section 11.04 of the Operating Agreement) of an amount not less than the sum of all federal, state and local taxes, including without limitation, all income taxes due upon sale, incurred or to be incurred by the Investor Member (or its constituent partners) as a result of such sale plus the amount of any theretofore Unpaid Tax Credit Shortfall to which the Investor Member is entitled under the Operating Agreement. Notwithstanding the foregoing, however, the amount described in the foregoing sentence shall never be less than the amount of the "minimum purchase price" as defined in Section 42(i)(7)(B) of the Code. In computing such price, it shall be assumed that each of the Members of the Company (or their constituent partners or members) has an effective combined federal, state and local income tax rate equal to the maximum of such rates in effect on the date of closing hereunder; or

(b) Fair Market Value. An amount equal to (i) 100% of the fair market value of the Apartment Complex, appraised as low-income housing to the extent continuation of such use is required under the Use Restrictions, any such appraisal to be made in accordance with the procedures described in Section 5 below (the "Appraised Fair Market Value") plus (ii) an amount sufficient to assure receipt by the Investor Member of the Company from the proceeds of the sale of the Apartment Complex (when distributed pursuant to Section 11.04 of the Operating Agreement) of an additional amount equal to any Unpaid Tax Credit Shortfall to which the Investor Member is entitled under the Operating Agreement together with any other amounts owed by the Company to the Optionee or its Affiliates (whether as loan repayments, accrued fees, or a return of Capital Contributions).

### 3. Conditions Precedent.

Notwithstanding anything in this Agreement to the contrary, the Option granted hereunder shall be contingent on the following being true and correct at the time of exercise of the Option and any purchase pursuant thereto: (i) the Optionee or an Affiliate thereof shall be continuing to serve as a Managing Member of the Company and (ii) neither Optionee nor any Affiliate of Optionee shall be in material default under the Operating Agreement or any agreement with the Company, the Investor Member or the Special Member.

If any or all of such conditions precedent have not been satisfied, the Option shall not be exercisable. Upon any of the events terminating the Option under this Section 3, the Option shall be void and of no further force and effect.

4. Exercise of Option

The Option may be exercised by the Optionee by (a) giving prior written notice of its intent to exercise the Option to the Company and each of its Members in the manner provided in the Operating Agreement and in compliance with the requirements of this Section 4 (the "Option Exercise Notice"), and (b) complying with the contract and closing requirements of Section 7 hereof. Any such Option Exercise Notice shall be given during the period commencing one (1) year prior to the expiration of the Compliance Period and terminating at the end of the Option Period. If the foregoing requirements (including those of Section 7 hereof) are not satisfied as and when provided herein, the Option shall expire and be of no further force or effect.

5. Determination of Option Price.

Upon delivery of the Option Exercise Notice, the Company and the Optionee shall determine the Option Price utilizing the Appraised Fair Market Value of the Apartment Complex (or of the interests of the Investor Member and Special Member in the Company in the event that the Optionee elects to purchase such interests pursuant to Section 8 hereof) determined as follows. As soon as practicable following the delivery of the Option Exercise Notice, the Optionee and the Special Member shall select a mutually acceptable independent appraiser. 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 Optionee and the Special Member 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 Section 2(b)(i) above 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 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 Section 2(b)(i). The Company and the Optionee shall each pay one-half of the fees and expenses of any independent appraiser(s) selected pursuant to this Section 5.

6. Contract and Closing.

Upon determination of the purchase price, the Company and the Optionee shall enter into a written contract for the purchase and sale of the Apartment Complex in accordance with the terms of this Agreement and containing such other terms and conditions as are standard and customary for similar commercial transactions in the geographic area which the Apartment Complex is located, providing for a closing not later than the date specified in the Option Exercise Notice or thirty (30) days after the Option Price has been determined, whichever is later. In the absence of any such contract, this Agreement 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 for the Apartment Complex or another mutually acceptable title company. Upon closing, the Company shall deliver to the Optionee, along with the deed to

the property, an ALTA Owner's Policy dated as of the close of escrow in the amount of the purchase price, subject to the liens, encumbrances and other exceptions then affecting the title. The Optionee shall be responsible for all costs including, but not limited to, transfer taxes, title policy premiums and recording costs.

7. Use Restrictions.

In consideration of the Option granted hereunder at the price specified herein, the Optionee hereby agrees that the deed granting the Apartment Complex to the Optionee shall contain a covenant running with the land, restricting the use of the Apartment Complex to low-income housing to the extent required by those Use Restrictions contained in the Regulatory Agreement and the Extended Use Agreement. Such deed covenant shall include a provision requiring the Optionee to pay any and all costs, including attorneys' fees, incurred by the Investor Member in enforcing or attempting to enforce the Use Restrictions, and to pay any and all damages incurred by the Investor Member from any delay in or lack of enforceability of the same. All provisions relating to the Use Restrictions contained in such deed and in this Agreement shall be subject and subordinate to any third-party liens encumbering the Apartment Complex.

The deed to the Optionee shall be subject to the prior written approval of the Investor Member. In the absence of a deed conforming to the requirements of this Agreement, the provisions of this Agreement shall run with the land. In the event that the Option is not exercised, or the sale pursuant thereto is not consummated, then, upon conveyance of the Apartment Complex to anyone other than the Optionee hereunder, the foregoing provisions shall terminate and have no further force or effect.

8. Alternative Purchase of Company Interests

Notwithstanding the foregoing and after the close of the Compliance Period, the Optionee may, at its election, in lieu of a direct acquisition of the Apartment Complex pursuant to the Option, acquire the Company interests (but not less than all of such interests) of the Investor Member and Special Member in the Company for a purchase price to each of them be equal to the fair market value of their interests which shall be determined by an appraisal to be made in accordance with the procedures described in Section 5 above.

9. Applicable Law.

This Agreement shall be construed in accordance with the laws of the State of New York.

10. Notices.

All notices, demands or other communications hereunder shall be in writing and deemed to have been given when the same are (i) deposited in the United States mail and sent by certified or registered mail, postage prepaid, (ii) deposited with Federal Express or similar overnight delivery service, (iii) transmitted by telecopier or other facsimile transmission, answerback requested, or (iv) delivered personally, in each case to the parties at the addresses set forth below or at such other addresses as such parties may designate by notice to the Company:

If to the Optionee, at c/o Conifer Realty, LLC, 183 East Main Street, 6<sup>th</sup> Floor, Rochester, New York 14604; if to the Company, at 183 East Main Street, 6<sup>th</sup> Floor, Rochester, New York 14604; if to the Managing Members, the Investor Member or the Special Member at the address specified in Section 16.08 of the Operating Agreement.

11. Binding Provisions.

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

12. Counterparts.

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties have not signed the original or the same counterpart.

13. Amendments.

This Agreement may be amended only by a written instrument executed in one or more counterparts by the parties hereto.

14. Time.

Time is of the essence with respect to this Agreement, and all provisions relating thereto shall be so construed.

15. Legal Fees.

Except as otherwise provided herein, in the event that legal proceedings are commenced by the Company against the Optionee or by the Optionee against the Company in connection with this Agreement or the transactions contemplated hereby, the prevailing party shall be entitled to recover all reasonable attorney's fees and expenses.

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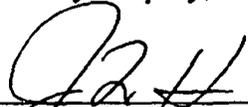
IN WITNESS WHEREOF, the parties have executed this document as of the date first set forth hereinabove.

COMPANY:

James Street Apartments, LLC, a New York limited liability company

By: James Street Managing Member, LLC, a New York limited liability company, its Managing Member

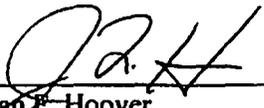
By: Conifer Realty, LLC, a New York limited liability company, its sole Member

By:   
Name: Joan F. Hoover  
Its: Vice President

OPTIONEE:

James Street Managing Member, LLC, a New York limited liability company

By: Conifer Realty, LLC, a New York limited liability company, its sole Member

By:   
Name: Joan F. Hoover  
Its: Vice President

The undersigned hereby consent to the foregoing Agreement as of the date first set forth hereinabove.

**MANAGING MEMBERS:**

James Street Managing Member, LLC, a New York limited liability company

By: Conifer Realty, LLC, a New York limited liability company, its sole Member

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

Name: Joan F. Hoover

Its: Vice President

**INVESTOR MEMBER:**

Conifer 2011 Tax Credit Fund, LP, a Delaware limited partnership

By: RSEP MM, LLC, its Managing Member

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

Name:

Title:

**SPECIAL MEMBER:**

Red Stone Equity Manager, LLC, a Delaware limited liability company

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

Name:

Title:

IN WITNESS WHEREOF, the parties have affixed their signatures and seals to this Amended and Restated Operating Agreement of James Street Apartments, LLC as of the date first written above.

**MANAGING MEMBER:**

**JAMES STREET MANAGING MEMBER, LLC,**  
a New York limited liability company

By: Conifer Realty, LLC, a New York limited liability company  
Its: Sole Member

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

Name: Joan F. Hoover  
Its: Vice President

**INVESTOR MEMBER:**

**CONIFER 2011 TAX CREDIT FUND, LP,**  
a Delaware limited partnership

By: RSEP MM, LLC, its Managing Member

By: Eric McClelland

Name: Eric McClelland  
Title: Managing Member

**SPECIAL MEMBER:**

**RED STONE EQUITY MANAGER, LLC,**  
a Delaware limited liability company

By: Eric McClelland

Name: Eric McClelland  
Title: Managing Member

**WITHDRAWING MEMBER:**

**CONIFER REALTY, LLC,**  
a New York limited liability company

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

Name: Joan F. Hoover  
Its: Vice President

**EXHIBIT "C"**  
**CERTIFICATE OF GOOD STANDING**

**State of New York**  
**Department of State** } **ss:**

I hereby certify, that JAMES STREET APARTMENTS, LLC a NEW YORK Limited Liability Company filed Articles of Organization pursuant to the Limited Liability Company Law on 09/13/2010, and that the Limited Liability Company is existing so far as shown by the records of the Department.



\*\*\*

*WITNESS my hand and the official seal  
of the Department of State at the City of  
Albany, this 21st day of November two  
thousand and eleven.*

A handwritten signature in black ink, appearing to read "Neil A. ...", is written over a faint circular stamp.

*First Deputy Secretary of State*

**EXHIBIT "D"**  
**RESOLUTION**

OFFICER'S CERTIFICATE

The undersigned, being the President and Chief Executive Officer of Conifer Realty, LLC ("Conifer") does hereby certify as follows:

1. Conifer is the sole member of James Street Managing Member, LLC, Conifer Management, LLC ("Conifer Management") and Conifer, LLC (the "Developer").

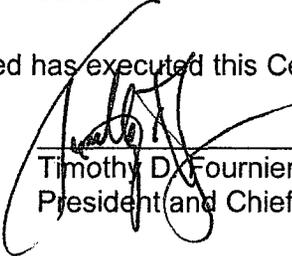
2. Attached hereto as Exhibit A is the unanimous written consent of all of the voting members of Conifer, obtained in lieu of a meeting. The authorizations contained in the attached Unanimous Written Consent have not been amended and remain in full force and effect.

3. Attached hereto as Exhibit B are the organizational documents of James Street Apartments, LLC, (the "Borrower") and James Street Managing Member, LLC (the "Managing Member"), in effective as of the date hereof, together with Good Standings Certificates issued by the New York Secretary of State.

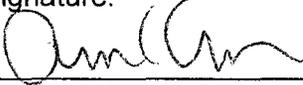
4. The following persons have been authorized to execute the documents on behalf of the Borrower, Managing Member, Conifer, Conifer Management and the Developer, are duly elected or appointed, qualified and acting officers of Conifer, holding the offices of Conifer indicated opposite their respective names.

<u>Officer</u>	<u>Office</u>
Richard J. Crossed	Chairman
Timothy D. Fournier	President and Chief Executive Officer
Andrew I. Crossed	Executive Vice President
Joan Hoover	Vice President

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of this 13<sup>th</sup> day of November, 2011.

  
\_\_\_\_\_  
Timothy D. Fournier  
President and Chief Executive Officer

The undersigned, Andrew I. Crossed, is the duly elected Executive Vice President of Conifer and certifies that Timothy D. Fournier is the duly elected, qualified and acting President and Chief Executive Officer of Conifer and that the signature set forth above opposite his name is his genuine signature.

  
\_\_\_\_\_  
Andrew I. Crossed  
Executive Vice President

each of the entities above providing any financing or security (the "Lenders") as a condition of providing such Financing and in connection with the Tax Credit Investment;

RESOLVED: That Conifer, as the sole member of Conifer, LLC (the "Developer"), hereby authorizes the Developer to assume the responsibilities of the developer for the Property and to enter into a Development Agreement with the Borrower and to pledge its developer fee hereunder to the Lenders if required as a condition of providing such Financing and in connection with the Tax Credit Investment.

RESOLVED: That Conifer, the Managing Member, the Developer and the Borrower are hereby authorized to grant liens in connection with the financing and to enter into such deeds, leases, pilot agreements, operating agreements, assignments, development agreements, loan agreements, mortgages, notes, reimbursement agreements, guarantees, regulatory agreements, environmental indemnification agreements and related documents, each in the form approved by the President or any other officer of Conifer, each acting in his/her individual capacity, with such changes as such officer believes to be necessary or appropriate, the execution thereof by any such officer to be conclusive evidence of such officer's approval thereof, and further

RESOLVED: That the President and any other officer of Conifer, each acting alone, are hereby authorized and directed to execute and deliver on behalf of Conifer, the Managing Member, Borrower and Developer, such deeds, leases, pilot agreements, operating agreements, assignments, development agreements, mortgages, notes, reimbursement agreements, guarantees, regulatory agreements and related documents required by each of the Lenders or deemed necessary or appropriate to complete the transactions contemplated herein for the Borrower acting on behalf of Conifer, the Managing Member, the Developer and the Borrower, and to take all actions necessary or desirable to carry out the obligations of each such entity and to consummate the transactions.

RESOLVED: That all agreements and documents entered into, actions taken and all decisions and statements made by Conifer, the Managing Member, the Developer and the Borrower with respect to or in connection with the development and financing of the Property and the improvements to be rehabilitated thereon are hereby ratified, confirmed and approved in all respects.

This Consent may be executed in any number of counterparts each of which shall be deemed an original but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, we have hereunto set our hands intending this Consent to become effective as of the date specified below.

  
\_\_\_\_\_  
Richard J. Crossed

November 23, 2011

  
\_\_\_\_\_  
Timothy D. Fournier

November 23, 2011

  
\_\_\_\_\_  
Andrew I. Crossed

November 23, 2011

ONE PARK PLACE  
300 SOUTH STATE STREET  
SYRACUSE, NEW YORK 13202  
T 315.425.2700 • F 315.425.2701

REACHUS@HBLAW.COM

December 22, 2011

City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202

James Street Apartments, LLC  
183 East Main Street, Suite 600  
Rochester, New York 14604

Re: City of Syracuse Industrial Development Agency  
James Street Apartments, LLC Project

Ladies and Gentlemen:

We have acted as counsel to the City of Syracuse Industrial Development Agency (the "**Agency**") in connection with a project (the "**Project**") undertaken by the Agency at the request of James Street Apartments, LLC (the "**Company**") consisting of: (A)(i) the acquisition of a leasehold interest in two parcels of improved real property including an approximately .51 acre parcel located at 615 James Street (Leavenworth Parcel) and an approximately .50 acre parcel located at 622 James Street (Kasson Parcel) (collectively, the "**Land**"); (ii) the reconstruction and renovation of: (a) an approximately 51,602 square foot seven (7) story building ("**Leavenworth Apartments**") for mixed-income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 37,138 square foot, seven (7) story building ("**Kasson Apartments**" and together with the Leavenworth Apartments the "**Apartments**") for mixed-income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on the Land and jointly housing 83 units of housing, each Apartment containing laundry and storage facilities together with on-site parking for residents (collectively, the "**Facility**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the "**Equipment**", together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax and sales and use taxation (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, improvement and equipping of the Project Facility; and (D) the lease of the Project Facility by the Agency pursuant to a lease

agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Agency acquired a leasehold interest in the Project Facility pursuant to that certain Company Lease Agreement dated as of December 22, 2011 (the "***Company Lease***") between the Company, as lessor and the Agency, as lessee, appointed the Company as its agent to complete the Project and leased the Project Facility to the Company pursuant to the Agency Lease Agreement dated as of December 22, 2011 (the "***Agency Lease***") between the Agency and the Company.

The Company has also requested that the Agency grant the Financial Assistance to the Project. The Agency and the Company will enter into a Payment in Lieu of Taxes Agreement dated as of December 22, 2011 (the "***PILOT Agreement***") with respect to the Project. Capitalized terms used herein shall have the meaning given to them in the Table of Definitions attached as Exhibit "C" to the Agency Lease.

The Company has granted, and at its request the Agency has joined, a mortgage lien and security interest on its interest in the Project Facility to Mortgagee 1 (as defined herein) to secure a loan made by New York State Housing Finance Agency (HFA) ( "***Mortgagee 1***") to the Company to finance certain costs of the Project pursuant to a Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement dated December 22, 2011 ("***Mortgage 1***").

The Company has also granted, and at its request the Agency has joined, a mortgage lien and security interest on its interest in the Project Facility to secure a second loan made by Mortgagee 1 to the Company to finance certain costs of the Project pursuant to a Fee and Leasehold Subsidy Mortgage dated December 22, 2011 ( "***Mortgage 2***").

The Company has further granted, and at its request the Agency has joined, a mortgage lien and security interest on its interest in the Project Facility to Mortgagee 3 (as defined herein) to secure a certain loan made by the City of Syracuse ( "***Mortgagee 3***") to the Company to finance certain costs of the Project pursuant to a Mortgage and Security Agreement dated December 22, 2011 ( "***Mortgage 3***").

As counsel to the Agency, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such instruments, certificates, and documents as we have deemed necessary or appropriate for the purposes of the opinion expressed below. In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as copies, and have assumed the accuracy and truthfulness of the factual information, expectations, conclusions, representations, warranties, covenants and opinions of the Company and its counsel and representatives as set forth in the various documents executed and delivered by them or any of them and identified in the Closing Memorandum in connection with the Project.

We are of the opinion that:

1. The Agency is a duly organized and existing corporate governmental agency constituting a public benefit corporation of the State of New York.
2. The Agency is duly authorized and empowered by law to acquire, demolish existing improvements, construct, and equip the Project, to lease the Facility from the Company pursuant to the Company Lease, to lease the Project Facility back to the Company pursuant to the Agency Lease and to appoint the Company as its agent for completion of the Project.
3. The Company Lease, Agency Lease, the PILOT Agreement, the Mortgages and the other documents to which the Agency is a party (that are listed on the Closing Memorandum) have been authorized by and lawfully executed and delivered by the Agency and (assuming the authorization, execution, and delivery by the other respective parties thereto) are valid and legally binding obligations enforceable against the Agency in accordance with their respective terms.

In rendering this opinion, we advise you of the following:

The enforceability of the Company Lease, the Agency Lease and other documents to which the Agency is a party that are listed in the Closing Memorandum may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar law or enactment now or hereafter enacted by the State of New York or the Federal government affecting the enforcement of creditors' rights generally and the general principles of equity, including limitations on the availability of the remedy of specific performance which is subject to discretion of the court.

This opinion is rendered to the addressees named above, and may not be relied upon by any other person without our prior, express written consent.

Very truly yours,

HISCOCK & BARCLAY, LLP

*Hiscock & Barclay, LLP*



conifer

a real estate development and management company

December 22, 2011

James Street Apartments, LLC  
183 East Main Street, Suite 600  
Rochester, New York 14604

City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202

New York State Housing Finance Agency  
641 Lexington Avenue  
New York, New York 10022

City of Syracuse  
c/o Department of Neighborhood and Business Development  
City Hall Commons  
233 East Washington Street  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency  
Lease/Leaseback Transaction  
James Street Apartments, LLC Project

Ladies and Gentlemen:

I have acted as counsel to James Street Apartments, LLC (the "**Company**") in connection with the James Street Apartments, LLC Project (the "**Project**") undertaken by the City of Syracuse Industrial Development Agency (the "**Agency**") at the Company's request. The Project consists of: (A)(i) the acquisition of a leasehold interest in two parcels of improved real property including an approximately .51 acre parcel located at 615 James Street (Leavenworth Parcel) and an approximately .50 acre parcel located at 622 James Street (Kasson Parcel) (collectively, the "**Land**"); (ii) the reconstruction and renovation of: (a) an approximately 51,602 square foot seven

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(7) story building ("*Leavenworth Apartments*") for mixed-income family housing including studio, one-bedroom and two bedroom units with a community exercise room to be shared by the residents of the Kasson Apartments (as defined below); and (b) an approximately 37,138 square foot, seven (7) story building ("*Kasson Apartments*" and together with the Leavenworth Apartments the "*Apartments*") for mixed-income family housing, including studio, one-bedroom and two bedroom units, the Apartments located on the Land and jointly housing 83 units of housing, each Apartment containing laundry and storage facilities together with on-site parking for residents (collectively, the "*Facility*"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment, including but not limited to new windows and HVAC systems in the Apartments (the "*Equipment*", together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from real property tax and sales and use taxation (collectively, the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, improvement and equipping of the Project Facility; and (D) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Agency has acquired a leasehold interest in the Project Facility pursuant to that certain Company Lease Agreement dated as of December 22, 2011 ("*Company Lease*") between the Company as lessor and the Agency as lessee and appointed the Company as its agent to complete the Project and subleased the Project Facility to the Company pursuant to the Agency Lease Agreement dated as of December 22, 2011 (the "*Agency Lease*") between the Agency and the Company. Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Agency Lease.

The Company has granted, and at its request the Agency has joined, a mortgage lien and security interest on its interest in the Project Facility to Mortgagee 1 (as defined herein) to secure a loan made by New York State Housing Finance Agency (HFA) ("*Mortgagee 1*") to the Company to finance certain costs of the Project pursuant to a Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement dated as of December 22, 2011 ("*Mortgage 1*").

The Company has also granted, and at its request the Agency has joined, a mortgage lien and security interest on its interest in the Project Facility to secure a second loan made by Mortgagee 1 to the Company to finance certain costs of the Project pursuant to a Fee and Leasehold Subsidy Mortgage dated as of December 22, 2011 ("*Mortgage 2*").

The Company has further granted, and at its request the Agency has joined, a mortgage lien and security interest on its interest in the Project Facility to Mortgagee 3 (as defined herein) to secure a certain loan made by the City of Syracuse ("*Mortgagee 3*") to the Company to finance certain costs of the Project pursuant to a Mortgage and Security Agreement, dated as of December 22, 2011 ("*Mortgage 3*").

In that regard, I have examined the Company Lease, the Agency Lease, the PILOT Agreement, the Mortgages, the Environmental Compliance and Indemnification Agreement and the other documents identified in the Closing Memorandum to which the Company is a party (collectively as the "*Company Documents*").

I have also examined corporate documents and records of the Company and made such investigation of law and/or fact that I deem necessary or advisable in order to render this opinion. For purposes of such examination, I have assumed the genuineness of all certificates and the authenticity of all documents submitted to me as original counterparts or as certified or photostatic copies; the genuineness of all signatures of all parties to the Company Documents other than on behalf of the Company; and the due authorization, execution and delivery of the Company Documents by and the enforceability thereof against all parties thereto other than the Company.

For purposes of factual matters material to the opinions expressed herein, I have relied generally upon certificates of officers of the Company, specifically including the General Certificate of James Street Apartments, LLC dated as of December 22, 2011 and provided to the Agency herewith, and of public officials. Without limiting the general nature of the reliance described above, I have relied specifically upon the results of searches performed by public officers and independent agencies.

Based upon the foregoing, it is my opinion that:

1. The Company is a duly organized and validly existing as a New York limited liability company and possesses full power and authority to own its property, to conduct its business, to execute and deliver the Company Documents, and to carry out and perform its obligations thereunder.

2. The execution, delivery and performance of the Company Documents have been duly authorized by the Company and the Company Documents have been duly executed and delivered by an Authorized Representative of the Company.

3. The Company Documents constitute the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with their terms, except as enforceability may be limited by applicable bankruptcy and insolvency laws and laws affecting creditors' rights generally and to the extent that the availability of the remedy of specific performance or injunctive relief or other equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought.

4. To the best of my knowledge, in reliance on the certificates and opinions specified herein, the execution and delivery by the Company of the Company Documents, the execution and compliance with the provisions of each and the consummation of the transactions contemplated therein do not and will not constitute a breach of, or default under the Company's organization documents, or any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Company or any of its Property may be bound, for which a valid consent has not been secured; nor is any approval or any action by any governmental authority required in connection with the execution, delivery and performance thereof by the Company.

5. To the best of my knowledge, in reliance on the certificates and opinions specified herein, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened against, or affecting the Company wherein an unfavorable decision, ruling or finding would in any way adversely affect in a material fashion the validity or enforceability of the Company Documents.

Our examination of law relevant to matters herein is limited to the laws of the State of New York and also the Federal law, where appropriate, and I express no opinion as to matters governed by the laws of any other state or jurisdiction.

This opinion is only for the benefit of and may be relied upon only by the Agency, its successors and assigns. The opinions set forth in this letter are limited to those expressly stated and no other opinion may be inferred nor is any implied. No other use of this opinion may be made without prior written consent. This opinion is given as of the date hereof and we undertake no obligation, and hereby disclaim any obligation, to update or supplement this opinion in

James Street Apartments, LLC  
City of Syracuse Industrial Development Agency  
December 22, 2011  
Page 5

response to a subsequent change in the law or future events affecting the documents identified in this letter.

Very truly yours,

A handwritten signature in black ink, consisting of several loops and a long, sweeping tail that ends in a small hook.